

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.08.2017
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17342 of 2004

S.Maharajan

... Petitioner

Vs.

1.Director General,
Railway Protection Force,
Rail Bhavan,
New Delhi.

2.Chief Security Commissioner (Inspector General),
Railway Protection Force,
Moore Market Complex,
Southern Railway,
Chennai - 600 003.

3.Dy.Chief Security Commissioner,
Railway Protection Force,
Moore Market Complex,
Southern Railway,
Chennai - 600 003.

4.Divisional Security Commissioner,
Railway Protection Force,
Moore Market Complex,
Southern Railway,
Chennai - 600 003.

5.Assistant Security Commissioner,
Railway Protection Force/W&S/PER,
Chennai - 600 003.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records from the respondents and on perusal to quash the Impugned Penalty Order of removal No.M/XP 227/21/98 dated 6.2.99 (Two orders) passed by the Fourth Respondent and the Order No.Nil dated 26.4.99 passed by the Third Respondent and Order No.Nil dated 1.11.99 passed by the second respondent and Order No.nil dated nil passed by the first respondent

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communicated in the Order dated 21.6.2001 of the fourth respondent and consequently to direct the respondents to reinstate the petitioner into service and to give him all consequential benefits.

For Petitioner : Mr.S.Ramaswamyrajarajan
For Respondents : Mr.P.T.Ram Kumar
Standing Counsel for Railways

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus calling for the records from the respondents and to quash the impugned penalty order of removal No.M/XP 227/21/98 dated 06.02.1999 (two orders) passed by the fourth respondent and the Order No.Nil dated 26.04.1999 passed by the third respondent and Order No.Nil dated 01.11.1999 passed by the second respondent and Order No.nil dated nil passed by the first respondent communicated in the Order dated 21.06.2001 of the fourth respondent and consequently to direct the respondents to reinstate the petitioner into service and to give him all consequential benefits.

2.The brief facts of the case are as follows: The petitioner was appointed as Constable in Railway Protection Force on 01.08.1986. While he was working under the control of Assistant Security Commissioner/ the fifth respondent, he was issued with a charge sheet on 04.08.1998, under Rule 153 of the Railway Protection Force Rules, 1987, alleging as follows:

'Charge 1 : "While working as Constable 1241 at MAS RPF post he was deputed for 13.00 to 21.30 hrs. duty on 12.6.98. But he did not turn up for Return Roll Call and absented himself unauthorisedly for duty from 12.6.98 to 15.7.98 on his own accord without obtaining prior permission from his superior officer. Thus, he violated Rule 147 (vi) of RPF Rules, 1987.

Charge 2 : That Sri.S.Maharajan, Constable 1241/MCPT was appointed on 1.4.97. In his 11 years and 3 months of service he has been awarded 13 punishments for unauthorised absence for duty alone. With all that he has not corrected himself and there is no perceptible improvement in his habit of unauthorised absence.'

3.Subsequent to the charge sheet, the fifth respondent appointed an Enquiry Officer and conducted the enquiry. On 29.08.1998, the petitioner appeared before the Enquiry Officer and answered the questions raised by the Enquiry Officer. The said questions and answers are as follows:

"Q.No.1 : Have you received the Charge sheet issued by ASC/W*S/PLR vide Charge sheet No.MXP/227/21/98 DT:04.8.98.

Ans : Yes, I have received the Charge sheet issued by ASC/W&S vide reference cited above.

Q.No.2 : Have you understood the charges mentioned in the Charge sheet referred in Q.No.1.

Ans : Yes, I fully understood the charges.

Q.No.3 : Do you have any objection in enquiring your case by me i.e., IPF/GSD/PER.

Ans : No, I don't have any objection.

Q.No.4 : Do you accept the charges 1 & 2 or deny the charges.

Ans : Yes, I accept the charges.

Q.No.5 : Do you want to engage any defence helper to defend your case.

And : No, I don't want to engage any defence helper, I fully accept the charge and I am giving the writing to the Enquiry officer accepting my charges and I don't want any further enquiry into the matter."

