

(2014) 10 KL CK 0221

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 23377 of 2014 (V)

S. Kiran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2014) 10 KL CK 0221

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : B. Harish Kumar and Saju S.A, Advocate for the Appellant; C.S. Dias, S.C, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner, an Inspector, Bomb Detection Squad of the Railway Protection Force, Thiruvananthapuram, filed the present writ petition assailing Ext. P4 suspension order passed by the 4th respondent.

2. Indian Railways has the distinction of being the largest civilian employer in the world, catering to the commuting needs of the Nation, transporting millions of people every day across its crisscrossing networks. Safety of those millions of commuters is in the hands of officers like the petitioner. Though this Court at this juncture would not be inclined to make any observations to the prejudice of the petitioner's cause, the fact, however, remains that the ghastly blasts in Bombay Railway Station and other public places have still been fresh in the minds of the people and the wounds are still green and unhealed in the psyche of the Nation.

3. Briefly stated, the petitioner was assigned the status of being the parade commander to present ceremonial parade on 68th Independence Day celebration to be held at the Railway Divisional Office, Thiruvananthapuram. On 14-8-2014, after completing the parade practice, at about 6.15 PM, the petitioner returned to the rest room assigned to him. In this regard, the petitioner cited the reason of ill health for his returning to the rest room. At about 10.30 PM, the 4th respondent along with the 5th respondent came to the place, where the

petitioner had been resting, and knocked at the door. After inordinate delay, the petitioner answered their call and opened the door.

4. The petitioner explains away his delayed response, attributing it to hypertension and other related medical problems, which were said to have made him have a deep sleep after "meditation". In the words of the petitioner, when he opened the door, the 4th respondent asked him to go for medical examination. When the petitioner enquired about the reason, the 5th respondent is said to have abused him in filthy language and punched him in the abdomen with a sharp edged object like a key. Having been assaulted, the petitioner lodged a complaint with Thampanoor Police station, which in turn registered Ext. P2 crime. The 4th respondent has also lodged a complaint against the petitioner for the offences like assault, which also resulted in the registration of Ext. P3 crime.

5. On 15-8-2014, the 4th respondent issued Ext. P4 order placing the petitioner under suspension invoking the powers conferred on him under Section 9 of the Railway Protection Force Act, 1987, read with Rule 139 of Railway Protection Rules 1987. Assailing Ext. P4, the petitioner approached this Court by filing the present writ petition.

6. Up to this point of time, the unfolding of events, as set out by the petitioner, appears to be innocuous and the suspension through Ext. P4 rather harsh. At this juncture, before moving further, it is well to appreciate the oral submissions made by the learned counsel for the petitioner in justification of the petitioner's conduct.

7. Mr. B. Harish Kumar, the learned counsel for the petitioner, has strenuously contended that Ext. P4 order of suspension is cryptic and does not mention any reason why the petitioner has been placed under suspension. In justification of the conduct of the petitioner, the learned counsel would submit that when the tired petitioner had been resting, on a mere excuse that he did not respond to the knocking at the door, the 4th respondent and his subordinate officers grievously injured him resulting in the petitioner's hospitalisation.

8. The learned counsel has further submitted that, having completed his duty, as being the parade commander, by 6.15 PM, the petitioner returned to the rest room. According to him, after 6.15 PM, the petitioner was not on duty. When the 4th respondent commanded him to subject himself to medical examination, the petitioner justifiably refused to obey the 4th respondent's order. Placing the petitioner under suspension even before the respondent would initiate the disciplinary proceeding, contends the learned counsel for the petitioner, is grossly illegal, apart from being premature. According to the learned counsel, Ext. P4 is violative of Section 9 of the Railway Protection Force Act.

9. The learned counsel for the petitioner, citing State of Orissa Vs. Bimal Kumar Mohanty, , has contended that placing delinquent under suspension is not a matter of course and that there ought to be cogent reasons emanating from the

very order of suspension. The learned counsel also placed reliance on P.R. Nayak Vs. Union of India (UOI), , in support of his contention that it is clearly impermissible to place an employee under suspension without actually commencing the disciplinary proceedings. In other words, unless the disciplinary authority is in possession of substantial materials to justify the placing of an employee under suspension, the extreme steps of suspension cannot be sustained.

