



WEB COPY



W.P. No. 934 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 934 of 2018

and

W.M.P. No. 1127 of 2018

P. Karuppuswamy

... Petitioner

Vs.

1.The Director General/Appellate Authority,
Railway Protection Force,
Ministry of Railways,
Railway Board, New Delhi.

2.The Inspector General cum
Chief Security Commissioner,
Integral Coach Factory,
Chennai – 38.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders issued by the respondents 1 & 2 in No.2017/Sec(E)/DAR-3/34 dated 21.11.2017 and No.P/X/D&AR/R.158/07/2017 dated 06.04.2017 respectively and quash the same.

For Petitioner : Mr. R. Dhineshkumar

For Respondents : Mr. P.T. Ramkumar,
Standing Counsel



ORDER

This Writ Petition has been filed against the order dated 21.11.2017 issued by the first respondent in confirming the order dated 06.04.2017 issued by the second respondent, seeking to quash the same.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. The case of the petitioner is that, he entered into service as Sub Inspector in the Railway Protection Force on 10.05.1992 and subsequently, he was promoted as Inspector in the year 2004. In the year 2014 he was transferred to Integral Coach Factory, Chennai. On 21.10.2016, the petitioner applied leave for two days i.e., on 28.10.2016 and 31.10.2016 and also for holiday permit on 29.10.2016 and one day weekly rest on 30.10.2016. The leave application was sent to the second respondent and he granted leave and posted another Inspector as in-charge. On 29.10.2016, the second respondent visited the Railway Protection Force station and found certain lapse. In this connection, the second respondent issued a show cause notice dated 02.11.2016 and sought for explanation. The petitioner made a detailed explanation on 10.11.2016. After receipt of the same, the queries have been made once again and called for explanation by letter dated 24.11.2016. The petitioner was harassed by



way of the explanation since the oral explanations have already been submitted by the petitioner and inspite of that, a fresh explanation was called for. Even then, the petitioner submitted on 05.12.2016, the petitioner was called by the second respondent for an official meeting and hence, the petitioner handed over the explanation to the despatch clerk attached in the second respondent's office. After the lapse of three months, a charge memo was issued to the petitioner by the second respondent on 09.03.2017. The petitioner submitted his written statement for the charge memo on 17.03.2017. Thereafter, the second respondent issued penalty advice on 06.04.2017 imposing a penalty of “stoppage of next annual increment for two years with non cumulative effect”. Aggrieved by the said order, the petitioner preferred an appeal before the first respondent. The appellate authority, by its order dated 21.11.2017 has confirmed the order of the second respondent. Aggrieved by the same, the petitioner filed the present writ petition.

4. A counter affidavit has been filed on behalf of the respondents.

5. Learned counsel for the petitioner submits that the second respondent himself granted leave on 22.10.2016 and during the leave period of the petitioner, he visited the RPF Station on 29.10.2016 and eliciting certain lack of supervision issues, imposed the punishment. Learned counsel would further submits that the



order of the second respondent is illegal, unjust and arbitrary and violation of principles of natural justice, in view of the fact that without conducting any enquiry, the second respondent passed order imposing the punishment. The first respondent who is the appellate authority also without considering the grounds raised by the petitioner in appeal, passed a non speaking order without stating any reasons, which is unsustainable under law and he sought to allow the writ petition by setting aside the order passed by the first and second respondents.

6. On the other hand, the learned Standing Counsel appearing for the respondents would submit that before issuing charge memo, a show cause notice was issued to the petitioner on 02.11.2016. Considering the explanation submitted by the petitioner on 10.11.2016 another notice was issued on 24.11.2016, as the petitioner could not submit proper explanation, he was given several opportunities to submit his explanation on or before 05.12.2016 but no explanation was submitted by the petitioner. But the learned Standing Counsel would further contends that the petitioner without submitting explanation to the second respondent on or before 05.12.2016, the petitioner made false statement that he has submitted explanation on 05.12.2016 in the office of the second respondent which is not correct.



