

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY ,THE 08TH DAY OF NOVEMBER 2018 / 17TH KARTHIKA, 1940

WP(C) .No. 32948 of 2017

PETITIONER/S:

SURESH

AGED 48 YEARS, S/O. ABRAHAM, PENIYATHU (H) ,
MANJUMMEL, ELOOR PO., PIN-683501 ERNAKULAM

BY ADVS.

SMT.K.G.MARY

SRI.ARUN P. ANTONY

RESPONDENT/S:

1 RAILWAY BOARD, REPRESENTED BY ITS CHAIRMAN
NEW DELHI PIN-110001

2 DIVISIONAL SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE, TRIVANDRUM -14

3 ASSISTANT SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE, TRIVANDRUM -14

BY ADV.

SRI.DINESH CHERUKAT, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Petitioner, who is a Head Constable in Railway Protection Force, is aggrieved by Ext.P6 proceedings issued on 26.04.2017. The second respondent had awarded a punishment of barring of increments for a period of 6 months to the petitioner as per order dated 15.06.2016 [Ext.R3(a)]. The contention of the petitioner is that after a period of one year he received Ext.P6 order dated 26.04.2017 issued by the Divisional Security Commissioner-the second respondent, cancelling the minor penalty advice without prejudice to the further DAR action against the petitioner. Petitioner filed this writ petition at that stage alleging that the power to revise cannot be invoked after a period of one year.

2. However, the respondents filed a counter affidavit producing Ext.R3(a) order issued on 15.06.2016 and stating that Ext.P6 order was issued as early as on 26.04.2017 and that Rule 219 (4) of

the Railway Protection Force Rules, 1987 permits any authority superior to the authority who issued the original order to revise any order and either confirm, enhance or reduce the punishment and that Ext.P6 order is issued within the time limit.

3. Learned counsel for the petitioner submits that under the proviso to Rule 219.4, the second respondent was bound to give an opportunity to the petitioner to show cause before he proposed to enhance the punishment. Rule 219.4 of Railway Protection Force Rules reads as follows:

Any authority superior to the authority making the original order may, on its own motion, or otherwise, call for the records of any inquiry and revise any order made under these rules and may:-

- (a) confirm, modify or set aside the order; or
- (b) confirm, enhance, reduce or set aside the punishment imposed by the order, or impose any punishment where no punishment has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit:
Provided that no action under this sub-rule shall be initiated after the expiry of one year from the date of the order aforesaid:

Provided further that no proceedings for revision shall be commenced until after-

- (i) the expiry of the period for making an appeal specified in sub-section (2) of section 9; or
- (ii) the disposal of the appeal, where any such appeal has been preferred:

Provided further that in a case in which it is proposed to enhance punishment further, the aggrieved member shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced.

4. Yet another contention of the petitioner is that the officials under the Railway Vigilance Department does not have any authority to conduct any enquiry against the members of Railway Protection Force. Therefore, it is the contention of the petitioner that the entire proceedings including Exts.R3(a) and Ext.P6 are without jurisdiction.

5. Respondents have filed a counter affidavit justifying the proceedings and pointing out that they have issued Ext.P7 memorandum to the petitioner, (produced along with reply affidavit of the petitioner) by which the petitioner is informed about the proposal to hold an enquiry under Rule 153 of the Railway Protection Force Rules, 1987, forwarding the

the statement of articles of charges, statement of imputation, list of documents and list of witnesses to be examined in the enquiry. Respondents stated that petitioner would get sufficient opportunity to defend his case and whether the penalty should be enhanced or otherwise would be decided only on finalisation of the enquiry.

6. On consideration of the contentions, on either side, I find that the proceedings initiated under Rule 219.4 is within time and if at all it is decided to impose a higher or major penalty, that would be only after giving sufficient opportunity to petitioner to show cause. However it is seen that the petitioner has raised the question of authority of the respondents to proceed against him. Therefore, I am of the view that the said question of jurisdiction of the second respondent/the authorities under the Railway Vigilance has to be considered as a preliminary issue before proceeding with Ext.P7 memo of charge.

In the above circumstances the writ petition is disposed of, allowing the petitioner to submit a detailed representation before the second respondent within a period of 'three weeks' from the date of receipt of a copy of the judgment, on the question of the jurisdiction.

On receipt of such representation, the second respondent shall consider the same, after affording an opportunity of hearing to the petitioner and pass orders within a further period of 'three weeks'. Further proceedings on Ext.P7 shall be taken only after a decision is taken by the second respondent.

Sd/-

P.V.ASHA, JUDGE.

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1: THE TRUE COPY OF THE RECEIPT REGARDING THE PAYMENT OF RS.1810/- BY THE PETITIONER TO THE RAILWAY COMMERCIAL DEPARTMENT DATED 13.04.16
- EXHIBIT P2: THE TRUE COPY OF THE CHARGE SHEET DATED 29.04.2016 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P3: THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- EXHIBIT P4: THE TRUE COPY OF THE WRITTEN STATEMENT SIGNED BY MR.CHACKO
- EXHIBIT P5: THE TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT
- EXHIBIT P6: THE MEMORANDUM ISSUED BY THE 2ND RESPONDENT RECEIVED BY THE PETITIONER ON 26.04.2017