

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4557 OF 2002

Sadanand Mishra
Ex-Railway Protection Force
Constable No.331 WB,
R/o. Room No.2,
Dayashankar Dube Chawl,
Veer Savarkar Nagar,
Mumbra, Dist. Thane

...Petitioner

Versus

1. Union of India
Through the General Manager,
Central Railway, CST,
Mumbai-400 001.
2. The Dy. Chief Security Commissioner,
Railway Protection Force,
Central Railway, CST,
Mumbai-400 001.
3. The Divisional Security Commissioner,
Railway Protection Force,
Central Railway,
Solapur Division, Solapur,
Maharashtra.

...Respondents.

**WITH
WRIT PETITION NO.4663 OF 2002**

Sitla Prasad Shukla
Ex-Railway Protection Force
Constable No.400 WB,
R/o. Room No.3,

Dayashankar Dube Chawl,
Veer Savarkar Nagar,
Mumbra, Dist. Thane

...Petitioner

Versus

1. Union of India
Through the General Manager,
Central Railway, CST,
Mumbai-400 001.
2. The Dy. Chief Security Commissioner,
Railway Protection Force,
Central Railway, CST,
Mumbai-400 001.
3. The Divisional Security Commissioner,
Railway Protection Force,
Central Railway,
Solapur Division, Solapur,
Maharashtra.

...Respondents.

...
Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy for the
Petitioners.

...

**CORAM: NITIN JAMDAR &
SANDEEP V. MARNE, JJ.**

DATE : 02 AUGUST 2023.

JUDGMENT – (Per – Sandeep V. Marne, J.)

1. Petitioners are ex-Constables working in the Railway Protection Force (**RPF**), who are removed from service by order dated 01 January 1987 as a measure of punishment after initiation of disciplinary proceedings. Both Petitioners claim that they were unaware of penalty orders of removal passed on 01 January 1987 and contend that the same were received by them on 26 September 2001. They accordingly filed appeals against the penalty orders. The Appellate Authority rejected the appeals by orders dated 11 March 2002. Accordingly, Petitioners have filed present Petitions challenging removal orders dated 01 January 1987 as well as orders passed by the Appellate Authority on 11 March 2002.

3. Facts in both the petitions appear to be similar. From pleadings filed by both the sides, the common facts in both petitions can be captured as follows. Petitioner in Writ Petition No.4557 of 2002 (Sadanand Mishra) was appointed on the post of Rakshak in RPF on 11 August 1970. Petitioner in Writ Petition No.4663 of 2002 (Sitla Prasad Shukla) was appointed as a Constable in RPF on 28 July 1977.

4. It appears that both Petitioners got embroiled in CBI Case No.4 of 1985, in which they were accused of committing offences of demand and acceptance of illegal gratification. Both Petitioners were placed under suspension owing to registration of CBI Case against them vide orders dated 26 November 1984. The order *inter alia* directed Petitioners to report twice a day at Wadibunder post. By order dated 23 February 1985, Petitioners were transferred from Wadibunder, Mumbai to Solapur Division while under suspension. By further order dated 10

April 1985 the Security Officer, Solapur issued posting order within Solapur Division and posted Petitioners at Wadi with further directions that they would continue to remain under suspension and would give daily attendance at Security Control, Solapur at 8.00 Hrs. and 20.00 Hrs. It appears that on 10 April 1985, both Petitioners submitted application to Security Officer, Solapur seeking permission to leave headquarters for 15 days on the ground that they had to give fresh security before CBI Court on 13 April 1985. In that application both Petitioners stated that they were staying in Uttar Pradesh. They were granted permission to leave headquarters for 7 days. It appears that Petitioners failed to report by 18 April 1985, but instead submitted applications seeking medical leave on 18 April 1985.

5. On 28 November 1985, the Commandant, Solapur issued communications to Petitioners stating that they had arrived on transfer from Mumbai Division to Solapur Division on 10 April 1985 and were permitted to leave headquarters for 07 days from 11 April 1985. That they failed report to Deputy Security Officer, Solapur on 18 April 1985. It was further stated that though Petitioners submitted letter dated 18 April 1985 to the effect that they were undergoing treatment from a private doctor, no medical certificate was produced to support sickness. Petitioners were accordingly advised to give report to Deputy Security Officer, Solapur immediately.

