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W.P.No.13939 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2023

PRONOUNCED ON : 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.13939 of 2015
and M.P.No.2 of 2015

A.Rajasekar

...Petitioner

-Vs-

1. Union of India rep by
The Inspector General – cum-
Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Park Town, Chennai – 600 003.
2. The Additional Chief Security Commissioner
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Park Town, Chennai – 600 003.
3. The Senior Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
5th Floor, DRM's Complex,
Park Town, Chennai – 600 003.



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4. S.K.Swaminathan

Assistance Security Commissioner/
RPF/W&S/PER

5th Floort, DRM's Complex,

Park Town.

The then Inquiry Officer and

IPF/GSN,

Railway Protection Force,

Chennai Division,

Southern Railway,

Chennai – 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order/proceedings of the 3rd respondent herein namely the Senior Divisional Security Commissioner, Railway Protection Force, Southern Railway, Chennai 600003, bearing No. M/XP/227/14/10 dated 25.07.2011 and proceedings of the 2nd respondent namely the Additional Chief Security Commissioner, Railway Protection Force, Southern Railway, Chennai 600003 and bearing No.nil dated 04.09.2012 and the proceedings of the 1st respondent namely the Inspector General cum Chief Security Commissioner, Railway Protection Force, Southern Railway, Chennai 600003, bearing No. nil dated 04.10.2013 quash the above said three orders and consequently direct the respondents herein to treat the period of suspension from 11.09.2010 to 26.01.2011 (*Amended as per the order of this Court dated 19.07.2018 made in M.P.No.1 of 2015 in W.P.No.13939 of 2015*) as one of duty for all purposes and to pay wages and allowances for the above said period in the post of Head Constable



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and to treat the period of absence from 04.09.2010 to 06.09.2010 as one of duty for all purposes and to pay wages and allowances with attendant, service and other monetary benefits for the above said periods in the post of Head Constable and to restore the Petitioner to the post of Head Constable which he was holding on 10.09.2010 prior to suspension and pay the arrears of wages in the above said post within a short date that may be fixed by this Court and to withhold the retirement benefits due to be paid to the fourth respondent herein who is retiring on 31.07.2015 on his reaching the age of superannuation.

For Petitioners : Mr.K.S.Govinda Prasad

For Respondents

For R1 to R3 : Mr.S.Janarthanam
Special Panel Counsel

For R4 : No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the third respondent dated 25.07.2011, thereby imposed punishment of reduction in post from Head Constable to Constable for the period of three years and treated the period of suspension from 11.09.2010 to 26.01.2011 as suspended and the period of absent from 04.09.2010 to 06.09.2010 as leave without pay and the order of the second respondent dated 04.09.2012, thereby confirming the order passed by the third respondent in the appeal and the order of the first



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respondent dated 04.10.2013, thereby confirming the order passed by the second respondent in the revision.

2. The petitioner had joined in service of third respondent as Constable on 10.11.1981 and completed his probation period in the year 1983. Thereafter he was promoted to the post of Naik in the year 1997 and in the same year he was promoted as Head Constable and he was due promotion to the post of Assistant Sub Inspector. While being so, the petitioner lodged complaint as against one K.Gnanaprakasam alleging that he released teak wood beams and rafters.

3. In that regard, on 04.09.2010, there was an altercation between the petitioner and the Inspector of Protection Force and he assaulted the petitioner. Therefore, the petitioner lodged complaint dated 04.09.2010 before the concerned police station and the same was not considered. Hence, he filed direction petition before this Court in Crl.O.P.No. 21773 of 2010, seeking direction to take appropriate action on his complaint dated 04.09.2010. Due to the assault, the petitioner got admitted in the Government Hospital, Royapettah and he was discharged



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on 07.09.2010. Therefore, the absent from 04.09.2010 to 07.09.2010, is not an unauthorized absent and it was due to the assault made by the Inspector of Protection Force and he got injury and admitted into the hospital.

4. Thereafter, he received letter dated 08.09.2010, stating that he was due of duty on 04.09.2010 and he misbehaved with Inspector of Protection Force and left from the port and did not report duty. Therefore, he was marked absent for duty from 04.09.2010 onwards. After discharging from the hospital, he came with certificate that he was an inpatient in the Government hospital from 04.09.2010 to 07.09.2010. Therefore, he submitted representation on 08.09.2010, before the third respondent to issue sick memo for continuation of his treatment. He also produced discharge summary. However, he was placed under suspension by an order dated 11.09.2010.

5. In pursuant to the said occurrence, the petitioner was served with charge sheet and enquiry was conducted. The charges are as follows:



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“Charge 1:- While working as such at RPM RPF Post, he was due for 13.00 to 21.30 hrs duty on 04.09.2011, but he did not turn up and absented himself for duty from 04.09.2010 to 06.09.2010 on his own accord in continuation of two days SCL on 02.09.2010 to 03.09.2010. Thus he has contravened Rule 147(vi) of RPF Rules, 1987.

