

(2009) 04 AHC CK 0310
In the Allahabad High Court
Case No : Special Appeal No. 107 of 2005

Amit Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 28
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 232, 354
Railways Act, 1989 — Section 143, 145, 147

Citation : (2009) 04 AHC CK 0310

Hon'ble Judges : S.Rafat Alam, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri C.B. Singh, learned counsel for the petitionerappellants (hereinafter referred to as "appellants") and Sri K.C. Sinha for the respondents.

2.This intra Court appeal arises from the judgement dated 6.10.2004 and 23.12.2004 of the Hon"ble Single Judge whereby his Lordship had declined to entertain the writ petition on the ground of alternative remedy under Section 29 of Central Reserve Police Force Act, 1949 (hereinafter referred to as the "Act") have dismissed review application of the appellants.

3.Sri Ashok Khare, learned counsel for the appellants, vehemently contended that the Hon"ble Single Judges has erred in law in dismissing the writ petition on the ground of alternative remedy inasmuch no such remedy is available to the appellants either under Section 29 of the Act or the Rules framed thereunder and, therefore, the judgments impugned in this appeal are liable to be set aside.

4.Sri K.C. Sinha, learned counsel for the respondents, however, defended the orders of the Hon"ble Single Judge.

5.Apparently, reference to Section 29 of the Act in the judgement of Hon"ble

Single Judge appears to be a typographical mistake inasmuch the Act contains only 19 Sections and there is no question of Section 29 of the Act and this is a glaring error, may be typographical, in the judgement of the Hon''ble Single Judge.

6.Learned counsel for the parties argued that in fact, the Hon''ble single Judge was referring to Rule 28 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the "Rules") as is also evident from his Lordship's order dated 23.12.2004 whereby the review application of the appellants was rejected and, thereafter, both the learned counsel for the parties addressed this Court treating the words "Section 29" as "Rule 28". Sri Khare agreed that the alternative remedy, which the Hon''ble Single Judge intended to apply was with reference to Rule 28 and in that view of the matter, he proceeded to submit that even Rule 28 does not provide any alternative remedy of appeal in the facts and circumstances of the Case.

7.Before coming to Rule 28 of the Rules, it would be appropriate to mention, at this stage, facts in brief giving rise to the present dispute.

8.The appellants were selected on the post of Constable in Central Reserve Police Force (hereinafter referred to as "CRPF") and were given training at Group Centre, CRPF, Rampur in the year 2002. After completion of 14 weeks" of training, they were required to undergo rest part of the basic training at R.T.C.III, CRPF, Pallipuram in the State of Kerala for which they were despatched on 15.10.2002. The appellants while on journey in Kerala Express (Train No. 2626) on 28.10.2002, some girls students and teachers of Beersheva English Medium Public School, Piparia, Hosangabad (State of Madhya Pradesh), who were also travelling by the same train, complained about molestation and misbehaviour by the CRPF people travelling by the same train. When the said students got down and informed the Railway Police, the train was stopped at Alwade Station, the Railway police registered criminal case no. 75 of 2002 under Sections 143, 147,145 of Railway Act and 232 and 354 I.P.C. but allowed the recruits including the appellants to proceed to their destination, i.e. Pallipuram. Subsequently, to identify actual culprits amongst the recruits, an identification parade was done whereat the victims, i.e, the teachers and students identified the recruits which included the appellants. The Principal R.T.C.III, Pallipuram, State of Kerala exercising power under Rule 16(a) terminated all the appellants. They along with some others who were also terminated in the same manner, filed writ petition no. 36713 of 2002 U, which was disposed of by Hon''ble Bench consisting of Hon''ble K. Balakrishnan Nair, J. vide judgment dated 15.1.2003 which reads as under:

"The petitioners were C.R.P.F. recruits and they were removed from service by Ext.P2 series of orders. Aggrieved petitioners have filed Ext.P4 petition before the additional fourth respondent challenging their termination. The learned counsel for the petitioners prays that there may be a direction for early disposal of Ext.P4 petition.

