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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos.1975 & 1976 of 2014

and

M.P(MD)Nos.1 & 1 of 2014

W.P(MD)No.1975 of 2014

T.Selvaraj

... Petitioner

Vs

1.The Union of India,
Rep. by Secretary to Government,
Ministry of Railways,
Rail Bhavan, New Delhi.

2.The Director General,
Railway Protection Force,
Rail Bhavan, New Delhi.

3.The Divisional Security Officer,
Railway Protection Force,
Southern Railway, Trivandrum-14.

4.The Asst. Security Officer cum
Enquiry Officer, Railway Protection Force,
Southern Railway,
RPF Training center, Kajamalai,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned enquiry proceedings issued by the fourth respondent in ASC/ID/TC/KG/TPJ dated 28.01.2014 denying permission to engage a retired railway employee as defence assistant for defending effectively in the departmental proceedings and further direct the respondents to permit the petitioner to engage a retired employee as defence assistant for defending himself in the disciplinary proceedings and grant such other further relief.

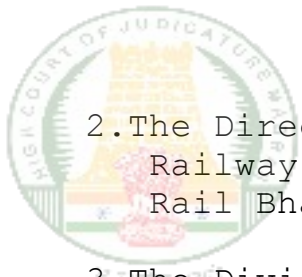
W.P(MD)No.1976 of 2014

T.Selvaraj

... Petitioner

Vs

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Rep. by Secretary to Government,
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2.The Director General,
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Enquiry Officer, Railway Protection Force,
Southern Railway,
RPF Training center, Kajamalai,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of declaration or any other appropriate writ or order or direction in the nature of writ declaring that the Rule 153.8 of the Railway Protection Force Rules 1987 as null and void ultravires and unconstitutional and grant such other further relief.

For Petitioner : Mr.K.Venkataramani
Senior counsel
in both petitions for Mr.T.Ayngaraprabhu

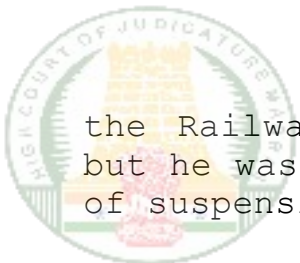
For Respondents : Mr.S.Manohar
in both petitions

COMMON ORDER

The relief sought for in W.P.(MD)No.1975 of 2014 is that to call for the records of the respondents in connection with the impugned enquiry proceedings issued by the fourth respondent in ASC/ID/TC/KG/TPJ dated 28.01.2014 denying permission to engage a retired railway employee as defence assistant for defending effectively in the departmental proceedings and further direct the respondents to permit the petitioner to engage a retired employee as defence assistant for defending himself in the disciplinary proceedings.

2.The relief sought for in W.P(MD)No.1976 of 2014 is to declare that the Rule 153.8 of the Railway Protection Force Rules 1987 as null and void, ultravires and unconstitutional and grant such other further relief.

3.The facts in nutshell to be considered for the purpose of deciding the two writ petitions are that the writ petitioner was appointed as Sub-Inspector in the Railway Protection Force, Southern Railway and subsequently, promoted to the rank of Assistant Security Commissioner and promotion order was issued by



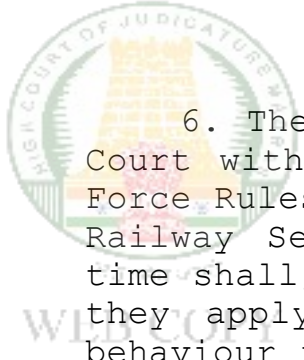
the Railway Board vide L.No.2013/SEC(E)/PM-2/1 dated 12.08.2003, but he was not relieved by the Administration in view of the order of suspension issued against him.

4. The writ petitioner was placed under suspension on 20.08.2013, based on the fact that the criminal case was registered against the writ petitioner in Cr.No.200 of 2013 under Section 403 of IPC on 20.08.2013. Consequent to the registration of the criminal case, the charge memo was also issued against the writ petitioner. The charge memo, dated 06.01.2014 was issued framing the following charge against the writ petitioner.

"Charge:-Sri.T.Selvaraj, while functioning as IPF/NCJ has misused EDPs by various means like writing two different names, one is counterfoil and another in party copy making it look like the EDP as issued for emergency duty to a staff when in reality, he made reservations with the party copy in his own name for his private journey. He has not obtained the acknowledgement of the staff on the reserve side of the counterfoil, to whom the EDPs were issued, thereby questioning whether the same was in fact issued to the person whose name is shown in the counterfoil or to someone else. He has circumvented prevalent and existing procedure of obtaining various types of passes and PTOs from DSC(O) TVC by indenting and obtaining the same at the Post level and having done this, he failed to maintain proper records and registers showing stock and issue."