Charge 2:- On 04.09.2010, at about 13.35 hrs., he had misbehaved with IPF/RPM Sri E.Thaninayagam in his chamber by addressing him in singular and abused in filthy language in Tamil as “Nee Yenna Peria Maaira, enna Seiva”. Moreover he had attempted to assault the IPF and further uttered that he would show his might and prove who he was in the present Sri.V.Vijaya Kumar, SIPF, V.Srinivasan, HC/SR810262, A.Jawaharlal Nehru, Con/SR9101911, P.J. Joychan, Con/SR9901997 and Zakker Hussain, Con/53 of RPM RPF post. Thus he behaved with his immediate superior in a most in-disciplined manner unbecoming of an enrolled member of the Force. Thus he has violated Rule 146.4 & 146.5 (a&b) & 3(i)(iii) of Railway Services (Conduct) Rules, 1966.”

6. While pending enquiry, in the direction petition filed by the petitioner in CrI.O.P.No. 21773 of 2010, this Court by an order dated



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22.09.2010, directed the concerned police officer to conduct appropriate enquiry and shall registered a case, if cognizable offence is made out.

Accordingly, FIR was registered in Crime No.16 of 2011 for the offence under Section 324 of IPC as against the Special Inspector of Protection Force, viz., E.Thaninayagam. However, subsequently the said FIR was closed as mistake of fact.

7. In the mean while, the enquiry officer completed enquiry and submitted his report and found that both the charges were proved against the petitioner. On receipt of the show cause notice, the petitioner submitted his detailed explanation to the disciplinary authority. However, the disciplinary authority viz., the third respondent herein passed final order thereby imposed punishment of reduction in rank from the post of Head Constable to Constable on basic pay of Rs.10340/- and grad pay from Rs.2800 to Rs. 2000 in scale 5200-20200 for the period of three years with cumulative and immediate effect. Further the period of suspension was treated as suspension and the period of absence from 04.09.2010 to 06.09.2010 was treated as leave without pay. Subsequently, the appeal and the revision also dismissed by the second



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and third respondents herein. Hence, the petitioner filed this present writ petition.

8. The learned counsel appearing for the petitioner submitted that the Railway Services (Conduct) Rules 1966 is applicable to the case of the petitioner. Chapter IV of the said Rules deals with penalties. Rule 6 in Chapter IV deals with minor penalty as well as the major penalty. The punishment imposed on the petitioner are claimed under Rule 6 sub clause (vi) of the Railway Services (Conduct) Rules. It is relevant to extract the Rule 6 of the Railway Services (Conduct) Rules, as follows :-

“RULE (6) PENALTIES: - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a railway servant, namely :-

Minor Penalties :-

(i) Censure;

(ii) Withholding of his promotion for a specified 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:

(a) Withholding of the privilege of Passes or Privilege Ticket Orders or both (N.R.S.N.5870)



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(b) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension. (Authority: - R.B.'s. No. E(D&A) 90-RG-112 dated 16-11-90 RN- S.N.10336)

(iv) withholding of increments of pay for a specified 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.

Major Penalties:-

(v) Same as provided for in clause (iii) (b), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(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 in such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;



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(ix) Dismissal from service which shall ordinarily be a disqualification from future employment under the Government or Railway Administration;

Provided that in cases of persons found guilty of any act or omission which resulted or would have ordinarily resulted in collisions of railway trains, one of the penalties specified in Clauses (viii) and (ix) shall ordinarily be imposed and in cases of passing railway signals at danger, one of the penalties specified in Clauses (v) to (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing.

Provided further that in cases of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act, one of the penalties specified in clauses (vii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons there of shall be recorded in writing. (Inserted vide Board No. E (D&A) 83 RG 6-14 of 28.8.1987)."

8.1. He further submitted that apart from treating the absented period as suspension and leave without pay, the disciplinary authority also reduced the petitioner scale of pay as Rs.5200-20,200 in the lower



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post. Therefore, he was imposed double punishment of reduction of rank and also reduction of pay scale. Further the Rules nowhere provided that period of suspension to be treated as suspension. However, the suspension period of the petitioner from 11.09.2010 to 26.01.2011 was treated as suspension by the disciplinary authority. In support of his contention, he relied upon the following judgments :-

(i) (1995) 6 SCC 749 – B.C.Chaturvedi Vs. Union of India & ors

(ii) (2009) 2 SCC 570 – Roop Singh Negi Vs. Punjab National Bank & ors

(iii) (2006) 4 SCC 713 – Narinder Mohan Arya Vs. United India Insurance Co. Ltd., & ors.

Therefore, he prayed to allow this writ petition by quashing the impugned orders.

9. The learned counsel appearing for the respondents filed the counter of the third respondent and it revealed that the FIR registered as against the Inspector of Protection Force was referred as mistake of fact. Therefore, the allegation made in the complaint was fabricated one. The petitioner misbehaved with the Inspector of Protection Force and in order to escape from the clutches of law, he himself admitted in the hospital and in fact the injury allegedly sustained by him was declared as simple



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in nature.

