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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.01.2017

DELIVERED ON: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A.(MD)No.603 of 2011

E.Venugopal Rao

.. Appellant
Petitioner

Vs.

- 1.The Union of India,
rep. by through the Director General,
Railway Protection Force,
Railway Board, New Delhi.
- 2.The Inspector General,
Railway Protection Force,
Railway Board, New Delhi.
- 3.Commandant,
(Commanding Officer),
5BN/RPSF/TPJ, Head Quarters,
No.5, Batalion,
Railway Protection Special Force,
Tiruchirapalli (TN).
- 4.Assistant Commandant - II,
5BN/RPSF/TPJ, Head Quarters,
No.5 Battalion,
Railway Protection Special Force,
Tiruchirapalli.(TN).
- 5.The Enquiry Officer & Inspector,
"A" Company No.5BN/RPSJ/TPJ,
Railway Protection Special Force,
Tiruchirapalli. (TN).

<https://hcservices.ecourts.gov.in/hcservices/>

6.S.Ramachandran

.. Respondents / Respondents



Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 31.08.2009, made in W.P.(MD). No.9296 of 2005 by a learned Single Judge of this Court.

PRAYER IN WP(MD)9296/2005:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ, order or direction in the nature of writ, to call for the records of the impugned order of Removal from service vide No.5BN/PRO-MAJ/D/20/92/93-3S-3S44 dated 18.10.1993 passed by the 3rd respondent against the petitioner, quash the same and direct 1st, 2nd & 3rd respondents to reinstate the petitioner in service with all attended service benefits and backwages incidental thereto.

For appellant : Mr.A.Thirumurthy

For respondents 1 to 5 : Mr.S.Manohar,
Standing counsel for Railway

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

The appellant is the writ petitioner. He has filed this writ appeal as against the order passed in W.P.(MD).No.9296 of 2005, whereby and whereunder a learned Single Judge of this Court has negatived the prayer of the petitioner to quash the order of dismissal from service and to consequently direct respondents 1 to 3 to reinstate him in service with all benefits.

2.The brief facts which are necessary to decide the writ appeal are as follows;

(a) The appellant was appointed as Constable in the Railway Protection Special Force (RPSF) on 16.10.1987. On 08.03.1992, after completion of election duty at Punjab, while the appellant was returning along with the other colleagues in Train No.8238, he played cards along with two colleagues for time pass. At that time, the other colleagues were drinking liquor and some of them were playing cards for relaxation. While so, the 6th respondent, who was working as Head Constable and who had been inimical towards him due to non payment of personal loan, has insulted the appellant and the appellant has objected the same. But, due to the false representation of the 6th respondent, an enquiry was conducted against the appellant on the charges of using abusive language and threatening to murder the sixth respondent.

(b) After enquiry, the Enquiry Officer has reported that the appellant was found guilty of all the charges, except the charge of threatening to murder the 6th respondent. After receipt of the Enquiry Officer report, the disciplinary authority dismissed him



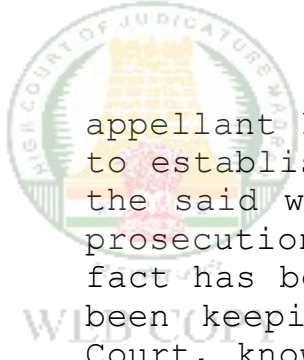
from service and the same was also affirmed by the appellate authorities viz., Inspector General of RPSF, New Delhi and Director General of RPSF, New Delhi on 25.10.1993 and 15.07.1996 respectively. The defence of the appellant was that initiation of departmental enquiry for the alleged offences committed out of duty hours is unconstitutional.

(c) Challenging the said impugned orders, initially, the appellant has filed a writ petition before the Calcutta High Court on 27.07.1995. But, the same was dismissed by the Calcutta High Court on the ground of territorial jurisdiction on 03.08.2005. Thereafter, the appellant has filed the writ petition before this Court challenging the impugned orders and also for a consequential direction to the respondents 1 to 3 to reinstate him in service with all benefits. After hearing both sides, the learned Single Judge has dismissed the writ petition on the ground of laches and also on merits. Aggrieved by the same, the present writ appeal has been filed.

3.The only ground raised by the learned counsel for the appellant is that the punishment of removal from service is disproportionate to the charges levelled against him. According to the appellant, mere usage of abusive language against a superior would not warrant dismissal from service. In this regard, the learned counsel for the appellant relied upon a decision of a Division Bench of this Court in **Syed Khader Mohiuddin Vs. The Chairman, TNPSC, Madras** reported in (1997) MLJ 272 and yet another decision of a Hon'ble Supreme Court in **Union of India and others Vs. Gyan Chand Chattar** reported in (2009) 12 SCC 78.