6. Since Petitioners failed to report even after issuance of letters dated 28 November 1985, disciplinary proceedings were initiated against

them by issuing Memoranda of charge sheet dated 16 April 1986 for conducting departmental enquiry alleging the misconduct of unauthorized absence from 18 April 1985 and failure to give daily attendance during suspension. The charge sheets were dispatched by Registered Post to permanent address in Uttar Pradesh, which remained unserved as Petitioners were not traceable. One Assistant Sub-Inspector was deputed to locate local address of Petitioners who traced the same at Mumbra, District Thane. When the officer went to serve the charge sheet at the local address, Petitioners were found untraceable and their relatives informed that they have left for Uttar Pradesh. It was also informed that they were likely to attend the Criminal Case in CBI Court on 18 June 1986. Accordingly, the Assistant Sub-Inspector was directed to serve chargesheets on Petitioners by visiting them at the Court of Special Judge for CBI, Mumbai. Accordingly, the Assistant Sub-Inspector meet both the Petitioners in the Court of Special Judge for CBI and attempted to serve charge sheet. Both the Petitioners refused to accept the charge sheets stating that they were under suspension and under sick leave and would accept the same after reporting.

7. On account of refusal on the part of Petitioners to accept the charge sheets, show cause notices dated 22 August 1986 were issued to both Petitioners under provisions of Rule 47 of the Railway Protection Force Rules, 1959. The notices were dispatched to permanent address at Uttar Pradesh as well as local address at Mumbra, District Thane. Both notices were returned unserved.

8. Under the above circumstances the Disciplinary Authority proceeded to pass an order dated 01 January 1987 imposing penalty of removal from service on Petitioners. The removal orders were also dispatched to Petitioners at their address at Uttar Pradesh by registered post, which were returned unserved.

9. It appears that Petitioners came to be acquitted in Special CBI Case No.04 of 1985 vide judgment and order dated 21 January 2001. They made application dated 28 September 2001 for seeking copy of penalty order and by communication dated 28 September 2001, they were provided with copies of order dated 01 January 1987 imposing penalty of removal from service. Petitioners thereafter preferred appeals before the Appellate Authority. The appeals came to be rejected by order dated 11 March 2002 holding the appeals to be time barred. The Appellate Authority also rejected the plea of Petitioners that the removal orders were not served on them. Petitioners have accordingly filed the present petitions challenging removal orders dated 01 January 1987 as well as orders passed by the Appellate Authority on 11 March 2002.

10. Appearing for the Petitioners, Mr. Ramamurthy the learned counsel would submit that the entire inquiry proceedings as well as penalty orders are vitiated on account of violation of principle of natural justice. That the inquiry proceedings were conducted behind the back of Petitioners without serving them Memoranda of chargesheet and without affording them any opportunity of hearing. He would further submit that no inquiry was held under the garb of refusal of charge-sheets by

Petitioners. In absence of any inquiry being held, Petitioners could not be penalised. That even the orders of removal from service were not served upon Petitioners and therefore the same cannot take any effect.

11. So far as order of the Appellate Authority is concerned, Mr. Ramamurthy would contend that though the appeal was preferred within stipulated time from the date of receipt of copy of removal order, the Appellate Authority erroneously rejected the same on the ground of limitation. That the removal orders were served on Petitioners for the first time on 28 September 2001 and that therefore the appeals preferred against the penalty order on 18 September 2001 were well within time. That the Appellate Authority failed to take into consideration the fact that the inquiry proceedings were held without affording any opportunity of defence.

12. So far as merits of the charges are concerned, Mr. Ramamurthy would contend that the provisions of Railway Protection Force Act, 1957 or the Rules made thereunder do not mandate daily attendance by a suspended member of the Force. He would therefore submit that failure to give daily attendance would not constitute as misconduct on the part of the Petitioners. That since Petitioners were placed under suspension, they were not supposed to remain present in the office for any purpose. Lastly and in the alternative, Mr. Ramamurthy would submit that penalty of removal from service imposed on Petitioners is otherwise grossly disproportionate to the misconduct alleged. That Petitioners have ultimately been acquitted in the Criminal

Case. That they faced minor charge of failure to give daily attendance during period of suspension, for which penalty of removal from service is harsh. That since the Petitioners rendered service from 1970/1977 till 1987, the penalty of removal is required to be converted to that of compulsory retirement so that Petitioners can at least be paid pension in respect of services already rendered by them.

13. None appeared on behalf of Respondents when the petitions were called out for final hearing. We have however considered Affidavits-in-Reply filed on behalf of Respondents opposing the petitions.