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9.1. He further submitted that the petitioner was sanctioned two days leave from 02.09.2010 & 03.09.2010. He had to pick up duty on 04.09.2010. However, he was instructed over phone to pick up 13.00 to 21.30 hrs duty on 04.09.2010. Instead of picking up duty, he quarreled with the Inspector of Protection Force and remained absent unauthorisedly till 06.09.2010. Therefore, he was suspended from duty and enquiry was conducted as per the procedure. After the enquiry, the disciplinary authority rightly imposed punishment and the same was confirmed in the appeal and revision. Hence, no interference warrant in the impugned orders by this Court.

10. Heard Mr.K.S.Govinda Prasad, learned counsel appearing for the petitioner and Mr.S.Janarthanam, Special Panel Counsel appearing for the respondents 1 to 3.

11. The learned counsel appearing for the petitioner relied upon the judgment of Hon'ble Supreme Court of India reported **(1995) 6 SCC**



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749 in the case of ***B.C.Chaturvedi Vs. Union of India & ors*** which held

that the Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case. Therefore, this Court can interfere with the conclusion or finding reached by the disciplinary authorities, since it is based on no evidence.

12. In the case on hand, as stated supra, he was assaulted by the counter party viz., Inspector of Protection Force and as such he was admitted in the hospital and also he produced discharge summary that he was admitted in the hospital as inpatient for two days. In fact, this Court directed the concerned jurisdiction police to register a case on the



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complaint lodged by the petitioner if any cognizable offence is made out.

Accordingly, the jurisdictional police registered a FIR in Crime No.16 of 2011, as against the Inspector of Protection Force viz., E.Thaninayagam. Thereafter, the authority who registered the FIR simply closed the FIR as mistake of fact after looking into the accident register, discharge summary and other documents produced by the petitioner. The disciplinary authority also over took those documents and mechanically concluded that both charges were proved against the petitioner.

13. Although the charges in the departmental proceedings are not required to be proved like a criminal trial i.e., beyond all reasonable doubt, this Court cannot lose sight of the fact that enquiry officer performs a quasi-judicial function, who upon analysing the document must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of the materials on record. While being so, the enquiry officer cannot taken into consideration any irrelevant fact. The enquiry officer cannot refuse to consider the relevant facts and cannot shift the burden of proof. The enquiry officer cannot reject the testimony of the witnesses only on the basis of surmises and



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conjectures.

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14. Though the petitioner was alleged that he misbehaved with the Inspector of Protection Force, no complaint had been lodged against the petitioner for the said occurrence by the Inspector of Protection Force. Instead of, the petitioner sustained injury and lodged complaint. In fact, on the memo issued by the concerned police station, he was admitted into hospital as inpatient. Therefore, the disciplinary authority failed to prove that the absence from duty was willful, no such finding has been given by enquiry or by the appellate authority.

15. The specific case of the petitioner was that he was assaulted by the Inspector of Protection Force as such, he was admitted in the government hospital. Therefore, he was unable to join duty and absented for two days. In fact, he submitted the joining memo along with the discharge summary. It was totally not considered and framed charges as against the petitioner. It is nothing but illegal action and only to wreck vengeance as against the petitioner, the charges were framed and he was punished with the punishment as stated supra.



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16. In view of the above discussion, impugned order/proceedings dated 25.07.2011 passed by the third respondent, bearing No. M/XP/227/14/10 and proceedings of the second respondent dated 04.09.2012 in the appeal , and the proceedings of the first respondent dated 04.10.2013 in the review, all are quashed. The third respondent viz., the Senior Divisional Security Commissioner, Railway Protection Force, Southern Railway, Chennai, is directed :-

(i) to treat the period of suspension from 11.09.2010 to 26.01.2011 as duty for all purposes and to pay salary and allowance for the said period in the post of Head Constable

(ii) to treat the period of absence from 04.09.2010 to 06.09.2010, as duty for all purposes and to pay wages and other monetary benefits, in the post of Head Constable.

(iii) to restore the petitioner to the post of Head Constable and pay arrears of wages and all other attended benefits, within a period of twelve 12 weeks from the date of receipt of a copy of this Order.



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WEB COPY 17. With the above directions, the Writ Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to cost.

17.08.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Inspector General – cum-
Chief Security Commissioner,
Union of India
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Park Town, Chennai – 600 003.
2. The Additional Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Park Town, Chennai – 600 003.
3. The Senior Divisional Security Commissioner,
Railway Protection Force,
Southern Railway,
5th Floor, DRM's Complex,
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G.K.ILANTHIRAIYAN. J.

rts

4. The Assistance Security Commissioner/
RPF/W&S/PER
5th Floort, DRM's Complex,
Park Town.
The then Inquiry Officer and
IPF/GSN,
Railway Protection Force,
Chennai Division,
Southern Railway,
Chennai – 600 00

ORDER IN
W.P.No.13939 of 2015
and M.P.No.2 of 2015

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