



W.P(MD)No.62 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.62 of 2021

Shri.Kamalesh Kumar Meena

... 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,
5th Battalion Railway Protection Special Force,
Kimber Garden,
Khajamalai,
Thiruchirapalli.



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

6.The Inspector,
5th 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/07/2018 dated 19.04.2018 issued by the fifth respondent herein and Impugned order of removal from the service No.5BN/PRO-MAJ/D/07/2018 dated 11.10.2018 issued by the fourth respondent and Order of rejection of Appeal, No. 5BN/PRO-MAJ/D/07/2019 dated 07.03.2019 issued by the Appellate Authority, third respondent herein and Order of the rejection of Revision, No. 5BN/PRO-MAJ/D/07/2019 dated 17.10.2019 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 Y.Krishnan

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



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ORDER

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Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondents.

2. The petitioner belongs to Scheduled Tribe community. He joined Railway Protection Special Force as Constable in the year 2015. He was transferred to the 5th Battalion, Thiruchirapalli on 10.09.2017. On 25.02.2018, an Assistant Commandant of force M.C.Tyagi was brutally killed by one constable by name Arjun Deshwal. From the mobile phone of the petitioner, the other members of “D” company received certain comments as well as photographs / video. In this regard, charge memo was issued to the petitioner on 19.04.2018. The petitioner offered his explanation. Not satisfied with the same, enquiry officer was appointed. He examined the witnesses and documents were marked. The petitioner was found guilty of the charges framed against him. After getting the petitioner's further representation, the commanding officer / disciplinary authority passed order dated 11.10.2018 imposing the punishment of removal from service. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority vide order dated 07.03.2019 confirmed the punishment imposed on the



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petitioner and rejected the appeal. The petitioner thereafter applied for review.

That was also dismissed by the Railway Board on 17.10.2019. Assailing the said orders, the present writ petition came to be filed.

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 grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents. It has been vehemently contended by the respondents that a member of Uniformed Force will have to maintain the highest standards of discipline. He has to necessarily comply with the orders of the superior. In this case, an officer who was on duty in Megalaya was brutally killed by a constable. It was a dastardly and cowardly act. However, the petitioner has celebrated the same. He also shared it with the fellow members of his battalion. Such an act will have serious bearing on the morale of the force. That is why the petitioner was departmentally dealt with. The respondents have scrupulously adhered to all the norms of the disciplinary proceedings. The petitioner was given the fullest opportunity to defend himself. The findings rendered by the enquiry officer can by no stretch of imagination be termed perverse. In fact, the petitioner himself has virtually



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admitted the charge framed against him. The learned Standing Counsel also pointed out that the scope of the writ Court in interfering in such matters is highly limited. He pointed out that the scope of interference in the case of disciplinary action taken against the members of the Uniformed Force is even more limited. According to him, the impugned orders do not call for interference. During the pendency of the writ petition, the petitioner's mercy petition was also rejected and no case has been made to revisit the issue. He pressed for dismissal of the writ petition.

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

6. The learned counsel appearing for the petitioner even before commencing her arguments submitted that in the event of this Court setting aside the impugned orders and directing reinstatement of the petitioner, the petitioner would not press his claim for backwages. Secondly, she submitted that the occurrence that is subject matter of the charge memo is dastardly and that the petitioner genuinely condemns the same and that he has not supported it in any manner.



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7. The charge against the petitioner is that the petitioner commented in favour of the killer and forwarded the same to the other members of the company.

8. In the appeal memorandum, the petitioner had clearly stated that the petitioner had only forwarded what was received on his mobile and that he had not made any comment as such. When such a specific stand has been taken by the petitioner, the burden is only on the disciplinary authority to prove that the petitioner had made the comment. The petitioner concedes that he had shared messages received on his mobile phone along with other members of the WhatsApp group. Sharing and forwarding of child pornography by itself is an offence. But an occurrence of this nature definitely concerns all the members of the force. Therefore, forwarding a message that was received on the mobile of the petitioner as such will not amount to misconduct. In any event, it is human nature to share such news. The petitioner hails from Scheduled Tribe community. He had joined the force only in the year 2015. During the relevant time, the petitioner states that he had some marital discord and that he was in a depressed condition. In these circumstances, mere forwarding of a received message by itself ought not to have been construed an act of misconduct. Misconduct is something that is committed with a dishonest or ill-motive ***(1979) 2 SCC 286 (Union of India Vs J.Ahmed).***



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9. The impugned order was passed way back in October 2018. We are now in June 2023. More than five years have lapsed. The petitioner has been out of service for five years. The petitioner has also made a statement before this Court through his counsel that he is not making any claim for payment of backwages. The petitioner must have definitely learnt his lessons by now.

10. In matters relating to electronic evidence, one cannot easily jump to any conclusion. Whether the petitioner posted his comments or he merely forwarded are matters on which there will have to be some kind of expert testimony. In this case, no expert was examined. Only officers from the “D” Company of the battalion alone were examined. It will be unsafe to conclude on the strength of evidence of such laymen that there was human interface at the end of the petitioner.

11. In this view of the matter, the orders impugned in this writ petition are set aside. The respondents are directed to reinstate the petitioner in service within a period of five weeks from the date of receipt of a copy of this order. The intervening period will be counted for all other purposes except backwages.



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12. 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

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G.R.SWAMINATHAN, J.

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