14. We have considered the submissions canvassed before us by the learned counsel appearing for the Petitioners and have also gone through the pleadings and documents filed alongwith the petitions and Affidavits-in Reply.

15. Petitioners were placed under suspension by orders dated 26 November 1984. Their suspension was necessitated on account of their involvement in a criminal case for accusations of demand and acceptance of illegal gratification. At that time, Petitioners were working at Wadibunder, Mumbai. The suspension order directed that Petitioners would be entitled to draw subsistence allowance upon furnishing certificates of not being engaged in any other employment. The suspension order further directed Petitioners to report twice on each day at Wadibunder Post. Subsequently, Petitioners came to be transferred from Wadibunder, Mumbai to Solapur Division by an order issued by the

Chief Security Officer, Mumbai. It appears that Petitioners reported at Solapur Division. Consequent to their transfer order, the Security Officer, Solapur issued order dated 10 April 1985 posting Petitioners at Wadi while continuing their suspension. The order dated 10 April 1985 specifically directed Petitioners to mark their attendance daily at Security Control, Solapur at 8.00 Hrs. and 20.00 Hrs. Both of them sought permission to leave headquarters from 10 April 1985 for 15 days to attend CBI Court at Mumbai for the purpose of giving security. The Controlling Officer however granted them permission to leave headquarters only for a period of 07 days. Petitioners were thus expected to report back at Wadi, Solapur on 18 April 1985. It appears that on 18 April 1985, Petitioners submitted letters intimating that they were sick and under treatment of a private doctor. However, the applications were not supported by any medical certificates. They failed to report before Controlling Officer for a considerable period of time. On 28 November 1985, the Commandant/RPF, Solapur advised petitioners to report within 05 days. The said letters dated 28 November 1985 were dispatched to permanent addresses of Petitioners at Uttar Pradesh. Petitioners however failed to report within the prescribed period. Respondents were therefore left with no alternative but to initiate disciplinary proceedings against Petitioners by issuance of Memoranda of chargesheet dated 16 April 1986 to both the Petitioners, alleging twin misconducts of unauthorized absence as well as failure to give daily attendance during the period of suspension.

16. Petitioners have raised a contention that they were not served with Memoranda of charge-sheet dated 16 April 1986. It is contended that the enquiry proceedings are vitiated on account of non-service of chargesheets. Respondents have countered the submissions by raising following pleadings in their Affidavits-in-Reply:

“13. I say that the Petitioner was issued charge sheet u/r 44 of RPF rules 1959 for the following charges vide charge sheet No: SUR/X/P/227/86 dt. 16.4.86.

1) Unauthorized absence from 18.4.85

2) Disobedience of orders in that he failed to give daily attendance under suspension.

14. I say that the above charge sheet was sent by registered post to his permanent address i. e. Village Pandepur, Bancwar. Tq Nekdya, Dist Janupur (UP), I say that the charge sheet remained unserved as he was not traceable.

15. I say that Shri K. K. Paul, ASI/DD was then directed to Wadi Bundar. Mumbai with the charge sheet on 6.5.86 to serve the same to the delinquent. Shri K. K. Patil was directed to find out local address in Bombay and also to intimate the progress of the Petitioner

16. I say that K. K. Patil ASI/DD traced the local address i.e. Room No.2 Shyam Narayan Upadhyay Clawl, Guru Niwas Achanak Nagar, Near Shankarji Temple, Mumbra village, Dist. Thane of the above named in Bombay and went to serve the charge sheet. However, he did not find him there. I say that the cousin brother of Sadanand Mishra informed the ASI that the above named had gone to his native place in UP in the month of February 1986 and also stated that the next hearing of CBI case was fixed on 18.06.86. As such, ASI/DD could not serve the charge sheet vide his report number PF/KKP/ASU/DD/86 dt. 14 05.86. Hereto annexed and marked Exhibit R-6 is the copy of report dated 14.05.1986. Hence AS/DD K.K. Patil was again directed to serve the charge sheet at Bombay when the above named attends the Court. Accordingly, on 18.06.1986 ASI/DD K.K. Patil attended the

special Judge Bombay Court at old Secretariat Building where he met him along with SIPF Mishra, CBI inspector Shri Shinde and CT S.K. Mishra. However, he refused to accept the charge sheet on the plea that he is under suspension and sick and will accept the charge sheet on resumption of duty. I say that the charge sheet could not be served to him vide report of ASI/DD No. PF/KKP/ASI/DD/86 dt. 23.06.86. Hereto annexed and marked Exhibit R-7 is the copy of report dated 23.06.1986.

