

(2014) 08 AHC CK 0035

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41382 of 2008

Nisar Ahmad

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311, 311(2)
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 341
Railways Act, 1989 — Section 143, 145, 147

Citation : (2015) 1 AWC 724 : (2014) 4 UPLBEC 2996

Hon'ble Judges : Mahesh Chandra Tripathi, J

Bench : Single Bench

Advocate : C.B. Singh, C.B. Yadav, R.K. Nigam and Suresh Kumar Pandey, Advocates for the Appellant; J.P. Singh, S.C. and Satish Kumar Rai, Advocates for the Respondent

Judgement

Mahesh Chandra Tripathi, J.—Heard Sri S.K. Pandey, learned Counsel for the petitioner and Sri S.K. Rai, learned Counsel for the respondent. The brief facts giving rise to the present writ petition are that the petitioners were selected on the post of Constable, Central Reserve Police Force (hereinafter referred as CRPF) and were going for training at Group Centre CRPF, Rampur (U.P.) in the 2002. After completion of fourteen weeks of training they were required to under go rest part of their training at Recruits Training Centre-III (Hereinafter referred as RTC-III), Pallipuram in the State of Kerala, for which they were all dispatched on 15.10.2002. As per the records, it reveals that the petitioners while on Journey in Kerala Express (Train No. 2626) on 15.10.2002, some girls students and teachers of Beershova English Medium Higher Secondary School, Pipariya, Hoshangabad (State of Madhya Pradesh) were also traveling in same train, complained about Molestation and misbehaviour by CRPF recruits traveling in the same train. When the girls student got down and they immediately informed to the Railway Police and the said train was also stopped at Alwaye Station. The Railway Police, Alwaya, immediately registered the case crime No. 75 of 2002

under Sections 143, 147, 145 of Railways Act. And Under Section 323/354 and 149 I.P.C. and subsequently the petitioners were allowed to proceed to their destination i.e. Pallipuram for further training. It also reveals from the record that subsequently to identify the actual culprits amongst the recruits an identification parade was done and the victims i.e. teachers and students identified the recruits including the petitioners. The Principal, RTC-III, CRPF, Pallipuram, State of Kerala exercise his power under Rule 16(a) of CRPF Rules 1965 and terminated the services of the petitioners. It also reveals from the record that the other recruits, those were travelling in the same train, were also terminated in same manner had filed writ petition No. 36713 of 2002 U, which was disposed of by the Kerala High Court vide judgment and order 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 one 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."

2. It further transpires from the record that claim of the other similar situated recruits were rejected by the Inspector General of Police (Operation & Training, CRPF, New Delhi) vide order dated 13.5.2003. The order dated 13.5.2003 was challenged in writ petition No. 45575 of 2003 (Amit Kumar and other v. Union of India), which was dismissed by the Hon"ble Single Judge vide judgment and order dated 06.10.2004, for want of alternative remedy, again they had filed a review application for review the order dated 06.10.2004 and the Hon"ble Single Judge vide an order dated 23.12.2004 had also dismissed the said review application.

3. Aggrieved with the aforesaid orders, the same were challenged by means of Special Appeal No. 107 of 2005 (Amit Kumar and others v. Union of India and others). The Appellate Court vide order dated 13.4.2009 had dismissed the Special Appeal. It would be useful to reproduced relevant para Nos. 16 to 34 of the said order for deciding the present controversy, which are reproduced hereunder:-

"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 judgment 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. The State of Haryana and others, ; Uptron India Limited Vs. Shammi Bhan and Another, ; Uptron India Limited Vs. Shammi Bhan and Another, , and High Court's judgment in Sri Jagdish Narain Singh v. State of U.P. & others, 1973 (2) SLR 410; Mahendra Pal Singh Sodhi Vs. State of U.P. and Others, ; Sanjay Kumar Vs. U.P. State and Others, .

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. and Another, and a Division Bench judgment of the Hon'ble Andhra Pradesh High Court in Samudrapu Somalappadu and Others Vs. Nellimerla Jute Mills Co. Ltd. and Another, .

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. Additional Commissioner (Admn.), Trade Tax, Lucknow and Others, .

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 Sub-Rule (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, RTC-3 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, . 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 para-57 of the aforesaid judgment 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) "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 a 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 judgment, 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 judgment 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 judgments 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 Sub-Inspector, 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 fulfill 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 short-time 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 fulfill 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 1.1.1980."

26. In these circumstances, the Court held in Babu Lal (supra) that once the notification dated 1.1.1980 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 judgment in making the order punitive on the averments made in the counter affidavit i.e. Hardeep Singh Vs. State of Haryana and Others, ; Smt. Rajinder Kaur Vs. State of Punjab and Another, , are concerned, we find that subsequently a Larger Bench of three Hon''ble Judges of the Apex Court in State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, 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 Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, 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 son 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 judgment has no application in the case in hand.