2. I heard the learned Senior Central Government Standing Counsel also. The original petition is disposed of directing the additional fourth respondent to consider and pass orders on Ext.P4 in accordance with law within four months from the date of receipt of a copy of this judgment. The petitioners or their representative shall be heard before a decision is taken on Ext.P4 petition."

9.It is, thus, evident that against the order of termination, the appellants had already filed a petition to the competent authority and the Hon"ble Kerala High Court directed the authority concerned to decide the said petition. The aforesaid petition was rejected by the Inspector General of Police (Operation & Training), CRPF, New Delhi vide order dated 13.5.2003. Thereafter, these appellants filed writ petition 45575 of 2003, which has been dismissed by the Hon"ble Single Judge vide judgment impugned in this appeal including the review application.

10.Rule 28 (a) and (b) of the Rules read as under :

"28. Appeal.(a) Every subordinate officer or every officer of any other rank below him including an enrolled follower against whom an order under serial numbers 1 to 7 of the table in rule 27 or under clauses (d) and (e) of section 13 is passed is entitled to prefer one appeal against such order to the Inspector General; if the original order was passed by the Deputy InspectorGeneral and to the Deputy InspectorGeneral; if the original order was passed by the Commandant.

(b) No appeal shall lie against an order by the competent authority inflicting any of the punishments mentioned in

(1)Serial Nos. 8 to 11 of the Table in rule 27;

(2)Clauses (a), (b) and (C) of section 13;

(3)Against an order discharging recruit before the termination of his period of training."

11.The Items 1 to 7 of the Table in Rule 27 provides the following punishments whereagainst the appeal is maintainable under Rule 28.

1.Dismissal or removal from the Force

2.Reduction to a lower timescale of pay, grade; post or service

3.Reduction to a lower stage in the timescale of pay for a specified period.

4.Compulsory retirement

5.Fine of any amount not exceeding one month"s pay and allowances

6.Confinement in the Quarter Guard exceeding seven days but not more than twentyeight days with or without punishment drill or extra guard fatigue or other duty

7.Stoppage of increment

12. None of the above items are attracted in the case in hand. Similarly, it is also not disputed by Sri K.C. Sinha that Section 13 Clauses (d) and (e) are also not attracted in the case in hand which reads as under :

"13. Deductions from pay and allowance.

(d) all pay and allowances ordered to be forfeited under Section 11; and

(e) such sum as may be ordered by the Commandant or assistant commandant in order to make good any expense caused by the member of the Force, or any loss of, or damage or destruction done by him to, any arms, ammunition, equipment, clothing, instruments or decorations belonging to the Force or to any buildings or property."

13. In these circumstances, we are constrained to observe that the Hon'ble Single Judge ought not to have dismissed the writ petition on the ground of alternative remedy since apparently the alternative remedy under Rule 28 was not available to these appellants. We have also seen Rule 29, which provides for revision but the same also would not apply in this case. To some extent, though it can be said that in the matter like present one, the appellants had a remedy under Rule 30 of the Rules, but the same appears to have exhausted by them by making a petition, which was directed to be decided by the Hon'ble Kerala High Court and which has been rejected by the I.G. (CRPF) by order dated 13.5.2003. Thus remedy under Rule 30 stood already availed off.

14. Normally, in view of the above discussion, this appeal should have been allowed and the matter ought to have been remitted back to the Hon'ble Single Judge for deciding the writ petition on merits. However, there are some subsequent events also, which have been brought on record by the parties and both the learned counsel for the parties requested and agreed that since the matter is already pending for almost five years, it would be in the interest of all the parties if this Court itself may consider the matter on merits and decide it instead of remitting it to the Hon'ble Single Judge.

15. We have accepted this request of the learned counsel for the parties and proceed to decide the matter on merits taking into account the subsequent event also, which have been brought on record.

