

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2019

Pronounced on : 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.22589 of 2013

A.Rajasekaran

...Petitioner

Vs

1. The Director General of Railway Protection Force,
Railway Board, New Delhi.
2. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway, Chennai - 600 003.
3. The Senior Divisional Security Commissioner,
Railway Protection Force, Chennai - 600 003.
4. The Assistant Security Commissioner,
Railway Protection Force,
TNPM/RPF/Chennai, Chennai - 600 003. ...Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records relating the impugned order of the 1st respondent vide No.2011/Sec(E)/DAR-2/3(CC) dated 15.02.2011, quash the same and consequently direct the respondents to pay all the service and monetary benefits to the petitioner with interest.

For Petitioner : Mr. K.Prem Kumar

For Respondents : Mr. Ramachandramurthy
Standing Counsel for Railways

O R D E R

The instant writ petition has been filed challenging the impugned order of the 1st respondent vide No.2011/Sec(E)/DAR-2/3(CC) dated 15.02.2011, to quash the same and consequently direct the respondents to pay all the service and monetary benefits to the petitioner with interest.

2. The short issue which arises in this case is as to whether both minor and major penalty can be imposed for one incident. The writ petitioner was appointed as a Constable in the Railway Protection Force. He was promoted as Head Constable. On 21.04.2005, he was assigned for an escort duty to travel in train bearing number 5012 from Chennai Central to Jolarpettai. At about 3.20 A.M, the petitioner went to attend nature call in the toilet, the petitioner's pistol fell in the toilet due to the jerks in the train. The petitioner pulled the alarm. The train stopped. This incident took place between Avadi and Hindu College railway stations. The petitioner alighted from the train to search the pistol and the train departed.

3. The petitioner tried to trace out the pistol, but due to darkness, the pistol could not be traced since it was dark. The pistol was finally recovered in a damaged condition at about 07.30 A.M. The Assistant Security Commissioner, Railway Protection Force, Chennai, suspended the petitioner pending contemplation of charge.

4. A charge sheet was issued against the petitioner on 23.01.2006. Four charges have been framed against the writ petitioner. The charges are read as under:-

"Charge 1 : He was directed with instructions to report before IPF/NHC/MAS for train escort by IPF/AJJ on 14.12.2005. While performing Train escorting duty by Tr.No.5012 GKP-TVC Express Ex.MAS- JTJ, he was found wearing chappals instead of Ankle boots on 24.12.2005. Thus, he has violated Rule 123.2 of RPF Rules, 1987

Charge 2 : He had miserably failed to secure the 9 mm pistol Butt No.910 in the pouch properly by putting the flap and buttoning the pouch, which resulted in the droppage of pistol in one of the toilet of ACT Coach of Tr.No.5012 Express in between AVD and HC (Hindu College) on 24.12.05 thereby failed to keep it in safe custody and upkeep while in his charge and possession. Thus, he has violated Rule 127.1 of RPF Rules, 1987.

Charge 3 : He was issued with the pouch in good condition by Sri.H.Bharmalingam, HC 21B/NG0/A on 24.12.05. He had wilfully and wantonly tampered the flap with intention to escape from the clutches of punishment. Thus, he has violated Rule 147(11) of RPF Rules, 1987.

Charge 4 : He had miserably failed to inform the very serious incident of the droppage of pistol from his possession either to his superiors or to DSCR which caused much hardship for the search team to locate the place of droppage of the pistol on 24.12.2005. Thus, he has contravened Rule 146.2(i) of RPF Rules, 1987."

5. Enquiry Officer was appointed. Enquiry report was submitted to the Disciplinary Authority. The Disciplinary Authority imposed a punishment of compulsory retirement. The petitioner thereafter filed an appeal before the Chief Security Commissioner. The Appellate Authority by its order dated 10.05.2007, upheld the penalty. The writ petitioner filed a revision to the Government. Pending revision, the petitioner was also filed a writ petition in WP.No.5756 of 2008, against the order dated 10.05.2007, passed by the Appellate Authority, rejecting the appeal. This Court by an order dated 25.11.2010 in WP.No.5756 of 2008, directed the Revisional Authority to dispose of the revision petition. This Court further directed that, while disposing the Revision Petition, the Authorities should keep in mind the circumstances under which the pistol got disengaged from the belt and fell into the toilet. This Court also observed that the pistol was recovered and this should also to be considered while deciding the punishment, and the authorities should take in to account the bonafides pleaded by the petitioner that the pistol did not fall because of the negligence or failure to take adequate care on the part of the petitioner. This Court observed that, all these facts should be considered at the time of deciding the Revision Petition including the claim for lenient punishment, considering the nature of the petitioner's employment and family circumstances.