10. Per contra, the learned Standing Counsel for the respondents, as a matter of preliminary objection, has submitted, in tune with the averments made in the counter affidavit filed by the respondents 1 and 4, that if there was any justification in the contentions of the petitioner, in the first place, he ought to have taken recourse to the statutory remedy of appeal as provided under Rule 211 of the Railway Protection Rules, 1987. According to the learned Standing Counsel, Rule 211 provides for not only an alternative but also an efficacious remedy. Thus, in the face of the statutory impediment, the petitioner, contends the learned Standing Counsel, ought not to have approached this Court by filing the present writ petition, which according to him, is clearly not maintainable.

11. In the counter affidavit, the respondents have narrated at length what is stated to be their version of the events. According to the respondents, the petitioner was assigned a very delicate and sensitive task of being the head of the Bomb Detection Squad. That apart, the petitioner had been assigned the status of being a Parade Commander for the Independence Day Celebrations held on 15-8-2014. The entire incident is said to have happened on the eve of the Independence Day. According to the learned Standing Counsel, at about 10.30 P.M., there was an intelligence input regarding a terrorist scare from certain extremist outfits threatening to carry out terror strikes at public places. Acting on the input, having sent a high alter message, the 4th respondent, accompanied by the 5th respondent, went in search of the petitioner, in as much as the petitioner did not respond to the calls of the officers. When the petitioner was in his rest room, which was bolted from inside, the 4th and 5th respondents, having knocked at the door, waited for a long time there.

12. It is the specific contention of the respondents that when the petitioner opened the door, he was found in a highly inebriated condition. Treating this as an instance of gross misconduct, the 4th respondent required the petitioner to subject himself to medical examination. When the petitioner refused to obey the command of the 4th respondent, left with no alternative, the 4th respondent directed the 5th respondent to take hold of the petitioner. At this juncture, the petitioner called up his subordinates, numbering about ten, who were standing nearby, and assaulted both the 4th and 5th respondents with their aid. Immediately, the 4th respondent lodged a complaint which resulted in the registration of Ext. P3 crime, as has already been narrated above. According to the learned Standing Counsel, only as a counter blast, next day evening, the petitioner got himself admitted into a hospital and lodged a criminal complaint in

another police Station which eventually resulted in registration of crime under Ext. P2.

13. The learned Standing Counsel has submitted that a police officer is expected to be on duty round the clock, and that the conduct of the petitioner, being drunk when he was assigned a very sensitive task, is reprehensible. Under these circumstances, the learned Standing Counsel prays this Court not to interfere with Ext. P4. He has also submitted that charges have already been served on the petitioner and enquiry has commenced.

14. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents, apart from perusing the records.

15. As stated in the prefatory observations, I do not wish to dwell at length on the factual aspects of the matter, for it may prejudice the cause of the petitioner during the course of enquiry. Suffice if this Court confines the discussion to the vires of the 4th respondent in issuing Ext. P4 order of suspension.

16. Statutorily, Section 9 prescribes the modes of punishment with a rider that the said provision is subject to Article 311 of the Constitution of India, and such rules as the Central Government may make under the Act. Since the learned counsel for the petitioner has laid heavy stress on the said provision, it pays to extract it, which reads as follows:

"9. Dismissal, removal, etc., of members of the Force - (1) Subject to the provisions of article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may-

(i) dismiss, suspend or reduce in rank any(enrolled member) of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any (enrolled member) of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:-

(a) fine to any amount not exceeding seven days" pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment, drill, extra guard, fatigue or other duty;

(c) removal from any office of distinction or deprivation of any special emolument."

17. Indeed, in terms of Sections 9 and 21 of the Act, statutory rules have come to be framed. Rule 134 of the Railway Protection Rules, 1987 deals with the power of the disciplinary authority to place an employee under suspension. The said Rule is as follows:

"134. Any superior officer or an enrolled member of the Force may be placed

under suspension:

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where a preliminary inquiry into allegation made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction or dismissal, removal or compulsory retirement from service; or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial; or
- (d) where his continuance in office will prejudice investigation, any inquiry or trial; or
- (e) where his continuance in office is likely to seriously subvert discipline in the office in which he is working; or
- (f) where his continuance in office appears to be against the wider public interest; or
- (g) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State."