7. Considering all these aspects, a charge memo was issued on 09.03.2017 and the petitioner submitted his written statement of defence on 17.03.2017. Considering the written statement of defence, as it is not at all satisfactory, the second respondent decided to impose a penalty of stoppage of next annual increment for two years with non cumulative effect.

8. Learned Standing Counsel would submit that the order of penalty imposed against the petitioner on 06.04.2017 is in accordance with law and the said order was passed by following the procedure provided under Railway Services (Conduct) Rules, 1966. The first respondent also has considered the appeal filed by the petitioner on merits and by following due process of law, appeal was dismissed confirming the order of the original authority. Under these facts, the learned Standing Counsel contends that there is no illegality or infirmity in the order passed by the second and first respondents and sought to dismiss the writ petition.

9. Having heard the submissions of the respective counsel and on careful perusal of the material available on record, it is an admitted fact that the petitioner was granted leave by the second respondent on 22.10.2016, granting leave for the petitioner on 28.10.2016 and 31.10.2016. There is no dispute about the 29.10.2016 is a holiday and the petitioner availed one day weekly rest on 30.10.2016, as such, it is



clear that the petitioner is not on duty from 28.10.2016 to 31.10.2016. During that period, on 29.10.2016, the second respondent visited the Railway Protection Force station where the petitioner is the in-charge and found certain lapse of supervision by the petitioner and accordingly, a show cause notice was issued. As proper explanation is not submitted by the petitioner, the second respondent issued several reminders in calling for proper explanation. It is also an admitted fact that the petitioner has to submit his explanation finally on or before 05.12.2016. On that date, as per the petitioner, he handed over the explanation at the office of the second respondent to a Constable who is discharging function as receptionist. But it is the case of the second respondent that as per the statement given by one V.S.Vinod, who is working as Constable at the second respondent office, he stated that the petitioner did not submit any letter to him personally on 05.12.2016. At this stage, considering all these aspects, the second respondent has issued a charge memo dated 09.03.2017 to the petitioner levelling certain charge against him. Thereafter, the second respondent issued penalty advice dated 06.04.2017 imposing penalty of stoppage of annual increment for two years with non cumulative effect.

10. On perusal of the penalty advice, it appears that the petitioner had submitted written statement of defence to the charge on 17.03.2017 to the charge memo dated 09.03.2017. It is the case of the second respondent that on consideration



of the charge levelled against the petitioner and the written statement of defence submitted by the petitioner has imposed penalty by order dated 06.04.2017. The first respondent who is the appellate authority has confirmed the penalty imposed by the second respondent. Learned Standing Counsel would submit that the first respondent being the appellate authority while dismissing the appeal, has provided opportunity for personal hearing to the petitioner and as such, there is no any violation of principles of natural justice in this case.

11. But the issue to be considered in this case is whether, any enquiry was conducted against the charges levelled against the petitioner by the second respondent or not. As per the settled procedure, under the service jurisprudence, after framing the charges, an enquiry officer has to be appointed to enquire into the charges levelled against the petitioner and petitioner has to be provided an opportunity to defend his case before the enquiry officer. Based on the report of the enquiry officer only, the disciplinary authority has to pass final orders in the disciplinary proceeding. Admittedly, in the present case that procedure was not followed. The disciplinary authority who was the second respondent simply passed the punishment order based on the charge memo and the written statement of defence submitted by the petitioner. Without conducting any departmental enquiry against the charges levelled against the petitioner, imposing penalty will not sustain under law.



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12. In the considered opinion of this Court, imposing punishment against the petitioner without conducting any departmental enquiry by appointing an enquiry officer, is illegal, unjust, arbitrary and against to the principles of natural justice.

13. For the above said reasons, in the considered opinion of this Court, the order dated 06.04.2017 issued by the second respondent which was confirmed by the first respondent is unsustainable and untenable under law and is liable to be set aside.

14. Accordingly, this Writ Petition is allowed and the orders impugned in this writ petition are hereby set aside.

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

12.09.2024

Index :Yes/No

Neutral Citation :Yes/No

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To

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