
(1998) 11 KL CK 0024
In the High Court Of Kerala
Case No : W.A. No. 2451 of 1998

Pavithran

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 146.1, 46(c)
Railway Servants Conduct Rules — Rule 21

Citation : (1999) 1 KLJ 279

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : K. Karthikeya Panicker, for the Appellant; V.V. Joshi, A.C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—Heard Mr. Karthikeya Panicker at length and the counsel for the R.P.F. The Writ Appeal has been filed against the judgment in O.P.13993/97. The appellant filed the Original Petition to call for the records leading to Exts. P4 and P6 and quash the same and for a mandamus directing the respondents to reinstate the appellant in service with all consequential benefits. Ext. P4 is the order passed by the Divisional Security Commissioner, Trivandrum imposing punishment of compulsory retirement on the appellant by upholding that the appellant is guilty of the charges of violation of Rule 21 of Railway Servants Conduct Rules and Rules 146.1, 46(c) and 247 of RPF Rules, 1987. He has passed a considered order. We have gone through the same, The Divisional Security Commissioner for reasons recorded in his order under Ext. P4 imposed the punishment of compulsory retirement with immediate effect. He has also held that the appellant has contracted a second marriage which is also clearly admitted in his representation dated 4-9-1995 when the first marriage was in subsistence. He has also failed to report of the pendency of a criminal proceedings against him to the authorities concerned. Therefore considering the grave charges the Divisional Security Commissioner imposed the punishment of

compulsory retirement. Under Ext. P6 a mercy petition filed by the appellant was rejected and the punishment of compulsory retirement with effect from 12-9-95 was upheld.

2. In this case the appellant when he was working as HC/F/Painter/TVC was issued with a charge sheet under Rule 153 of RPF Rules, 1987 vide DSC/. TVC charge memorandum No. VXP/227/153/1/95 dated 12-1-95 for the following charge:--

"For contravention of Rule 21 of the Railway Servants Conduct Rules, 1966 and Rules 146.1, 46(c) and 247 of RPF Rules, 1987 and for discreditable conduct."

An Enquiry Officer was nominated who conducted an enquiry and held the charges as proved regarding violation of Rules and not proved for discredit to the reputation of the force by assaulting one M.G. Thankamony. The disciplinary authority after observing all the formalities imposed a penalty of compulsory retirement with effect from 12-9-1995. The Chief Security Commissioner, after going through the mercy petition came to the conclusion that there is a clear documentary evidence with regard to the appellant having a first wife and three children based on the appellant's family declaration. He also held that there is clear evidence of having entered into a contract of second marriage while his first wife was alive. It is thus proved that the appellant had entered into a second marriage with another lady without prior permission of the competent authority or without getting legal divorce from his first wife. Therefore, the Chief Security Commissioner after rejecting the mercy petition upheld the punishment of compulsory retirement. Learned Counsel for the appellant submitted that the authorities have not afforded a reasonable opportunity to the appellant to contest the matter and that the second marriage during the subsistence of the first marriage has not been proved at all. He has also submitted that as soon as he received the notice from the criminal court he intimated the authorities concerned about the pendency of the criminal case. Therefore he would submit that the appellant has not committed any of the offence alleged to have been committed by him under the charge memo. He would also further contend that the imposition of extreme punishment of compulsory retirement is not warranted in the facts and circumstances of the case.

2. We have carefully considered the argument of the Learned Counsel for the appellant and perused all the records placed before us. Records placed before us clearly discloses that the appellant has effectively participated in the proceedings, that too, with the assistance of a friend.

3. In our opinion the punishment imposed by the authorities is the only proper punishment in the facts and circumstances of the case. Since, in our view, contracting a second marriage during the subsistence of first marriage is a serious misconduct on the part of a government employee and therefore the punishment imposed cannot be said to be excessive, arbitrary or disproportionate. The charges levelled against the appellant is also very clear and