Statement of imputations were furnished in the memorandum of charges. List of witnesses and list of documents were also furnished along with the charge memorandum. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner.

5. The learned Senior Counsel appearing on behalf of the writ petitioner strenuously contended that in W.P(MD)No.1975 of 2014 was filed for a direction to permit the writ petitioner to engage a retired railway employee as defence assistant and W.P(MD)No.1976 of 2014 was filed to declare that the Rule 153.8 of the Railway Protection Force Rules 1987 is null and void, ultravires and unconstitutional. The learned Senior counsel is of the firm opinion that the Rule is to be declared as un-constitutional on the ground that an opportunities to be provided to the delinquent employees are restricted so as to deprive them to defend their case in compliance with the principles of natural justice. The Rule impose restriction for engagement of defence assistant in the enquiry proceedings. Such a restriction causes inconvenience to the delinquent officials to engage retired employee of their choice for the purpose of defending their case before the enquiry officer so appointed.

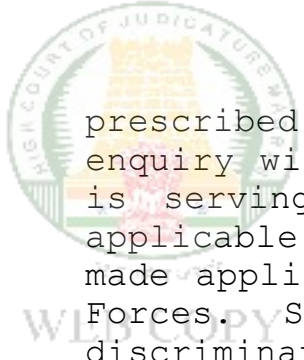


6. The learned Senior counsel solicited the attention of this Court with reference to the provisions of the Railway Protection Force Rules, 1987. The Rule 145 was referred which reads that "The Railway Services (conduct) Rules, 1966 as amended from time to time shall, so far as may be, apply to all members of the Force as they apply to Railway servants. The Rule 146 denotes Code of behaviour for members of his force. Rule 146(1) reads as under:-

"(1) All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following Code of behaviour, both on and off duty. It shall be incumbent upon all members of the Force to respect the Code of behaviour and of an attitude of complete discipline and maintain to it. Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officer or, as the case may be, under Section 9 or Section 17."

7. By referring the above rules, the learned Senior Counsel contended that the Rules for Railway Servants (Discipline and Appeal) must be applied to the case of the writ petitioner and the said rule provides engagement of retired employee also. Thus, applying the said Rule, the writ petitioner is to be allowed. In other words, it is contended that Rule 9 of the Railway Servants (Discipline and Appeal) Rules provides procedure for imposing penalties, wherein it is stated that the retired employees can be engaged for the purpose of defending enquiry proceedings.

8. This Court has carefully gone through the spirit of this rules. Rule 145 enumerates that the Railway Services (Conduct) Rules, 1966 as amended from time to time shall, so far as may be, apply to all members of the Force as they apply to Railway servants. Thus, the rule indicates that the Railway Services (Conduct) Rules are applied to the members of the board. The application of the conduct rules cannot be compared with the procedure to be followed for the purpose of conducting enquiry proceedings. The enquiry proceedings and its procedure are governed under the Railway Protection Force Rules, 1987 and therefore, reference made in Rule 145 of the Railway Protection rules cannot have any applicability in respect of conducting of an enquiry by the enquiry officer by following the procedure contemplated under the Railway Protection Force Rule 1987. Further, it depends upon the cadre in which the employee works. There is a rational behind the rule. The officer working in the rank of Inspector of Police cannot be compared with the persons working in the cadre of constable including the administrative side. The Officer working in the rank of Inspector of Police in the Railway Protection Force is the law implementing authority and is competent to conduct investigations and dealing with the criminal case and participate in the criminal trial in the competent court of law. Therefore, different yardsticks are



prescribed as well as the procedures for the purpose of conducting enquiry with reference to cadre in which, the delinquent employee is serving in the Railway Protection force. Thus, the rules applicable to Ministerial/administrative side employees cannot be made applicable to the officers working in the Railway Protection Forces. Such a difference made cannot be construed as a discrimination or otherwise in the eye of law.

9. The learned Senior counsel further contended that the writ petitioner is now medically not fit and he is now posted in non-sensitive post and thus, he required assistance for the purpose of defending the case in the enquiry proceedings. Undoubtedly, the writ petitioner is entitled to avail an opportunity with reference to the rules in force. More specifically, Rule 153.8 of the Railway Protection Force Rules 1987 provides an opportunity. The only contention of the learned counsel for the petitioner is that such restricted rule may not be much use for the purpose of defending the case by the writ petitioner in the enquiry proceedings.