16. First, let us complete the factual events, i.e., subsequent one, which have been brought on record. During the pendency of the matter, we are informed that the criminal trial which was conducted against the appellants in the Court of Judicial First Class Magistrate, Court 1, Sri Aslam, was concluded vide judgment dated 23.2.2008 whereby the learned Judicial Magistrate acquitted all the appellants. The judgement has been brought on record as Annexure 1 to the supplementary affidavit sworn on 18.10.2008. Thereafter, the appellants again preferred a mercy petition before the Director General, CRPF, New Delhi on 1.4.2008, but the same has been rejected by the order dated 30.6.2008 communicated by Addl. Director General of Police, CRPF, Rampur vide his letter

dated July 2008.

17. Sri Ashok Khare, learned Senior Advocate, submitted that the matter has been examined at various levels by the respondents and the foundation of the order of termination is the alleged incident which took place during the ongoing journey by Kerala Express on 18.10.2002 as is evident from the various orders passed by the authorities. Since the impugned orders are founded on the said incident and the enquiry conducted pursuant thereto, though no opportunity was afforded to the appellants and no enquiry consistent with Article 311 (2) of the Constitution of India was held, therefore, the impugned orders are illegal and liable to be set aside. In support of his submission, he placed reliance on the Apex Court's decisions in *Babu Lal Vs. State of Haryana & others* AIR 1991 SC 1310, *Uptron India Ltd. Vs. Shammi Bhan & another* AIR 1998 SC 1681, *Chandra Prakash Shahi Vs. State of U.P. & others* 2000 (3) AWC 1848 (SC), and High Court's judgment in *Sri Jagdish Narain Singh Vs. State of U.P. & others* 1973 (2) SLR 410, *Mahendra Pal Singh Sodhi Vs. State of U.P. & others* 2004 (3) AWC 2548, *Sanjay Kumar Vs. U.P. State & others* 2003 (3) UPLBEC 2193.

18. He further contended that where the evidence before the departmental authorities and criminal case are one and the same, the acquittal in criminal case would have to be given due weight by the departmental authorities and after acquittal of the appellants in criminal case by the Trial Court, they were entitled to be reinstated. Reliance is placed on *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd & another* 1999 (1) LBESR 969 (SC) and a Division Bench judgement of the Hon'ble Andhra Pradesh High Court in *Samudrapu Somalappadu & others Vs. Nillimerla Jute Mills Company Ltd & another* 1996 LLR 405.

19. He lastly contended that some of recruit trainees whose names were mentioned in the FIR were left and they are still working while the appellants were singled out for the punishment of termination and, therefore, the respondents have violated Articles 14 and 16 of the Constitution. This discriminatory treatment renders the termination illegal. In support, he placed reliance on a Single Judge judgment in *Paras Nath Singh Vs. Addl. Commissioner (Administration), Trade Tax & others* 2002 (1) UPLBEC 600.

20. Sri K.C. Sinha refuted and submitted that termination being simplicitor warrants no interference and the judgments relied by Sri Khare have no application in this case.

21. It is no doubt true that the order of termination passed by respondent no. 5, I.e., Principal, R.T.C.III, Pallipuram ex facie is an order of termination simplicitor and from a perusal thereof, it cannot be said that the same is ex facie stigmatic or founded on any alleged misconduct. The language of all the orders is similar and it would be useful to reproduce here the order of termination of the appellant no. 1 which reads as under :

"TERMINATION ORDER

Under the provision of SubRule (1) (a) & 2 (a) of Rule 5 of the CCS (Temporary Service) Rules 1965, read with Rule 16 (a) of CRPF Rules 1965, I, P.G.G. Nair, ADIGP/Principal, RTC3 CRPF is hereby terminate the service in respect of No. 025261001 Rt/Ct Amit Kumar of CC CRPF Rampur (Detailed to undergo basic training in this Institution) with effect from 22.10.2002 (FN) by giving one month pay and allowances in case in lieu of one month notice. He is accordingly struck off strength of GC CRPF Rampur from the same date."