elucidative. The plea of the appellant that the charges are vague and indefinite is nothing but an effort to take umbrage under misleading statements. Rule 10 of RPF Rules 1987 makes it very clear that the Director General and every member of the force shall for all purposes be regarded as Railway servants within the meaning of Indian Railways Act 1890 other than Chapter VIA thereof and shall be entitled to exercise the powers conferred on railway servants by or under this Act. Rule 21 of Railway Servants Conduct Rules, 1966 as well as Rule 46(c) of Railway Protection Force, Rules 1987 mandates the same rule viz., that no railway servant who has a wife living shall contract another marriage without first obtaining the permission of the government. The appellant's contention that the disciplinary proceedings initiated against him are illegal and unsustainable in law again has no relevance since contrary to his plea. Members of the RPF are railway servants who have to conduct themselves in accordance with the conduct rules laid down by the railways as well as abide by the guidelines and rules stipulated in RPF Rules 1987. Nowhere in the RPF Rules 1987 does it mention that Railway Servants Conduct Rules 1966 should be disregarded but all the rules of Railway Servants Conduct Rules are reiterated in RPF Rules 1987 albeit under different rule numbers. As such both Rule 21 of Railway Servants Conduct Rules and Rule 46(C) of the RPF Rules are one and the same. Again Rule 145 of RPF Rules 1966 states that without any ambiguity that the Railway Services (Conduct) Rules, 1966 as amended from time to time shall, so far as may be, apply to all members of the force as they apply to railway servants. In our opinion the disciplinary proceedings against the appellant was initiated, conducted and disposed of strictly in compliance with the rules laid down in RPF Rules 1987 and the appellant is only trying to confuse the issue by claiming otherwise.

4. In terms of Rule 46(C) of RPF Rules 1987, no person who is having a spouse living has enter into or contracted a marriage with any person, shall be eligible for appointment as member of the force. By entering into a contract of marriage with another person when his spouse was alive, the appellant ceased to have the basic eligibility to be member of the RPF and became unfit for RPF. As such the appellant warranted the maximum penalty of dismissal/removal from service. However, keeping in view of the fact that the contract of marriage was ultimately cancelled on 15-3-95 and also keeping in view the facts revealed by him regarding his relation with his first wife the disciplinary authority awarded him the reduced penalty of compulsory retirement as it was felt that this would serve the ends of justice and for the maintenance of discipline and morale of the force. Rule 146(1) of the RPF Rules stipulates a code of behaviour for the members of the force and requires that it shall be incumbent upon all members of the force to respect the code of behaviour and maintain an attitude of complete discipline and obedience to it. It further stipulates that any breach of these provisions shall constitute misconduct and shall be punishable under Railway Servants (Discipline and Appeal) Rules as applied to superior officers or as the case may be under Sec. 9 or Sec. 17. By contravening Rules 21 of the Railway Services Conduct

Rules 1966 and Rule 46(C) and 247 of RPF Rules 1987 the appellant broken the code of Rules and became liable for punishment under Rule 146(1) RPF Rules 1987. The departmental enquiry made it abundantly clear that one Chandini Pavithran was and is the wife of the appellant though both were not residing with each other for a considerable span of time. This was also evident from the fact that the appellant in his family declaration for pass has shown her as his wife. If she had not been his legal wife there was absolutely no reason for him to file a petition for legal divorce in the Family Court, Trivandrum. As far as the department is concerned Chandini was and is his wife as per his own signed statement in the pass declaration. Hence the onus is not on the department to produce any marriage certificate but for the petitioner to disprove the same. If Chandini were not his wife, then he was defrauding the Government of India by claiming free passes in her name in the capacity of his wife. That in itself is a grave crime. As far as the departmental enquiry is concerned the allegation against him was proved beyond doubt. The appellant's contentions are baseless and without any worth. In the appeal dated 4-9-95 submitted by the appellant to the disciplinary authority he submitted that he knew of the police case only in November 94 when he received the court summons. But his stand is not justified. Even if he came to know of the case only in November, 1994, he has not given any intimation of the same till the issue of the charge sheet i.e., on 12-1-1995 when irrespective of whether the appellant was at fault or not. He was duty bound under Rule 247 of RPF Rules 1987 to appraise the facts to the controlling officer. Sec. 247 was not included for his complicity in the case but for withholding facts when he is expected to report the same immediately. Disciplinary authority has recorded in detail the reasons in support of his decision to award the punishment of compulsory retirement in his detailed speaking order under Ext. P6. The grounds put forth by the Learned Counsel for the appellant at the time of hearing are not acceptable and against proved facts and circumstances of the case. Therefore no interference is called for against the judgment under appeal. The learned single Judge, in our opinion has scrutinised the entire materials placed before him and has come to the conclusion that the punishment imposed is not excessive on the facts and circumstances of the case. Writ Appeal fails and is dismissed. No costs.