17. I say that since the delinquent refused to accept the charge sheet a show cause notice No. SUR/X/P/16/86 u/r 17 (b) of RPF rule 1959 dt. 22.08.86 was issued against the above named, as proceedings under rule 41 could not be followed. I Say that the show cause notice proposing the removal of the delinquent from service was sent to the following address under registered post. 1. Sadanand Mishra, Village Pandepur, Banewar, Tq. Nekdva. Dist/Jaunpur (UP) 2. Sadanand Mishra, room No 2, Shyam Naravan Upadhyay Chawl, Guru Nevas Achanak Nagar, Near Shankarji Temple, Mumbra village, Dist. Thane but both the letters returned undelivered. Hereto annexed and marked Exhibit R-8 is the copy of show cause notice dt. 22.08.1986. I say that SIPE/ANG was directed to deliver the above show cause notice at the address of the named at Room No.2, Shyam Narayan Upadhyay Chawl, Guru Niwas Achanak Nagar, Mumbra village, Dist Thane but the above named was not available there. The show cause notice was handed over to his cousin Shri Devi Prasad Mishra in the presence of Constables A. R. Dagaitkar and P. L. Tikekar of R-1 Company, Mulund by Shri K. K. Patil SI/ANG vide his report No: PF/KK/SIPF/ANG/86 dt. 12.12.86. Here to annexed and marked Exhibit R-9 is the copy of report dated 12.12.1986.

18. I say that the show cause notice was deemed to have been served. Since explanation to the show cause notice from the above named was not received, he was removed from service under RPF rule 47 (b) vide divisional order No. 12/87 dated 01.01.87. The order was sent to his Bombay address which returned unserved. Hereto annexed and marked Exhibit R-10 & Exhibit R-11 is the copies of removal order dated 01.01.1987 and postal service.”

17. We find that Respondents have made sincere efforts to serve

charge-sheets as well as show cause notices to Petitioners on multiple occasions. Petitioners have not filed rejoinders countering the above assertions. A specific case is pleaded in the Affidavit-in-Reply that after the charge-sheets could not be served at permanent addresses at Uttar Pradesh as well as local address at Mumbra District Thane, an Assistant Sub-Inspector was deputed to serve the charge sheets personally on Petitioners who were present before the Court on 18 June 1986. That Petitioners refused to accept the charge-sheets on 18 June 1986. Report to that effect has been submitted by the Assistant Sub-Inspector on 23 June 1986, which is produced at Exh. R-7 to the Affidavits-in-Reply. We find no reason to disbelieve the contentions raised by Respondents, especially in absence of filing of any rejoinder by Petitioners denying the same. Petitioners have not raised any allegations of *malafides* against any officials of Respondents, particularly Mr. K. K. Patil, Assistant Sub-Inspector/ D.D. who has submitted specific report about attempts made by him to personally serve charge-sheets on petitioners on 18 June 1986.

18. Another reason to disbelieve Petitioners' story of ignorance about initiation of disciplinary proceedings is the conduct exhibited by them. Petitioners were placed under suspension with effect from 26 November 1984. While being under suspension, they were entitled to draw subsistence allowance which is either 50% or 75% of pay and allowances. Petitioners did not make any attempt to inquire about status of their service after 18 April 1985. Any person of reasonable prudence would make some inquiry at least at some point of time about the status

of his service, and particularly about the non-receipt of subsistence allowance. In the present case, after 18 April 1985 Petitioners admittedly did not make any effort to inquire about status of their services. The first communication addressed by Petitioners for supply of copies of removal orders was on 28 September 2001. Thus for a period of 16 long years, Petitioners did not seek to know about status of their services.

19. Petitioners were made aware of the fact that disciplinary proceedings were initiated against them. This fact is required to be assumed on the basis of interaction between Petitioners and Assistant Sub-Inspector on 18 June 1986. Though Petitioners refused to accept the charge sheets, they atleast acquired knowledge that disciplinary proceedings were initiated against them. Also, the Assistant Sub-Inspector met relatives of Petitioners at their local addresses at Mumbra, District Thane and it was for Petitioners to find out why the RPF Officials were attempting to trace them. Having acquired knowledge about initiation of disciplinary proceedings, it was all the more important for them to know the outcome of the same at some point of time during 16 long years. Petitioners however did not bother to know the status of their services for 16 long years from 1985 to 2001. This conduct exhibited by Petitioners would lead us to an inescapable conclusion that Petitioners knowingly refused to accept Memoranda of chargesheet.