10. This Court is of the considered opinion that the writ petitioner being an employee serving in the rank of Inspector of Police and capable of assisting for the purpose of defending his case before the enquiry officer, the assistance of an another employee is provided for the purpose of effective adjudication. Such provisions are available in order to conduct an enquiry in a complete manner for the purpose of complying with the principles of natural justice. It is always open to these level officers to discuss the issues with the assistants or with the lawyer and effectively conducting the case before the enquiry officer concerned. Contrarily, they cannot seek permission to engage a lawyer or to engage a retired employee so as frustrate the enquiry proceedings.

11. The recent trend developed amongst officials in all the departments are that on issuance of charge memo they are filing number of writ petitions for appointments of assistants, appointments of lawyer etc., All these kind of writ petitions are filed to frustrate the enquiry proceedings and to prolong the enquiry proceedings so as to escape from the clutches of law by adopting delay tactics. The enquiry proceedings are kept pending for long years without any disposal and the delinquent officials are also attempting to take un-due advantage of such delay and thereafter, escape from the clutches of the disciplinary proceedings. Such attitudes of the delinquent employee can never be encouraged by the courts. All departmental disciplinary proceedings initiated against the delinquent officials must be concluded without causing any undue delay. Any delay in ~~some cases on~~ the departmental disciplinary proceedings, will also cause prejudice to the employees and they are deprived of their promotion. They are not eligible to get their terminal and



retirement benefits in the departmental disciplinary proceedings for grave charges are pending. Therefore, the authorities competent must ensure that all such departmental disciplinary proceedings are concluded with a reasonable period of time and without causing any un-due delay. This being the principles to be followed. This court is of the opinion that opportunity to be provided under rules must also be provided to the delinquent officials for the purpose of defending their case effectively.

12. As far as these writ petitions are concerned, the rule which is under challenge was already considered by the Supreme Court of India in ***D.G.Railway Protection Force and ors. vs. K.Raghuram Babu*** reported in ***AIR 2008(SC) 1958***. The judgment of the Apex Court is extracted hereunder:-

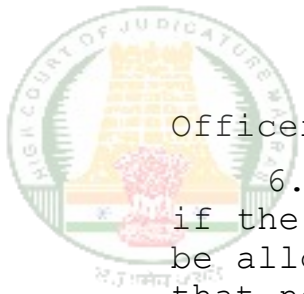
"3. A writ petition was filed before the Learned Single Judge of the Andhra Pradesh High Court which was dismissed. Against that judgment a Writ Appeal was filed, and the matter was referred to a Full Bench of the High Court for deciding the constitutionality of Rule 153(8) of the Railway Protection Force Rules, 1987 (hereinafter referred to as the Rules), which have been made under the Railway Protection Force Act, 1957.

4. The Full Bench held that Rule 153(8) is unreasonable and hence un- constitutional and accordingly it struck down Rule 153(8). Against that judgment of the Full Bench this appeal has been filed.

Rule 153(8) of the Rules states:

"153.8 The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (hereinafter referred to as "friend") where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a "friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the Inquiry Officer nor to cross-examine the witnesses". (emphasis supplied)

5. The last sentence of Rule 153.8 (which has been underlined above) was challenged as being arbitrary and unconstitutional. The said sentence states that a friend shall not be allowed to address the Inquiry Officer nor to cross-examine the witnesses. Thus the friend of the charge-sheeted employee can only assist him in preparing his case and even during the hearing, but the charge-sheeted employee himself has to address the Inquiry



Officer and cross examine the witnesses, if he so desires.

6. It may be stated that Rule 153.10 (b) states that if the evidence is oral, the charge-sheeted employee shall be allowed to cross-examine the witnesses. Thus, it is not that no right of cross-examination has been granted at all in the Inquiry. However, this cross-examination must be done by the charge-sheeted employee himself and not by his friend. Similarly, arguments before the Inquiry Officer can only be advanced by the charge-sheeted employee and not by his friend.

7. We are of the opinion that the view taken by the Full Bench of the High Court in the impugned judgment is not correct.