4.Thereafter, the Enquiry Officer submitted a report on 25.10.1998. After considering the enquiry report, the fourth respondent passed the impugned penalty order of removal from service on 06.02.1999. As against the order of the fourth respondent, the petitioner filed appeal before appellate authority namely, the third respondent. The third respondent also rejected the appeal on 26.04.1999 and confirmed the order of the original authority. Thereafter, the petitioner filed revision petition before the second respondent. The second respondent also rejected the revision made by the petitioner on 01.11.1999. Thereafter, mercy petition submitted by the petitioner before the first respondent was also dismissed by the first respondent and the same was also communicated to the petitioner vide order of the fourth respondent dated 21.06.2001, as against which, the present writ petition has been filed.

5.The learned counsel for the petitioner would submit that due to the family circumstances and the mental pressure given by the family members only, the petitioner was not able to join the duty on different occasions and was not able to perform his official duty and was un-authorizedly absent. Hence, the un-authorized absence has occurred not because of any intention or

any fixatious reasons but only because of the family circumstances.

6.The learned counsel also relied upon Rule 147(4) of the Railway Protection Force Rules, 1987 and submitted that in view of the said Rule, the second charge levelled against the petitioner is not sustainable. The first charge is re-produced as second charge. Hence, the impugned order passed by the respondent is vitiate and contrary to the above said Rules and prayed this Court to take a leniency view, taking into consideration the past service and prayed for allowing the writ petition.

7.In support of his submissions, the learned counsel for the petitioner relied upon paragraph no.23 of the judgment of the High Court of Gujarat at Ahmedabad made in Special Civil Application No.11952 of 2000, dated 15.06.2016 in the case of Diwan Singh Vs. Director General R.P.F. And 4, and the same reads as follows:

"23.We have quoted in extenso as we are disposed to think that the Court has, while dealing with the charge of failure of devotion to duty or behavior unbecoming of a Government servant, expressed the aforestated view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is willful. On an apposite understanding of the judgment we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence HC-NIC Page 10 of 12 Created On Sat Jun 18 02:32:59 IST 2016 C/SCA/11952/2000 JUDGMENT is willful even if the employee fails to show the compelling

circumstances to remain absent."

Thus, the Supreme Court, in Chennai Metropolitan Water Supply and Sewerage Board (supra), has not laid down any law which could be said to be running contrary to the law laid down by the Supreme Court in *Krushnakant B. Parmer* (supra). The Supreme Court, in Chennai Metropolitan Water supply and Sewerage Board (supra), considered the gross facts and took the view that it was not obligatory on the part of the disciplinary authority to record a finding that the said absence was willful as the employee had failed to show the compelling circumstances to remain absent.

In the case in hand, the petitioner could very much show the compelling circumstances and such compelling circumstances were believed and accepted by the Director General while modifying the order of penalty.

In my view, having regard to the circumstances in which the petitioner had to leave the headquarter and the fact that his explanation has been accepted by the authority i.e., the Director General, the imposition of penalty of compulsory retirement was not proper and justified.

As a result, this writ-application succeeds and is allowed. The order passed by the disciplinary authority, appellate authority, revisional authority and reviewing authority is quashed and set-aside. The petitioner stands reinstated in service on the post of Constable.

Taking into consideration the fact that the petitioner has HC-NIC Page 11 of 12 Created On St Jun 18 02:32:59 IST 2016 C/SCA/11952/2000 JUDGMENT suffered a lot since the proceeding was drawn in 1997 for absence from duty for a period of 44 days, I am not inclined to remit the proceeding to the disciplinary authority to consider the proportionality of the punishment. Further, keeping in view the fact that the petitioner has not worked for a long time, I direct that the petitioner be paid 50% of the backwages

but there shall be no order as to costs.

Rule made absolute to the aforesaid extent."