20. Having held that Petitioners are responsible for their absence during course of disciplinary proceedings, the Respondents cannot be blamed for conducting the same *ex parte*. We are therefore unable to

accept Mr. Ramamurthy's contention that the disciplinary proceedings were conducted in violation of principles of natural justice. We accordingly repel the said objection.

21. The objection about non-service of removal orders dated 01 January 1987 is also required to be rejected on account of conduct of Petitioners in not making any attempt to know the status of their services during 16 long years from 1985 to 2001. The said contention is also required to be rejected on account of specific affidavit filed by Respondents to the effect that the penalty orders were dispatched on permanent addresses of Petitioners at Uttar Pradesh. It was petitioners' duty to ensure that their correct addresses were maintained in the Respondents' office for service of any communication. Respondents cannot be faulted in addressing various communications such as charge-sheets, show cause notices and penalty orders at addresses given by Petitioners. We find that the Respondents have made genuine attempts to serve various communications to petitioners from time to time. We therefore cannot hold Respondents responsible for non-service of penalty orders removing Petitioners from service.

22. Coming to the appellate order, we find that Petitioners filed appeals challenging orders of removal dated 01 January 1987 after a period of 16 years on 18 October 2001. The Appellate Authority has held that the appeals were filed beyond stipulated period and the same were treated as time barred. The Appellate Authority further held that the orders were dispatched by Registered Post on permanent addresses of

Petitioners. The Appellate Authority further held that Petitioners did not probe about the status of their service for 16 long years. It is further held that pendency of CBI Case was not a ground for Petitioners not to make inquiries about the status of their services. We find the reasons recorded by Appellate Authority to be cogent and the same do not suffer from the vice of perversity warranting exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India. We accordingly do not find any error in the order dated 11 March 2002 passed by the Appellate Authority rejecting the appeals.

23. Coming to the next contention of Mr. Ramamurthy of non-conduct of any enquiry in pursuance of memoranda of chargesheet, we find the contention to be totally baseless. Petitioners were charged with misconduct of remaining unauthorizedly absent as well as failure to give daily attendance during period of suspension. There is no denial to the fact that Petitioners did not report at Wadi, Solapur after 18 April 1985. It is also admitted fact that they have not given daily attendance after 18 April 1985. In the light of such admitted misconduct, we need not go into the issue as to whether the Respondent Administration was required to prove the charges by leading any evidence. We accordingly reject this submission.

24. The next submission of Mr. Ramamurthy is that failure to give attendance during period of suspension does not constitute any misconduct. This submission is premised on an assumption that the Rules did not mandate such attendance during suspension. We are not

impressed by this submission as suspension order dated 26 November 1984 as well as transfer order dated 10 April 1985 specifically mandated daily attendance. Petitioners did not question the correctness of those orders at the relevant time. Since Petitioners were specifically directed to give attendance twice a day during the period of their suspension, they cannot now be permitted to raise a plea that such attendance was not mandatory under the Rules. The contention in this regard is therefore rejected.

25. Coming to the last contention of Mr. Ramamurthy that penalty imposed on Petitioners is disproportionate and is required to be substituted by a penalty of compulsory retirement so as to enable Petitioners to receive family pension in respect of services rendered by them. In the facts of the present case, we are unable accede to such a request. Petitioners have abandoned their services by remaining untraceable for a period of 16 long years. Last communication addressed by Petitioners to their employer is of 18 April 1985. Thereafter for a period of 16 long years, whereabouts of Petitioners were unknown. They exhibited conduct of refusing to accept charge-sheets when attempted to be served by Assistant Sub-Inspector at CBI Court on 18 June 1986. Thereafter Petitioners did not bother to check the status of the enquiry or of their service till the year 2001. In these circumstances, no sympathy can be shown to Petitioners who were members of a disciplined Force, which is now identified as an armed force of the Union. The penalty imposed on Petitioners does not shock our conscience and therefore we

are unable to hold that the penalty is disproportionate to misconduct alleged.

26. Resultantly we do not find any merit in the petitions. Writ Petitions are dismissed without any order as to costs. Rule is discharged in both the petitions.

SANDEEP V. MARNE, J.

NITIN JAMDAR, J.

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