8. It is well settled that ordinarily in a domestic/departmental inquiry the person accused of misconduct has to conduct his own case vide N. Kalindi and others vs. M/s. Tata Locomotive and Engineering Co. Ltd AIR 1960 SC 914. Such an inquiry is not a suit or criminal trial where a party has a right to be represented by a lawyer. It is only if there is some rule which permits the accused to be represented by someone else, that he can claim to be so represented in an inquiry vide Brook Bond India vs. Subba Raman 1961 (11) LLJ 417.

9. Similarly, in Cipla Ltd. and others vs. Ripu Daman Bhanot and another 1999 (4) SCC 188 it was held by this Court that representation could not be claimed as of right. This decision followed the earlier decision Bharat Petroleum Corporation Ltd. vs Maharashtra General Kamgar Union 1999(1) SCC 626 in which the whole case law has been reviewed by this Court.

10. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

11. In the present case, Rule 153(8) only provides for assistance to a charge-sheeted employee by an agent. Thus, a restricted right of representation has been granted by Rule 153(8). Even if no right of assistance had been granted by the rules, there would be no illegality or unconstitutionality. How then can it be said that when a restricted right is granted, the said restricted right is unconstitutional ?



12. We, therefore, respectfully disagree with the Full Bench impugned judgment of the High Court and we are of the view that Rule 153(8) is constitutionally valid.

13. In view of the above, the appeal stands allowed. The impugned judgment of the High Court is set aside. There shall be no order as to costs."

13. In para-12 of the judgment, the validity of the rule was upheld by the Hon'ble Supreme Court of India and therefore, it is not necessary for this Court to adjudicate the grounds raised by the writ petitioner in the present writ petition questioning the constitutional validity of Rule 153.8 of the Railway Protection Force Rules 1957. In view of the decision of the Apex Court in respect of the validity of the rules, the said writ petition deserves no further consideration.

14. As extracted above, the allegations against the writ petitioner are undoubtedly serious in nature warranting an enquiry. The writ petitioner is bound to submit his explanations/objections on the allegations set out in the charge memo and defending his case by producing documents, if necessary, for the purpose of establishing his innocence or otherwise.

15. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

16. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner, directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

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

17. The Honourable Supreme Court of India *in the case of Union*



of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

18. In the case of Secretary, Ministry of Defence and Others v. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed, as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a



party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, the writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

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19. In view of the facts and circumstances and considering the arguments advanced by the learned counsel appearing on behalf of the writ petitioner as well as the learned counsel appearing on behalf of the respondents, this Court is of the considered opinion that the charge memo has been framed in accordance with the rules warranting an enquiry, equally an opportunity is to be provided to the delinquent officials for the purpose of defending his case in the manner known to law. Considering the fact that the writ petitioner is working the rank of Inspector of Police, it is sufficient that the permission is granted to engage defence assistance in accordance with the Rule 153.8 of the Railway Protection Force Rules 1987. The writ petitioner is capable of discussing the issues with the assistance and participate in the enquiry proceedings for the purpose of defending his case effectively. This being the factum, following orders are passed:-

i) The relief as such sought for in these writ petitions stand rejected.

ii) The writ petitioner is directed to submit his explanations/objections afresh along with the documents, if any, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the explanations/objections, the enquiry proceedings may be commenced by the enquiry officer.

iii) The respondents are directed to permit the writ petitioner to engage the defence assistant with reference to the Rule 153.8 of the Railway Protection Force Rules 1987. In the event of preferring to engage such defence assistant, the writ petitioner has to choose the defence assistant and furnish the name and details of the defence assistant to the competent authority within a period of three weeks from the date of receipt of a copy of this order.

iv) The respondents are directed to permit the writ petitioner to cross-examine all the witnesses who have already been deposed before the enquiry officer and such an opportunity is to be provided at the first instance on commencement of the enquiry proceedings. The remaining witnesses can be examined thereafter and the writ petitioner must be provided with an opportunity to cross-examine the other witnesses also.

v) The writ petitioner is directed to co-operate for the early disposal of the enquiry proceedings. The writ petitioner should not ask frequent or unnecessary adjournments of enquiry proceedings on one reason or other. The enquiry officer can grant adjournment of the enquiry proceedings only, if the reasons are ~~given in writing~~ ~~otherwise~~ ~~otherwise~~ otherwise.

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vi) The respondents are directed to proceed with the enquiry proceedings as expeditiously as possible and complete the enquiry



proceedings and pass final orders preferably, within a period of six months from the date of receipt of a copy of this order.

20. With these directions, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

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Rep. by Secretary to Government,
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Tiruchirapalli

+2 CC to Mr.S.MANOHAR, Advocate SR-76725 & 76726.

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