

(2002) 04 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 1726 of 1996

V. Sundar Raj

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0037

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : R. Muthukannan, for C. Venkateraman, for the Appellant; Aparna Nandakumar, for the Respondent

Final Decision : Allowed

Judgement

K. Gnanaprakasam, J.—The petitioner in ,this writ petition joined in the Railway Protection Force ,Southern Railway as constable on

14.12.1973. He was placed under suspension by order dated 30.8.1993 and departmental proceedings were taken and a memorandum of

charges was issued to him and the charges were that on 29.8.1993 at 13.30 hours he had prevented the Assistant Sub Inspector,Railway

Protection Force,C-shed from coming out of the outpost and abused the higher officials using unparliamentary languages and further attempted to

throw a railway brake block on the said officer which was a very serious misconduct, quite unbecoming of the member of the Armed Force . An

enquiry was conducted and he had given an opportunity to meet the enquiry and the disciplinary authority passed an order dated 17.1.1994

dismissing him from service holding that the charges against him were proved. The petitioner preferred an appeal to the Chief Security

Commissioner,Southern Railway who had confirmed the order of dismissal by his order dated 6.2.1995 and communicated to the petitioner on

9.2.1995 . Aggrieved by the same, the petitioner has filed the above writ petition.

2.The respondent has filed a counter affidavit wherein it is stated that the petitioner was charge sheeted for the following charge:

While functioning as a Constable 592/C-shed/TNPM he was on duty at BTTR case to the C-shed/TNPM on 29.08.1993 at 13.30 hours and at

the entrance of the outpost, abused the officials with obscence and unparliamentary language challenging the ASIPF and ran away. Further when

ASIPF was on his way to TNPM/Post at about 13.35 hours. On the same day, the said constable attempted to throw a railway brake block on

the ASIPF. This is a very serious misconduct quite unbecoming of a member of the Armed Force, besides being an act of gross insubordination to

his higher officer.

Before the enquiry officer four witnesses were examined besides one defence witness and 12 documents were marked and the petitioner had

taken part in the enquiry and the same was conducted by observing all the formalities as per the Rules and Orders in force and the enquiry officer

came to the conclusion that the charges have been proved. The charges were proved against the petitioner after conducting a full fledged enquiry

as per the rules, during which evidence was also let in and after considering all aspects only, the final order was passed. There was no malice or

illegality in passing the order. I

3.The petitioner questions the order on the ground that the enquiry was not held in a free and fair manner and there was no evidence at all to arrive

at a conclusion that the petitioner has committed such an offence and principles of natural justice were also not followed in conducting the enquiry.

It is also submitted before this Court that the punishment imposed on him was strikingly disproportionate to the offence said to have been

committed and therefore the same is liable to be set aside.

4.Learned advocate for the petitioner further submitted that on 28.8.1993 a day prior to the incident alleged to have taken place , the petitioner

after having completed his escort duty to goods train from Bitragunta to Tondiarpet at 6.00p.m.handed over the charge of the escort duty and went

to his residence where he found his wife was very sick and he had to take her for

medical treatment. As there was none else available in his family to look after her, he approached the Assistant Sub Inspector, Railway Protection Force on 29.8.1993 at 13.30 hours and requested him to relieve him from duty but the Assistant Sub Inspector shouted at him and refused his request. By pointing out this, learned counsel submitted that this is the background under which the incident had said to have taken place. It is further submitted that as the petitioner's wife was sick and there was none to attend her in the house, and the leave requested for was also not granted, he might have lost his temper. It is submitted that the circumstances and the environment on the date of committing the act are very important and playing a vital role in order to arrive at a conclusion whether one could have done such an act or not. Incidentally, learned advocate for the petitioner relied upon the judgment reported in A.I.R.1995 SC 255 (RAM KISHAN (Appellant) VS UNION OF INDIA AND OTHERS (Respondents)) wherein in paragraph 11, the Apex Court has observed as follows:

When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service.

The petitioner has submitted that his wife was ill and there was none in the house to accompany her to the hospital and his request for leave was also refused, he was in fits, what to do and what not to do and only in the circumstances, the incident might have taken place and for that purpose, the punishment of dismissal from service is too harsh and disproportionate. In fact, the charge levelled against the petitioner is that he prevented the Sub Inspector, Railway Protection Force, C -Shed from coming outpost, abused the higher officials using unparliamentary language. In fact, the unparliamentary words so used by the petitioner is also not in the charge memo and in the circumstances, it cannot be said that the petitioner used any such unparliamentary words.

5. Learned advocate for the petitioner has also relied upon the judgment reported in 1995 WLR 379 (THE CHAIRMAN, RAILWAY BOARD,

NEW DELHI AND OTHERS (Appellants) VS D.SAINSON (Respondent). That in the said case, the disciplinary proceedings were instituted

against the petitioner for the alleged unauthorised absence for a period of 45 days. The disciplinary proceedings had been conducted in a free and

fair manner and the petitioner/employee was dismissed from service. When the said order was challenged before this Court, the learned single

Judge held that the enquiry was conducted properly and the same cannot be interfered with. But, however, on the question of penalty, learned

single Judge had taken the view that having regard to the nature of misconduct, the penalty imposed was disproportionate and harsh and set aside

the order of dismissal and directed the authorities to consider the same as penalty of censure alone and further held that ""we are of the view that it

is always open to this Court to interfere, if it is of the opinion that the penalty imposed is harsh and disproportionate to the proved misconduct"". By

holding so, it was held that it is not open to this Court to prescribe the penalty while remitting the matter to the disciplinary authority for

consideration of imposition of penalty. It is further held that ""even after finding that the disciplinary proceedings conducted by the disciplinary

authority is fair and proper, that the finding recorded on the charge of misconduct that is proved does not suffer from any lack of fair and proper

opportunity to the petitioner, it is still open to the High Court to exercise of its jurisdiction under Article 226 of the Constitution to interfere with the

order if it comes to the conclusion that the penalty imposed is harsh and disproportionate

6. I respectfully agree with the view arrived at by the Division Bench of this Court. In the instant case also, the punishment of dismissal of the

petitioner from service for the proved charge appears to be strikingly disproportionate and therefore, the same is liable to be set aside and

accordingly, it is set aside.

7..In the result, the writ petition is allowed and the order passed by the respondents 2 and 3 is set aside and the matter is remitted back to the

disciplinary authority for the consideration of the penalty within three months from the date of receipt of a copy of this order. No costs.

Consequently,W.M.P.2649/1996 is closed.