18. A perusal of the above Rule makes it manifestly clear that an employee can be placed under suspension either while the disciplinary proceedings are pending or are contemplated initiated. When Ext. P4 is examined, there is a clear recital to the effect that the petitioner has been placed under suspension in contemplation of the initiation of the disciplinary proceedings.

19. Invocation of public law remedy under Article 226 of the Constitution of India is circumscribed precedentially with respect to disciplinary proceedings in general and suspension in particular. Through a profusion of precedents this Court, as well as the Hon'ble Supreme Court, has held that unless the order of suspension is vitiated by factors like ultra vires or mala fides, any judicial intervention is not called for. Keeping in mind the above well-established judicial dictum, this Court is of the opinion that, as has already been observed, the 4th respondent does have the necessary power to place the petitioner under suspension.

20. The petitioner arrayed the Assistant Security Commissioner co-nominee as the 5th respondent. When a specific query is put to the learned counsel for the petitioner whether any averments have been made in the writ petition attributing mala fides to any of the authorities, the learned counsel refers to paragraphs 3 and 4 of the writ petition. A Perusal of those paragraphs, however, reveals only narration of the petitioner's version of events and justification for the alleged violent conduct of the petitioner on that fateful day. That apart, this Court fails to see any mala fides in the pleadings of the petitioner attributed to any officer.

21. In the present instance, besides a mere invocation of the expression mala fides, no substantive allegations are forthcoming in the petitioner's pleadings against any of the respondents. Accordingly, it is difficult, nay impossible, to hold

that Ext. P4 is vitiated by any instances of mala fides. In *State of Orissa v. Bimala Kumar Mohanty* (supra), the Hon'ble Supreme Court has held that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or in contemplation of inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. A careful reading of the judgment does not however lay down, contrary to the contentions of the learned counsel for the petitioner, any principle that an employee cannot be placed under suspension before the disciplinary proceedings could actually commence.

22. In *P.R. Nayak v. Union of India* (cited supra), the Hon'ble Supreme Court has observed that an order of suspension before the actual initiation or commencement of the disciplinary proceedings to be clearly outside the ambit of Rule (3). On further examination of the statutory scheme referred to in the said decision, it is clear that the Rules do not empower the disciplinary authority to place an employee under suspension in contemplation of disciplinary proceedings. In other words, the power of suspension can be invoked only after the actual commencement of the disciplinary proceedings.

23. Indeed, law recognizes, of course subject to the statutory scheme governing the employee, three types of suspensions, namely: (1) Suspension as a punishment; (2) suspension during or in contemplation of disciplinary proceedings or an enquiry; and (3) suspension in the sense that the employee may merely be forbidden from discharging his duties during the pendency of an enquiry against the employee.

24. At this juncture, it is relevant to observe that in service jurisprudence the disciplinary proceedings are exclusively governed by the subordinate legislation, of course, subject to the constitutional mandate under Article 311, if applicable, and the statutory mandate, if available. Accordingly, to have a presidential value, the judicial decision relied on is required to be examined in the light of the statutory provisions that govern the employee whose case fell for consideration in that decision. Unless the provisions are in pari materia or at least substantially the same, the application of the legal principle enunciated therein as a matter of stare decisis may not be possible. Ipso facto, the citations relied on by the learned counsel for the petitioner do not have any relevance to the present fact situation.

In the above facts and circumstances, this Court fails to find any merit in the case of the petitioners. The writ petition is accordingly dismissed. No order as to costs.

It is, however, made clear that the dismissal of the writ petition does not come in the way of the petitioner's taking recourse to an appeal under Rule 2(11) of the

Railway Protection Rules, 1987. In the event of preferring any such appeal, it is further made clear that any observations made in the course of the present disposition shall not be taken as an expression of opinion of this Court on the merits of the matter. Thus, the appellate authority may decide the appeal undue influenced by any of the observations made incidentally.