6. The Revision Petition was disposed of by passing the following order.

"Shri A.Rajasekaran Ex HC/RPF/Southern Railway has filed a WP. No. 5756 of 2008 in the Hon'ble High Court of Madras against the compulsory retirement from service awarded by Sr DSC/MAS vide order dated 20-06-2006 and withheld by the appellate authority vide order dated 10-05-2007.

The instant case is being dealt with in compliance of direction issued by Hon'ble High Court of Madras dated 25-11-2010. Ex HC/RPF A. Rajasekaran was charged with violation of RPF Rules 1987 in as much as he was not

wearing proper uniform during duty as train escort and lost his service 9mm pistol due to negligence and failed to inform about the loss of weapon to concerned authorities. In DA&R proceeding, the IO found him guilty of the charges and consequently the DA imposed the punishment of compulsory retirement from service on him. On appeal to the CSC/SR, the punishment was upheld and appeal was rejected.

In the writ petition tiled in the Hon'ble High Court of Madras, the revision petitioner has contended that the pistol fell through the toilet while attending the call of nature due to faulty pouch in the belt supplied by the department. The lost pistol was subsequently recovered by a Railway Key man and RPF party in damaged state.

In course of DA&R action, all relevant details have been taken into consideration and procedure followed. It has been proved beyond doubt that the revisionist miserably failed in his duty to keep the arm and ammunition supplied to him securely and did not follow the stipulated procedure after loss of weapon. The appellant authority while condoning the delay in the submission of appeal petition has observed that the enquiry was conducted as per Rules and did not suffer from any infirmity. He rejected the appeal on the ground that no fresh ground were advanced to warrant any interference with the order passed by the DA.

Having seen the observation made by the Hon'ble Court and materials on the record, I hereby modify the punishment imposed on the delinquent as under:-

" He is reinstated in service from the date on which he reports for duty. He will be taken in service as Constable in the lowest scale of pay for a period of three years without cumulative effect. The Intervening period of compulsory retirement from service to the date of reinstatement may be treated as extraordinary leave/ leave due under the F.R. (54) "

The revision petition filed by the petitioner is disposed off and the Hon'ble Court may be informed accordingly."

7. The writ petitioner gave a representation against the impugned order. The representation is yet to be answered. The petitioner has filed the instant writ petition challenging the order dated 15.02.2011, by which the Revisional Authority has set aside the order of compulsory retirement from service and replacing it with punishment of reduction in rank of Head Constable to Constable and has placed the petitioner in the lowest scale of pay in the rank of Constable for the period of three years without cumulative effect.

8. Heard the counsel for the parties.

9. The learned counsel for the writ petitioner vehemently contended that the order of Revisional Authority imposing the punishment of reduction in rank from Head Constable to Constable and placing the petitioner in a lowest scale of pay in the rank of Constable for the period of three years without cumulative effect, is unsustainable in law.

10. The learned counsel for the writ petitioner would rely on the judgment of the Hon'ble Supreme Court of India, in the case of Union of India Vs. S.C.Parashar, reported in 2006 (3) SCC 167, wherein the Hon'ble Supreme Court of India held that imposition of both minor and major penalties by the same order is not sustainable. The Hon'ble Supreme Court of India held that the amalgamation of minor and major penalties cannot be imposed by the same order. The learned counsel for the writ petitioner would rely on the Punjab and Haryana High Court, in the case of R.S.Panwar Vs. Food Corporation of India (P&H), reported in 2010 (2) PLR 765, wherein the Punjab and Haryana High Court has relied on the judgment of the Apex Court (cited supra), which also holds that major penalty cannot be clubbed with the minor penalty in the same order.

11. On the other hand, the learned counsel for the respondent would rely on Rule 1322 of the Indian Railway Establishment Code. He would also rely on a circular of the Ministry of Railways. It is stated that, the penalty of reduction to the lower grade and fixation of pay at the minimum of that grade is permissible under Rule 1322.

12. Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, deals with the penalties which can be imposed on a railway servant, namely (i) censure, (ii) withholding of his promotion for a specific period, (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the government or railway administration by negligence or breach of orders and (iv) withholding of increments of pay for a specific period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay, (v) reduction to a lower stage in the time-scale of pay for a specified period, with further direction as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of pay and (vi) reduction to a lower time-scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or service. Rule 9 gives the power to the Government to impose penalty. Rule 1322 of the Indian Railway Establishment Code, reads as under:-

"1322.(F.R.) 28 pay on reduction to lower post. The authority which orders the reduction of railway servant as a penalty from a higher to a lower post or time-scale, may allow him to draw any pay, not exceeding the maximum of the lower post, or time-scale which it may think proper.

Provided that the pay allowed to be drawn by a railway servant under this rule shall not exceed the pay which he would have drawn by the operation of Rule 1313 (F.R.22) read with Clause (b) or Clause (c) as the case may be, of Rule 1320 (F.R.26)."

13. The clarification dated 03.10.1996 of the Government of India on the power to impose penalty under the Railway Servants (Discipline & Appeal) Rules, 1968, reads as under:-

"In the meeting held with the Departmental Council in May 1996, under the Joint Consultative Machinery Scheme, certain points raised by the staff side relating to RS (D&A) Rules, were clarified as under :-

Sl.No	Points raised	Clarifications
(i)	Whether Defence Assistant is to be allowed during personal hearing before Revising Authority	There is no bar in the rules in allowing the defendant employee the services of a Defence Assistant during personal hearing, if such hearing is allowed by the reversionary authority, as admissible at the appeal stage
(ii)	Whether the reduced penalty should take effect from the date of the original penalty of dismissal / removal / compulsory retirement.	In cases where the penalty of dismissal/ removal/compulsory retirement is set aside in appeal or review and the employee is reinstated in service with a reduced penalty, the reduced penalty takes effect from the date of reinstatement, In all other cases, the reduced penalty takes effect from the date of imposition of the original penalty. This is because regularization of the intervening period from the date of dismissal/removal/compulsory retirement to the date of reinstatement including the period of suspension, if any, is governed by provisions contained in Rule 1343-RII which may be contravened if the reduced penalty takes effect from the date off the original penalty.
(iii)	Whether original of relied upon documents are to be produced in the enquiry proceedings.	In terms of Section 191 of the Railway Act, 1989, production of the originals of the records or other documents relied upon is not necessary in the inquiry proceedings, provided the certified copies thereof are made available.
(iv)	Whether Disciplinary Authority can order de novo inquiry on same charges	Ordinarily, the Disciplinary Authority should remit the case back to the same inquiry on same Authority for further inquiry. However, if the same inquiry officer is not available the case may be remitted to another inquiry officer.

Sl.No	Points raised	Clarifications
(v)	whether revision under Rule 25 is permissible after retirement	The issue whether revision under Rule 25 of Railway Servants (Discipline & Appeal) Rules, is permissible in cases of retired Railway servants is under consideration in consultation with the Department of Personnel and Ministry of Law and decision in this regard may be awaited.
(vi)	Whether reduction to lower grade and fixation of pay at the minimum of that grade would amount to be double punishment	The penalty of reduction to the lower grade and fixation of pay at the minimum of that grade does not amount to dual penalty as it is within the ambit of Rule 2024 (now Rule 1322) (FR 28) of IREC Vol. II

14. The judgment of the Hon'ble Supreme Court of India, in the case of Union of India Vs. S.C.Parashar, was dealing with the provisions of Central Reserve Protection Force Rules. The said Rules does not contain any code akin to the Rule 1322 as given in the Indian Railway Establishment Code. The Hon'ble Supreme Court of India while dealing with the situation identical to the present case and arising under the Railway Servants (Discipline & Appeal) Rules 1968, in the case of Union of India & Anr. Vs. G.Veerassamy, reported in 2003 (10) SCC 251, in paragraphs 4,5 and 6 held as under:-

"4. We also extract Rule 1322 of the Indian Railway Establishment Code. It reads as follows:

"1322. (FR 28) Pay on reduction to lower post.—The authority which orders the reduction of railway servant as a penalty from a higher to a lower post or time scale, may allow him to draw any pay, not exceeding the maximum of the lower post, or time scale which it may think proper:

Provided that the pay allowed to be drawn by a railway servant under this Rule shall not exceed the pay which he would have drawn by the operation of Rule 1313 (FR 22) read with clause (b) or clause (c), as the case may be, of Rule 1320 (FR 26)."