22.However, this by itself would not prevent this Court from examining as to whether the background preceding the order would show that the impugned termination is founded on the alleged misconduct of the appellants or it was only a case of motive. How and in what circumstances an order can be said to be based on motive or founded on alleged misconduct has been considered in detail recently by this Court in the case of Paras Nath Pandey Vs. Director, North Central Zone Cultural Centre, Nyay Marg, Allahabad 2008 (10) ADJ 283 (DB). After considering the earlier authorities, in para 57 of the judgment, this Court has crystallized certain guiding factors which may help the Court while deciding as to when an order would be founded on misconduct or it is only a case of motive. It would be useful to reproduce para57 of the aforesaid judgement which reads as under :

"57. From the above discussions, the principles discernible to find out whether a simple order of termination/discharge of a temporary employee or probationer is punitive or not, broadly, may be stated as under:

(a)The termination of services of a temporary servant or probationer under the rules of his employment or in exercise of contractual right is neither per se dismissal nor removal and does not attract the provisions of Article 311 of the Constitution.

(b)An order of termination simplicitor prima facie is not a punishment and carries no evil consequences.

(c)Where termination simplicitor is challenged on the ground of casting stigma or penal in nature, the Court initially would glance the order itself to find out whether it cast any stigma and can be said to be penal or not. If it does not, no further enquiry shall be held unless there is some material to show certain circumstances, preceding or attending, shadowing the simplicitoriness of the said order.

(d)The Court is not precluded from going beyond the order to find out as to whether circumstances, preceding or attending, makes it punitive or not. If the circumstances, preceding or attending, show only the motive of the employer to terminate, it being immaterial would not vitiate the order unless it is found that order is founded on such act or omission constituting misconduct.

(e)If the order visits the public servant with evil consequences or casts aspersions against his character or integrity, it would be an order by way of

punishment irrespective of whether the employee was a mere probationer or temporary.

(f) "Motive" and "foundation" are distinct, though the distinction is either very thin or overlapping. "Motive" is the moving power, which impels action for a definite result, or to put it differently. "Motive" is that which incites or stimulates a person to do an act. "Foundation", however, is the basis, i.e., the conduct of the employee, When his acts and omissions treated to be misconduct, proved or founded, it becomes a case of foundation.

(g) If an order has a punitive flavour in cause or consequence, it is dismissal, but if it falls short of it, it would not.

(h) Where the employer is satisfied of the misconduct and the consequent desirability of termination, it is dismissal even though the order is worded innocuously. However, where there is mere suspicion of misconduct and the employer does not wish to bother about it, and, instead of going into the correctness of guilt, feel like not to keep the employee and thus terminate him, it is simpliciter termination and not punitive.

(i) Where the termination simplicitor is preceded by an enquiry, preliminary or regular, the Court would see the purpose, object of such enquiry as also the stage at which, the order of termination has been passed.

(j) Every enquiry preceding the order of termination/discharge, would not make it punitive. Where an enquiry contemplated in the rules before terminating an probationer or temporary employee is held, it would not make the order punitive.

(k) If the enquiry is to find out whether the employee is fit to be confirmed or retained in service or to continue, such an enquiry would not render termination punitive.

(l) Where the employer hold a formal enquiry to find out the correctness of the alleged misconduct of the employee and proceed on the finding thereof, such an order would be punitive, and, cannot be passed without giving an opportunity to the concerned employee.

(m) If some formal departmental enquiry commenced but not pursued to the end. Instead a simple order of termination is passed, the motive operating in the mind of the authority would be immaterial and such an order would be non punitive.

