
(1997) 07 MAD CK 0039
In the Madras High Court
Case No : W.A. No. 239 of 1997

Sainson D.

APPELLANT

Vs

Railway Protection Force and Others

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 LLJ 1246

Hon'ble Judges : P. Thangavel, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : S.V. Jayaraman, for the Appellant; V.R. Goplan, for the Respondent

Judgement

A.R. Lakshmanan, J.—By consent of both parties the main Writ Appeal is taken up for disposal. The above appeal is directed against the

order of the Learned Single Judge dated February 17, 1997 made in CP. No. 12673 of 1995. The learned Judge in his order dated February 17,

1997 has stated the entire facts and circumstances of the case. There is also no dispute with regard to the facts. Therefore we are not repeating the

same.

2. A Division Bench of this Court comprised of the Hon'ble Chief Justice and Somasundaram, J. by their Judgment dated February 24, 1995

allowed the appeal in part. The Division Bench felt that the punishment imposed on the appellant was harsh and therefore remitted the matter to the

Railway authorities back for consideration of the penalty. In all other respects the order of the Learned Single Judge which was impugned in W.A.

No. 43 of 1995 was maintained and the matter was remitted back to the authority concerned to consider the 2 question of imposition of penalty

afresh in accordance with law within three months from the date of that judgment.

3. Pursuant to the order of remand an order was passed by the Chief Security Commissioner, Southern Railway on May 17, 1995. The said order

was communicated to the appellant by the office of the Chief Security Commissioner along with their letter dated May 3, 18, 1995. It is seen from

the appellate authority's order that the charge levelled against the appellant was proved and that there has been no procedural flaw during the

course of enquiry. The Chief Security Commissioner himself felt that the punishment of removal from service on the charge of unauthorised absence

from August 12, 1979 to October 13, 1979 was harsh and therefore the set aside the punishment order of removal from service issued on March

21, 1981 & 4 and awarded the punishment of withholding of increments for a period of three years with cumulative effect. The period of removal

from the service to reinstatement to be treated as non-qualifying service and that the appellant will not be entitled to any wages etc., during the

period he was not in service. This order was challenged in W.P. No. 12673 of 1995 by the appellant herein. According to the appellant the o

imposition of the punishment that the period from removal from service to reinstatement to be treated as non-qualifying service and that he will not

be entitled to any wages etc., during the period he was not in service is too harsh and severe and wholly disproportionate to the offences held to

have been committed. It is also contended that in the case of one Mr. Dhayalan who was similarly placed as that of the appellant, the punishment

meted out to him was only that of a censure though he had unauthorisedly remained absent for 3 1/2 months whereas the appellant was absent for

45 days. Therefore it is contended that the punishment imposed on the appellant is too harsh and discriminatory and is violative of Article 14 of the

Constitution of India.

4. The Writ Petition was resisted by the Railways by filing their counter affidavit. It was contended that there been no violation of the principles of

natural justice in the order which is challenged in the Writ Petition and that the Writ Appeal No. 43/1995 had directed the of with minimum punishment

(iii) of RPF Rules, 1987 and the Circular No. 60 Security/6/17 and therefore the revised punishment awarded is very liberal. The allegation that the

punishment awarded is harsh and is also disproportionate was also denied. The Learned Single Judge by his order dated February 17, 1997

considered the rival claims on merits and dismissed the Writ Petition by holding that he is in entire agreement with the arguments of the learned

Counsel for the Railways and that the contention of the learned Counsel for the appellant cannot be countenanced in that regard. In so far as the

imposition of penalty is concerned it was contended before the Learned Judge that the punishment was too harsh and disproportionate to the

alleged misconduct. The Learned Judge held that the Disciplinary Authority considered the misconduct of the appellant and imposed proper

penalty in the light of the (ii) observations made by the Division Bench in the Writ Appeal and therefore this Court cannot go into the correctness of

the punishment awarded by the competent authority. Aggrieved by the said order the writ petitioner has filed the above Writ Appeal.

5. We heard Mr. S. V. Jayaraman and Mr. V. R. Gopalan learned counsel for the appellant and respondent respectively. Before us the question of

the quantum of punishment imposed by the authority on remand from this court alone was argued. It is seen from the impugned order in W.P. No.

12673 of 1995 dated May 17, 1995 the appellant was awarded the punishment of withholding of increments for the period of three years with

cumulative effect and that the period from the removal from service to reinstatement to be treated as non-qualifying service and that he will not be

entitled to any 3 already noticed, the charge against the appellant is that he had committed a gross misconduct by remaining on an authorised

absence of 45 days. There cannot be any second opinion that the appellant who belongs to the disciplined service is to behave and conduct

himself in a disciplined service is to behave and conduct himself in a disciplined manner. Admittedly he has failed to conduct himself in a disciplined

manner by not intimating the authorities and unauthorisedly remained absent for 45 days. We are of the view that for such an unauthorised absence,

the punishment of withholding of increments for a period of three year with cumulative effect and the non-payment of backwages would be just,

reasonable and fair in the facts and circumstances of the case. In our opinion, the order of the Chief Security Commissioner dated May 17, 1995

in treating the period from March 21, 1981 to May 22, 1995 as non-qualifying service is not only disproportionate for the offence alleged against

the appellant but also harsh and excessive. Hence, this part of the order alone is set aside. Moreover, the appellant has joined in the Railway

service in the year 1978 and he was removed from service for the charges on March 21, 1981 and reinstated in service on May 22, 1995.

6. Mr. S. V. Jayaraman, learned senior Counsel for the appellant also did not seriously argue about the entitlement for the appellant for the

backwages for the period of removal from service from March 21, 1981 till the date of reinstatement on May 22, 1995. By this, the appellant will

be losing his backwages for about 14 years. This in addition to the punishment of withholding of increment for a period of three years with

cumulative effect will be the just and fair punishment for the offence committed by the appellant. Therefore, we allow the Writ Appeal to the above

extent. The order of the learned single Judge is modified to this extent. We make it clear that the period between March 21, 1981 and May 22,

1995 will be treated as qualifying service for all the benefits. There will, however, be no order as to costs.