4.0. Per contra, the learned counsel appearing for the respondents 1 to 5 submitted that the allegations against the appellant is that he misbehaved with his superior, used abusive language and also threatened to murder the superior and except the charge of threatening to murder, the other charges are proved and therefore, he deserved stringent punishment to curb such nature of actions in the disciplined force. He has further submitted that Rule 156(3) of the Railway Protection Force Act, 1957, empowers the disciplinary authority to impose punishment of dismissal from service for such charges and thus, the punishment was imposed only in accordance with the said Rule.

4.1. The learned counsel for the respondents 1 to 5 further submitted that in fact, the appellant has initially filed the writ petition before the Calcutta High Court in the year 1995. Though the respondents, at the earliest point of time i.e, on 27.07.1995, ~~itself~~ have taken a plea before the Calcutta High Court that the said Court has no jurisdiction to entertain the writ petition, the



appellant has not chosen either to not press the writ petition or to establish the jurisdiction of the Calcutta High Court. In fact, the said writ petition was dismissed on 31.01.2002 itself for non prosecution and after some time, it was restored. But, the said fact has been suppressed by the appellant. Since the appellant has been keeping the writ petition pending before the Calcutta High Court, knowing fully well that the said Court has no jurisdiction, the present writ petition, which has been filed after 10 years, was liable to be dismissed on the ground of delay and laches. The learned Single Judge has rightly dismissed the writ petition on the ground of delay and also on merits.

4.2. The learned counsel for the respondents 1 to 5 has also submitted that the cases relied upon by the learned counsel for the appellant cannot be made applicable to the facts of this case as the delinquent in those cases were in civil services, whereas in the present case the delinquent / appellant was working in a disciplined force.

5. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

6. The main submission of the learned counsel for the appellant is that the punishment imposed on the appellant is disproportionate to the charges levelled against him. Admittedly, the appellant was a Constable in a Disciplined Force viz., Railway Protection Special Force. The charges against appellant are breach of discipline, serious misconduct, insubordination, misbehaviour with superior, using of abusive language and holding threat to murder the superior. It is seen from the record that except the charge of threatening, the other charges were proved. The disciplinary authority has imposed the punishment of dismissal from service holding that "it is no way desirable to retain such an individual in an Armed Force of the Union any longer in the interest of discipline, which is an essence of the force". The said decision was also affirmed by the appellate authorities.

7. At this juncture, this Court is of the view, it would be appropriate to extract the provision of Rule 156 of the Railway Protection Force Rules, 1987, hereunder:

"156.Imposing of punishment of dismissal, etc.:-

Before coming to any lower punishment the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or from service to any member of the Force in the following cases, namely:-



(a) Dismissal:

- (i) Conviction by a criminal Court;
- (ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;
- (iii) discreditable conduct affecting the image and reputation of the Force;
- (iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;
- (v) insolvency or habitual indebtedness; and
- (vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from service:

- (i) any of the misconduct for which he may be dismissed under clause (a) above;
- (ii) repeated minor misconducts;
- (iii) absence from duty without prior intimation or overstay beyond sanctioned leave without sufficient cause."

8.A bare perusal of the above said Rule makes it clear that even for discreditable conduct affecting the image and reputation of the Force, the disciplinary authority can impose the maximum punishment of dismissal of service. Here, in this case, several charges were contemplated as against the appellant and except one charge, other charges were proved. There is no *mala fide* allegation against the disciplinary authority. According to the official respondents, in order to maintain discipline in the force, the above said decision has been taken as per Rule 156 of the Railway Protection Force Rules, 1987. It is settled law that if the punishment imposed is found to be totally irrational or shockingly disproportionate or outrageous in defiance of logic, then the Court can interfere with the same. In this case, this Court is of the view that the punishment imposed on the appellant cannot be stated to be disproportionate to the charges leveled against him and in fact, it was imposed only in accordance with the Rules.

9.As rightly contended by the learned counsel for the official respondents, the decisions relied upon by the learned counsel for the appellant are not applicable to the facts of this case, as in those cases the delinquents were in civil services, whereas, in this case, the delinquent/appellant was an employee of a disciplined force and except the charge of holding a threat to service, other charges were proved. This Court does not find any infirmity or illegality in the order passed by the learned Single Judge.



10. In the result, this Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar[CS-II]

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Sub Assistant Registrar/-

To

1. The Union of India,
Director General,
Railway Protection Force,
Railway Board, New Delhi.
 2. The Inspector General,
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Railway Board, New Delhi.
 3. Commandant,
(Commanding Officer),
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 5. The Enquiry Officer & Inspector,
"A" Company No.5BN/RPSJ/TPJ,
Railway Protection Special Force,
Tiruchirapalli. (TN).
- +1cc to Mr.S.Manohar, Advocate, SR.11009
+1cc to Mr.A.Thirumurthy, Advocate, SR.10384

Pre-Delivery Judgment made in
Writ Appeal (MD) No.603 of 2011
24.02.2017

KK-SV-MMS-14.3.2017-6P-8C