8. Per contra, the learned Standing Counsel appearing for the respondents would submit that the petitioner was working in an uniformed service and disciplined force. They should maintain minimum standard of the regulation and discipline in the said duty. However, for the past eleven years, he was unauthorisedly absent for 13 times which cannot be considered leniently and the punishment imposed by the authority is perfect. He also relied upon the Rule 147(vi) and 156(b)(iii) of the Railway Protection Force Rules, 1987 and the same reads as follows:

"147(vi) Absenting himself without proper intimation to his controlling authority and without sufficient cause over staying leave granted to him for failing without reasonable cause to report himself for duty on the expiry of such leave".

"156(b)(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause."

Accordingly, he prayed for dismissal of the writ petition.

9. The learned Standing Counsel appearing for the respondents relied upon the decision of the Supreme Court reported in (2008) 5 Supreme Court Cases 569 (Chairman & Managing Director, V.S.P. And others vs. Goparaju Sri Prabhakara Hari Babu):

"16. Indisputably, the respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of Section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.

17. In Sangramsinh P. Gaekwas v. Shantadevi P. Gaekwad this Court noticing Section 58 of the Evidence Act held: (SCC p.380, para 214)

"214. In terms of the aforementioned provision, things admitted need not be proved. In view of the admission of Respondent 1 alone, the issue as regards

allotment of 6475 shares should have been answered in favour of the appellants. The company petitioner at a much later stage could not be permitted to take a stand which was contrary to or inconsistent with the original pleadings not could she be permitted to resile from her admissions contained therein."

18.It was observed that judicial admissions can be made the foundation of the rights of the parties.

19.A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings.

20.The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See Maruti Udyog Ltd. v. Ram Lal; State of Bihar v. Amrendra Kumar Mishra; SBI v. Mahatma Mishra; State of Karnataka v. Ameerbi; State of M.P. v. Sanjay Kumar Pathak and Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi.)"

10.The learned Standing Counsel further relied upon the judgment of this Court rendered in W.P.No.5851 of 2002 dated 05.09.2012 in the case of E.R.Jeya Shankar Vs. 1.The Director General, RPF, Railway Board, Rail Nilayu, New Delhi and others and the relevant portion of the same reads as follows:

"The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments.

Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal

parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. {[See Sangeroid Remedies Ltd. v. Union of India & Ors. [(1999) 1 SCC 259]}. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.""

11.I have gone through the entire typed set as well as the arguments advanced by both sides.

12.The petitioner who was in the uniformed service was un-authorizedly absent for 13 times in the total period of service and Rule 147 of the Railway Protection Force Rules, 1987, also imposed a condition that whoever absents himself without proper intimation or without consent of the controlling authority has to be viewed seriously on un-authorized absence. Accordingly, the order of removal was passed.

13.On a perusal of the questions raised and the answers given during the enquiry, it is clear that the petitioner has accepted the charge and he has refused to avail any defence and he has also entrusted accepting the charge in writing. Once the person accepts the charge before the Enquiry Officer and has not availed any opportunity to defend the case, later on he cannot turn around and say, no opportunity was given to defend his case. Hence, there is no violation of principles of natural justice.

14.I am not able to accept the reasons given in the above cited judgment relied upon by the learned counsel for the petitioner, as it is something different from the present case on hand. The employee in the above said case had taken leave only for 40 days and the same was also considered by the appointing authority and hence, a lenient view was taken and that order was modified in the above said order. In the present case on hand, the petitioner was un-authorizedly absent for 13 times during his service. Hence, the ratio laid down in the above said order cannot be equated in the present case.

15.Law is well settled that once the disciplinary authority as well as the appellate authority considers the factual aspects elaborately and arrives at the findings, the High Court cannot act as an Appellate Authority unless their order is perverse or arbitrary. Accordingly, I do not find any error in the order passed by the appellate authority as well as the revisional authority. Hence, I am not inclined to interfere with the order passed by the authorities.

16. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS III)

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Sub Assistant Registrar

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To

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+1 cc to Mr. P. T. Ramkumar Advocate sr 59562
+1 cc to the Mr. S. Ramaswamy Rajarajan Advocate sr 59824

W.P.No.17342 of 2004

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