5. Learned counsel for the appellant Union of India has submitted that reading clause (vi) of sub-rule (1) of Rule 6 with Rule 1322 of the Indian Railway

Establishment Code together, the disciplinary authority has power after imposing a punishment of reduction to lower time scale to fix the pay. Learned counsel for the respondent in reply has submitted that the Tribunal has rightly held that so doing amounts to double punishment. 6. The language of clause (vi) of sub-rule (1) of Rule 6 of the Rules, in our opinion, is clear. After reduction to the lower time scale the disciplinary authority has to fix the pay in terms of Rule 1322 of the Establishment Code. The Establishment Code clearly empowers the disciplinary authority to allow to draw any pay not exceeding the maximum of the lower post or time scale. We are unable to accept the reasoning of the Tribunal that it amounts to double punishment inasmuch as unless pay is fixed after reduction he may be entitled only to draw pay on the lowest of the time scale."

15. The reading of the above paragraphs 4,5 and 6 would show that the present case is squarely covered by the decision of the Hon'ble Supreme Court of India in the case of Union of India & Anr. Vs. G.Veerasamy, reported in 2003 (10) SCC 251. In view of the above, there is no infirmity in the impugned order imposing penalty of reduction in rank of Head Constable to Constable and placing the petitioner in a lower scale of pay in the rank of Constable for the period of three years without cumulative effect.

16. Accordingly, the writ petitioner is dismissed. No Costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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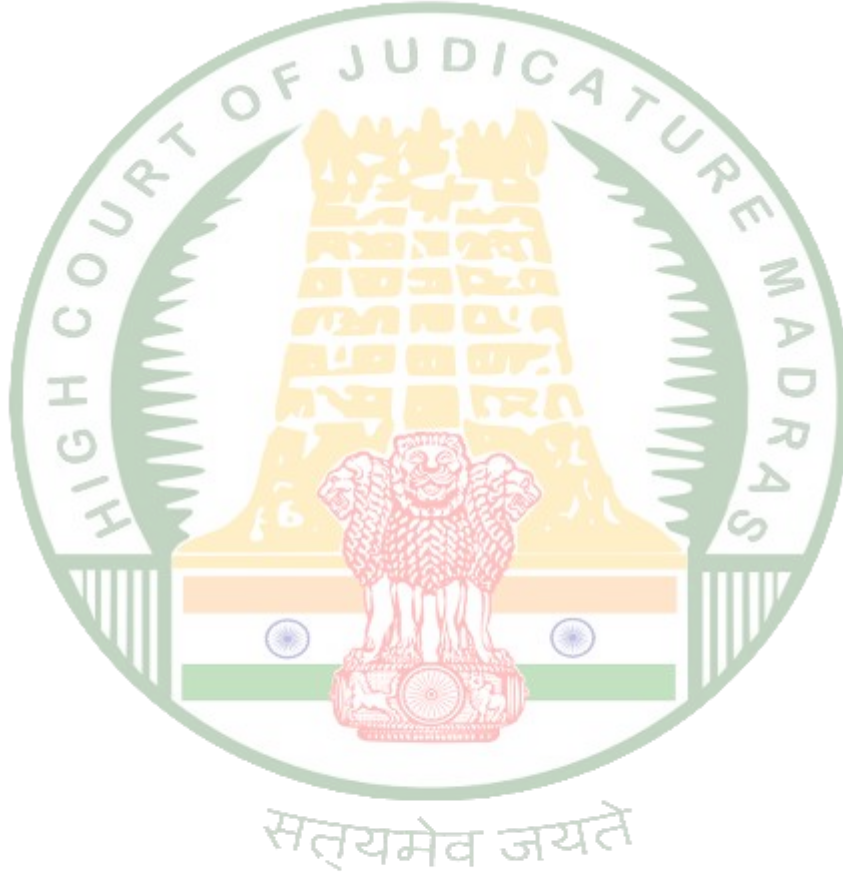
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+1 cc to Mr.C.V.Ramachandramurthy, Advocate, S.R.No.45902

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SSD (CO)
SSM(13/08/2019) .



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