(n) When an order of termination is assailed on the ground of mala fide or arbitrariness, while defending the plea of mala fide, if the authority has referred certain facts justifying the order of discharge relating to misconduct, negligence or inefficiency of the employee in the appeal or in the affidavit filed before the Court, that would not make the order founded on any misconduct.

(o) Sometimes when some reason is mentioned in the order, that by itself would not make the order punitive or stigmatic. The following words mentioned in the

order have not been held to be punitive.

i. "want of application",

ii. "lack of potential",

iii. "found not dependable",

iv. "under suspension",

v. "work is unsatisfactory",

vi. "unlikely to prove an efficient officer".

(p) Description of background facts also have not been held to be stigmatic.

(q) However, the words "undesirable to be retained in Government service", have been held stigmatic.

(r) If there is (i) a full scale formal enquiry, (ii) in the allegations involving moral turpitude or misconduct, (iii) which culminated in a finding of guilt; where all these three factors are present, the order of termination would be punitive irrespective of the form. However, if any one of three factors is missing, then it would not be punitive."

23. The incident, which took place in Kerala Express between the CRPF training recruits and the girls student and teachers of a School is not disputed, though identify of persons who actually were involved in the incident is sought to be disputed by the appellants contending that they were not travelling in the same compartment. It is also not disputed that the victims identified the trainee recruits including the appellants when the identify parade was conducted though it is contended that the identification parade was not in accordance with law. Further, neither a charge sheet was issued to the appellants nor any regular departmental enquiry was conducted but the respondents no. 5 passed an order of termination simplicitor after being prima facie satisfied that the appellants as members of an armed force of Union of India are not maintaining such character as would be in public interest. In our view, the facts of this case are covered by in para 57 (k) of the judgement, which shows that mere preliminary enquiry to make assessment about the work and conduct of an employee so as to whether he should be retained in service or not would not render the order of termination simplicitor founded on the alleged misconduct. Para 57 (n) of the judgement in Paras Nath Pandey (supra) further shows that any subsequent explanation given in the affidavit filed before the Court where the order is challenged or by the authorities while deciding the representation or appeal of the employee would not make the otherwise termination simplicitor as punitive. We, therefore, are satisfied that the issue raised in this appeal is squarely covered by our judgment in Paras Nath Pandey (supra) and in view of what has been said in para 57, we do not find that here is a case which warrants interference by holding that the order of termination simplicitor is punitive and founded on the alleged misconduct. Rather, the legal and factual position is otherwise.

24. Various judgements referred to by the learned counsel for the appellants, in our view, have no application in the case in hand. In Babu Lal (supra) the employee working as SubInspector, Food and Civil Supplies was suspended pending a criminal proceeding against him under Section 420 I.P.C. During the pendency of the suspension as well as criminal proceeding, he was terminated on 17.11.1980 as his appointment was ad hoc and liable to be terminated at any point of time. When challenged, the Court observed that the employee was suspended admittedly on the sole ground of pendency of criminal proceeding which ultimately ended in the acquittal. The Court held that it is the settled position in law that the appellant, who was suspended on the ground of pendency of the criminal proceeding against him, after being acquitted from the criminal charge is entitled to be reinstated in service. The Court further found that Sri Babu Lal was appointed on 13.4.1975 on ad hoc basis with a clear stipulation that his appointment shall not exceed six months. However, Babu Lal continued beyond six months and in the meantime, a notification dated 1.1.1980 was issued by the Chief Secretary to the Government of Haryana addressed to all the Heads of the departments that such ad hoc employees who hold the class III posts for a minimum period of two years on 31.12.1979 are to be regularised if they fulfil the following conditions :

(a) Only such ad hoc employees as have completed a minimum of two years service on 31.12.1979 should be made regular. However, break in service rendered on ad hoc basis up to a period of one month may be condoned but break occurring because the concerned employee had left service of his own volition or where the ad hoc appointment was against a post/vacancy for which no regular recruitment was required/intended to be made, i.e., leave arrangements or filling up of other shorttime vacancies may not be condoned.