30. In *Uptron India Limited Vs. Shammi Bhan and Another*, , 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 misbehave 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 or 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."

4. Learned Counsel for the petitioners submitted that in the present matter inspite of the fact that the matter has already been decided by the Division Bench of this Court in Special Appeal No. 107 of 2005 (Amit Kumar and others) (supra), but at the same time he submitted that while deciding the present controversy, the Appellate Court had not considered the material facts and relevant law as well as the terms and conditions of the relevant service rules. He further submitted that as per the service rules one months notice was required and the Principal of the training academy had no jurisdiction to pass the termination order. He also submitted that in the present matter the impugned termination order was passed as simplicitor and the same is stigmatic in nature and can not be sustained.

5. Learned Counsel for the petitioners submitted that petitioner were not involved in the alleged incident and in any way not made any misconduct while traveling in train, the same is reflected from the F.I.R. in which they were not named, and further drawn attention to the Court that the petitioners were acquitted, from the Criminal Court, therefore the impugned termination order is unsustainable and liable to be set-aside.

6. On the other hand, learned Counsel for the respondents submitted that the matter has already been resolved and decided up to the Appellate Court in (Amit Kumar and others) (supra), and affirmed the termination order. Therefore, at this stage, the petitioners do not have any right to agitate the matter as fresh and present writ petition is also liable to be dismissed in terms of decision taken by the Appellate Court in Special Appeal No. 107 of 2005. He further submitted that each and every aspect had been dealt in detailed by the Appellant Court and new ground can not be taken at this stage.

7. Learned Counsel for the respondents had also indicated each and every relevant facts of the matter that petitioners had moved a mercy petition before Director General of C.R.P.F., New Delhi and while rejecting their mercy petition the Director General of C.R.P.F., had also indicated that the petitioners were acquitted in criminal proceeding on the technical ground specially due to lapses on the part of prosecution and the same was not Hon"ble acquittal.

8. Learned Counsel for the respondents further submitted that charges levelled against the petitioners were grave in nature and they indulged in misbehavior and molesting the girls and no indulgence are required in the matter, and further argued that order dated 13.4.2009 passed in Special Appeal No. 107 of 205 has attained finality and the same had not been challenged before Hon"ble Apex Court. Therefore, at this stage, the propriety demands that present writ petition is also liable to be dismissed on the same terms.

9. I have heard the rival submissions of learned Counsel for the parties and perused the record.

10. In the present matter, the petitioners were selected on the post of constable in CRPF and after completing fourteen weeks of training they were all dispatched on 15.10.2002 for further training, while on journey through Kerala express on 28.10.2002, some girl students and teachers of Beershova English Medium Higher Secondary School, Pipariya, Hoshangabad (State of Madhya Pradesh), who were also traveling in same train, the petitioners alongwith their other trainees had indulged in misbehaviour with them. Thereafter they had informed to the Railway Police and finally a case crime No. 75 of 2002 under Sections 143, 147, 145 Railways Act, and 323/354 and 149 I.P.C. was registered.

11. Thereafter, an identification parade was also made in which the girls student and teachers had found the petitioners were involved in the said incidence.

12. It is apparent from the record that other similarly situated persons namely Amit Kumar and six others had filed Civil Misc. Writ Petition No. 45575 of 2003 and this Court vide order dated 06.10.2004 had dismissed the writ petition for want of alternative remedy.

13. It is also transpires from the record that thereafter Amit Kumar and others (supra) had filed a review petition and same was also rejected vide order dated 23.12.2004. Thereafter, the Special Appeal No. 107 of 2005 (Amit Kumar and others) (supra) had been filed and the Appellant Court had rejected the claim of the Amit Kumar and other vide order dated 13.4.2009. The full details have already been enumerated above and the appellate Court had dealt the matter at length and rejected the claim of Amit Kumar and other on 13.4.2009.

14. Learned Counsel for the respondents has categorically made an averments in para 6 of the short counter affidavit, which had been filed on 30.7.2014 that the order dated 13.4.2009 passed in Special Appeal No. 107 of 2005 had attained finality and no Special Leave Petition had been filed against the said order.

15. In view of the above, I do not find any reason to interfere in the matter. The present controversy has already been resolved and decided on 13.4.2009 by the Appellant Court in Special Appeal No. 107 of 2005 (Amit Kumar and others v. Union of India and others) (supra) and said judgment is fully applicable in the present facts and circumstances of the case. Therefore, in terms of decision taken by the Appellant Court, in Special Appeal No. 107 of 2005 (Amit Kumar and others v. Union of India and others) (supra), the present writ petition is devoid of merits and is, accordingly, dismissed.