



W.P(MD)No.65 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 20.06.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.65 of 2021**

Narender Chauhan

... Petitioner

**Vs.**

- 1.The Director General,  
Railway Protection Special Force,  
Railway Board,  
Rail Bhavan,  
New Delhi.
- 2.The Inspector General cum Principal,  
Chief Security Commissioner,  
Railway Protection Special Force,  
Railway Board,  
Rail Bhawan,  
New Delhi.
- 3.The Deputy Inspector General cum  
Chief Security Commissioner,  
Railway Protection Special Force,  
Railway Board,  
Rail Bhawan, New Delhi.
- 4.The Commanding Officer,  
5<sup>th</sup> Battalion Railway Protection Special Force,  
Kimber Garden,  
Khajamalai,  
Thiruchirapalli.



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5. The Assistant Commissioner,  
'D' Coy, 5<sup>th</sup> Battalion Railway Protection Special Force,  
Kimber Garden,  
Khajamalai,  
Thiruchirapalli.

6. The Inspector,  
5<sup>th</sup> Battalion Railway Protection Special Force,  
Kimber Garden,  
Khajamalai,  
Thiruchirapalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records culminated in the impugned Memorandum /Charge sheet, No. 5BN/PRO-MAJ/D/08/2018 dated 19.04.2018 issued by the fifth respondent herein and Impugned order of removal from the service No.5BN/PRO-MAJ/D/08/2018 dated 05.09.2018 issued by the fourth respondent and Order of rejection of Appeal, No. 5BN/PRO-MAJ/D/08/2019 dated 07.03.2019 issued by the Appellate Authority, third respondent herein and Order of the rejection of Revision, No. 2018/sec(ABE)/DAR/3/21 dated 13.06.2019 issued by the Revisional Authority, second Respondent herein, and quash the same as arbitrary, illegal, unconstitutional, violation of Provisions of Railway Protection Force Rules, 1987 and Railway Servants (Discipline and Appeal) Rules, 1968 and Article 14 and 311 of Constitution of India and Principles of natural justice.

For Petitioner : Ms.T.Tamil Selvi

For Respondents : Mr.K.R.Laxman  
Standing Counsel



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## **ORDER**

Heard the learned counsel on either side.

2. The writ petitioner joined the Railway Protection Special Force as Constable in the year 2015. He was transferred to 5<sup>th</sup> Battalion, Thiruchirapalli on 10.09.2017. On 25.02.2018, an Assistant Commandant by name M.C.Tyagi was brutally killed by one constable by name Arjun Deswal in Meghalaya. This news was shared in Whatsapp group of the “D” company. The petitioner had put "thumbs up" sign for the said message. This was noticed by the superiors. The petitioner's act was construed as extending moral support to the murder accused. Hence charge memo dated 19.04.2018 was issued. The petitioner offered his explanation. It was not found satisfactory and enquiry was conducted. Enquiry officer found the charge framed against the petitioner to be proved. After obtaining the petitioner's further representation, the disciplinary authority vide order dated 05.09.2018 removed the petitioner from service. Questioning the same, the petitioner filed an appeal. The appellate authority vide order dated 07.03.2019 confirmed the punishment and rejected the appeal. The petitioner applied for review, that was also dismissed on 13.06.2019. The petitioner thereafter filed mercy petition and that was also dismissed on 10.08.2020. Challenging these orders, this present writ petition came to be filed.



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3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents.

5. The primary argument of the learned Standing Counsel is that the gesture demonstrated by the petitioner by putting up "thumbs up" symbol for the dastardly occurrence indicates that he is unfit to be a member of the Uniformed Force. The stand of the respondents is that the petitioner has not denied the charge that he has put up the "thumbs up" symbol.

6. According to the respondents, such a person ought to be shown the door. It is not as if he was summarily thrown out without due process. Considering the gravity of the charge made against the petitioner, the learned Standing Counsel submitted that this Court ought not to interfere with the impugned punishment. He pressed for dismissal of the writ petition.



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7. I carefully considered the rival contentions and went through the materials on record.

8. The learned counsel appearing for the petitioner even before commencing her argument submitted that the petitioner would be satisfied with being reinstated in service and would not press for backwages. This submission made by the petitioner through his counsel is placed on record.

9. No person in his senses will condone the dastardly killing of Assistant Commandant M.C.Tyagi. The petitioner is a member of the official Whatsapp group of the “D” company, 5<sup>th</sup> Battalion, Tiruchirapalli. It is natural that news of this sought was widely shared. It is human nature to forward such texts. The petitioner states that while forwarding, he erroneously put up "thumbs up" symbol. His explanation is quite believable. The petitioner comes from a very ordinary background. Even by mistake such things do occur. We are in the habit of saying 'OK' or 'ACHCHA'. It is more a habit. Sometimes when we receive bad news even then we do utter such expressions. That does not mean that we rejoice for what has happened. It is sheer reflex action. Likewise, the petitioner's finger might have mechanically touched the "thumbs up" symbol. These are matters that are better ignored after a warning or Censure. In any



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event, the petitioner has suffered for his lapse. Charge memo was issued in April 2018. He was removed from service in September 2018. We are now in June 2023. For almost five years the petitioner has been out of employment. He has also given up his claim for backwages. This is sufficient punishment.

10. Misconduct is something that is committed with a dishonest or ill-motive *(1979) 2 SCC 286 (Union of India Vs J.Ahmed)*. If an act is done without any conscious thought or negligently, that should not be characterized as a misconduct. The act of the petitioner deserves to be viewed from that perspective.

11. In this view of the matter, the orders impugned in this writ petition are set aside. The petitioner shall be reinstated in service. This writ petition is allowed accordingly. There shall be no order as to costs.

**20.06.2023**

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No  
MGA



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**G.R.SWAMINATHAN, J.**

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