(b) Only such ad hoc employees as have been recruited through the Employment Exchange should be made regular.

(c) The work and conduct of the ad hoc employees proposed to be regularised should be of an overall good category.

25. The Court found that Sri Babu Lal fulfil the said conditions. The defence taken by the department that his case for regularization was considered by the department in the light of the Circular but his work and conduct was not found of the required standard so as to justify his regularization and, therefore, he was not regularized was found incorrect as the respondent department could not produce any evidence in support thereof as is evident from the following observation :

"This finding of the High Court is totally baseless inasmuch as the counsel for the said respondent could not produce any order or documentary evidence to show that the respondents considered the case of the appellant for the purpose of regularisation in accordance with the Notification dated 1st January, 1980."

26. In these circumstances, the Court held in Babu Lal (supra) that once the

notification dated 1st January, 1980 was issued, which was applicable to Babu Lal since he was also in service on that date as he was terminated on 17.11.1980, without considering his case in accordance with the said notification it was not open to the respondents to terminate his services.

27. So far as the reliance placed by the petitioners on the Apex Court's judgement in making the order punitive on the averments made in the counter affidavit i.e. Hardeep Singh Vs. State of Haryana 1989 (4) S.L.R. 579, Smt. Rajinder Kaur Vs. State of Punjab 1986 (4) SCC 141 are concerned, we find that subsequently a Larger Bench of three Hon'ble Judges of the Apex Court in State of U.P. & another Vs. Kaushal Kishore Shukla JT 1991 (1) SC 108 held that what has been said in the counter affidavit by way of defence will not make an otherwise simplicitor termination a punitive one. The Court further held that the allegations made against the respondent contained in the counter affidavit by way of defence filed on behalf of the appellants do not change the nature and character of the order of termination. This was followed by a Division Bench of the Apex Court in Pavenendra Narayan Verma Vs. Sanjay Ganghi Post Graduate Institute of Medial Sciences & another AIR 2002 SC 23 wherein it was argued that mention of reasons for termination which constitute allegations of misconduct in the counter affidavit would vitiate the order since it render the order stigmatic. Repealing the above contention, the Court held :

"That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.....(para 34)

Equally an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. This is also what was held in State of Uttar Pradesh v. Kaushal Kumar Shukla (supra):

"The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination. (para 35)"

28. The law, therefore, is very clear that an order of termination simplicitor cannot be held invalid with reference to the reason given in the counter affidavit or in any subsequent proceeding. It is not permissible to invalidate order of termination on the basis of certain averments made in the affidavit trying to justify the order by adding certain reasons to support the order of termination and to reply the allegations against arbitrariness. Similar is with respect to the order of higher authorities passed while deciding representation/appeal etc.

29. In Uptron India Ltd. (supra), the Court found that workman had acquired the status of a permanent employee and, therefore, could not have been terminated treating him to be a temporary employee by issuing one month's or three

month's notice as the case may be. This judgement has no application in the case in hand.

30. In Chandra Prakash Shahi Vs. State of U.P. & others 2000 (3) AWC 1848, the Court, in para 30 of the judgment, after discussing the "motive" and "foundation" as to when and how can be asserted, found that the preliminary enquiry was conducted to establish the involvement of the employee in the alleged misconduct and the termination was founded on the report of preliminary enquiry. Since the preliminary enquiry was not held to find out whether the employee was suitable for further retention in service or for confirmation as he has already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it was admitted by the respondents that the performance of the appellant throughout was unblemished, the Court, therefore, found that as a matter of fact, the order of termination was founded on the allegation of misconduct. This judgment also does not help the petitioners.

31. The facts in the case in hand are much different. The appellants were trainee recruits and it is not the case where they have completed their training unblemished. The incident of molestation and misbehaviour in the running train was an admitted one though the identification of the persons involved therein was disputed. The Principal of the training institute considered the question of continuance of appellants as a member of disciplined force as to whether it was in public interest or not and finding otherwise, decided to terminate their services. In the facts and circumstances of the case we are not satisfied to hold that the impugned orders of termination can be said to be founded on the alleged misconduct.

32. Even otherwise, we are of the view that here is not a case where the appellants deserve any discretionary relief in equitable jurisdiction under Article 226 of the Constitution. The appellants were selected for the post of Constable in CRPF, a disciplined uniform force. They were employed by the Union of India for maintaining safety and security of the public at large of this country. Such persons are expected to show a character respecting the dignity of mankind and to the women folks in particular. If during the course of training, such persons can get involved in an unwanted shuffle with the bona fide passengers of a train, went to the extent of even misbehaviour with School going girl students as also their lady teachers, such persons cannot deserve any discretionary and equitable relief from a Court of law even if there is any technical or procedural flaw though in fact there is none. The incident of misbehaviour with the girl students of the School and lady teachers is not in dispute though some of the appellants claim that they were not travelling in the same coach. The I.G. In his order rejecting appellants' petition has mentioned some of the facts which it would be appropriate to reproduce as under :

"(ii) At Itarsi Junction, an excursion group of students of Beershaba English Medium Higher Secondary School, Papariya (MP) boarded S/2 compartment. The

excursion party consisted of the Principal of the School, 4 lady teachers, 22 boys and 27 girls. Some of the berths were under occupation of the Recruits, who vacated them on request by the Principal and teachers. The Recruits were travelling with their kit boxes and bags which were lying the compartment and causing difficulty in movement. The teachers and students appear to have raised objections on this issue. This led to arguments between the two parties. The Principal complained to SI Puran Singh, who was travelling in Coach No. S/3 about the alleged misbehaviour and indecent comments being made by the Recruits towards girl students and lady teachers. SI Puran Singh came to Coach No. S/2 and asked the recruits to maintain discipline. Thereafter he returned to his Coach.

(iii) The tension which developed between the excursion party and the Recruits on 17/10/2002 led of the scuffle between the Principal and the students on one side and some of the Recruits led by CT Pawan Kumar on the other. On 18.10.2002 while the train was approaching Aluva Railway Station, When the excursion party was trying to get down at Aluva Railway Station, the Recruits allegedly blocked the exit doors preventing them from getting down. During this period some of the Recruits are reported to have misbehaved with the lady teachers and girl students.

(iv) The Principal reported the matter to the Railway Police at Aluva Railway Station. On his complaint a case No. 75/2002 u/s 143, 147, 341, 354 IPC read with Section 149 IPC and 145 of Railway Act was registered at Railway Police Station Ernakulam South. The Railway police permitted the Recruits accompanied by their escort party to proceed to Thiruvananthapuram.

(v) During this melee at Aluva Railway Station, a number of media persons, both Electronic and print media, appear to have visited the Railway Station having come to know of the incident and immediately flashed the same on several TV channels alleging misbehaviours by CRPF personnel with the lady teachers and girl students."

33.Immediately after a few days of incident, i.e., on 22.12.2002, during the course of identification, the principal, teachers and students of school identified 15 recruits and CT Pawan Kumar. This was within four days of incident. No reason has been assigned as to why these students and teachers would have identified wrongly or falsely, though they have no previous history or reason of bias with the appellants. A man in force is expected to be a person of solid ideals and model conduct. He may not supposed to be person not possessing normal human weaknesses but being a man of disciplined force, he must be a man of better restrain, control and responsible to the modesty of fellow country people, particularly to the women folk. In our view, here is a fit case which does not deserve at all any interference in extraordinary equitable jurisdiction under Article 226 of the Constitution and, therefore, even otherwise, we are of the view that the appellants do not deserve any relief in the facts and circumstances of the case. This appeal deserves to be dismissed.

34. In the result, the special appeal lacks merit and is, accordingly, dismissed. No costs.