



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

WP(C) NO. 33835 OF 2018

PETITIONER:

R.S. SOUMYA, AGED 35 YEARS,
W/O. BALASUNDARAM, WOMAN CONSTABLE/RAILWAY
PROTECTION FORCE/SOUTHERN RAILWAY/TRIVANDRUM,
RESIDING AT - KUDANTHARA KIZHAKATHU THAZHAM,
CHATHANOR P.O., KOLLAM - 691 572.

BY ADVS.
T.C.GOVINDA SWAMY
SMT.KALA T.GOPI

RESPONDENTS:

- 1 UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O.,
CHENNAI - 600 003.
- 2 THE DIVISIONAL SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,
TRIVANDRUM DIVISIONAL OFFICE, TRIVANDRUM-695014.
- 3 THE CHIEF MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY/RAILWAY HOSPITAL, PETTAH,
TRIVANDRUM - 695037.
- 4 THE CHIEF MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY/RAILWAY HOSPITAL,
MADURAI - 625010.
- 5 THE DIRECTOR GENERAL, RAILWAY PROTECTION FORCE,
RAIL BHAVAN, NEW DELHI-110001.



- 6 THE CHIEF SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,
HEADQUARTERS OFFICE, MOORE MARKET COMPLEX,
PARK TOWN P.O., CHENNAI - 600003.
- 7 THE ADDITIONAL CHIEF SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY,
HEADQUARTERS OFFICE, MOORE MARKET COMPLEX, PARK
TOWN.P.O., CHENNAI - 600003.

BY SRI.VINU T.V., CGC
BY SRI.S.ANANTHAKRISHNAN, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25.09.2024,
THE COURT ON 21.11.2024 DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner, a Railway Protection Force Woman Constable, has been removed from service pursuant to the order at Ext.P18, modified in appeal by the order at Ext.P24, and such modification reiterated by Ext.P27 order by the revisional authority. The petitioner has filed the captioned writ petition challenging the proceedings at Ext.P18, P24, and P27 issued as above, as also challenging the proceedings at Ext.P11 by which the petitioner was informed that she can avail treatment facility only from the Railway Medical Authorities and not from any other authorities.

2. The short facts necessary for the disposal of this writ petition are as under:

The petitioner states that she was undergoing treatment for severe pain on her left knee, and she also underwent a surgical procedure as part of her treatment, at the Medical College Hospital, Thiruvananthapuram, as evidenced by Exts.P1



and P2. A perusal of Exts.P1 and P2 would show that the petitioner was hospitalized from 15.09.2015 and discharged on 19.09.2015, and in the meantime, she underwent the surgical procedure at the Medical College Hospital, Thiruvananthapuram. She complains that when she went to the Railway Hospital, Thiruvananthapuram, some doctors behaved in a very rude and shocking manner, and therefore, she also reported the same to the Vanchiyoor Police Station and the Railway Authorities. Complaints are also stated to have been lodged with the Railway Protection Force, Thiruvananthapuram Division, as evidenced by Ext.P3 statement recorded from the petitioner and Ext.P4 statement recorded from her husband. Thereafter, she points out that she was continuing treatment at the Medical College Hospital, Thiruvananthapuram and in the meantime, she was directed by the Railway Hospital Authorities, Thiruvananthapuram to appear at the Railway Hospital at Madurai on 21.11.2015 for further treatment. The petitioner,



however, admits that she could not report before the Madurai Railway Hospital on account of fever and internal derangement of her left knee and was hospitalized at Varkala. The petitioner, thereafter, submitted Ext.P6 representation dated 28.11.2015 informing that she could not appear at Madurai on account of the reasons stated above. She, thereafter, points out that once her situation improved, she reported at the Railway Hospital, Madurai on 07.12.2015 on which date she was advised to get herself admitted at the Hospital and to take treatment for atleast a month, that she could not continue at Madurai as inpatient since her children were of tender age, etc. Therefore, she points out that she was directed to report at Railway Hospital, Thiruvananthapuram, and she reported on 08.12.2015, on which date she was informed that her name had been removed from the sick list on 02.12.2015. She is thereafter served with the communication at Ext.P7 dated 18.01.2016, informing that since her name stood discharged



from the sick list with effect from 02.12.2015, she has been absenting herself unauthorisedly from 02.12.2015 and, therefore, she should report within three days at Thiruvananthapuram. The petitioner, in turn, submitted Ext.P8 communication dated 22.01.2016, producing various documents indicating her illness and continued treatment, to which the petitioner was served with Ext.P9 dated 12.04.2016 informing that she is unauthorizedly continuously absent from duty. The petitioner submitted Ext.P10 reply, repeating the stand taken earlier, to which Ext.P11 was issued by the 2nd respondent herein informing that if at all the petitioner wanted to have any treatment facility, that could be only from the Railway Hospital and not from any other quarter. The petitioner submitted Ext.P12, again informing the authorities that she is continuing the treatment and that she may be permitted to appear before a Medical Board other than the Railway doctors at Thiruvananthapuram for the reasons already noticed earlier.



3. While so, the petitioner was issued with a major penalty charge memo dated 21.06.2016 alleging that the petitioner has been on unauthorized absence from 02.12.2015, produced as Ext.P14 in this writ petition. The petitioner, in the meantime, filed W.P(C) No.23594 of 2016 before this Court, seeking a direction to treat the period from 02.12.2015 as leave. An inquiry was constituted as evidenced by Ext.P17 report, followed with Ext.P18 communication imposing a penalty of 'removal from service'. Against this order, the petitioner preferred Ext.P19 appeal, contending that there was no unauthorized absence and also pointing out that she had made a request to refer her to the competent Medical Board, which was not considered. Against the afore order, the petitioner has filed an appeal, which stood disposed of by Ext.P24, and a further revision petition, which stood rejected by Ext.P27. It is in the afore circumstances, that the captioned writ petition is filed by the petitioner.



4. A detailed counter affidavit has been filed on behalf of the respondent herein seeking to sustain the impugned proceedings.

5. I have heard Smt. Kala T. Gopi, the learned counsel for the petitioner and Sri.T.V. Vinu, the learned Central Government Counsel for the respondent Railways.

6. The challenge in this writ petition is against the findings contained in the impugned orders noticed as above. Originally, the petitioner was removed from service by Ext.P18 order, and ultimately, by the order at Ext.P24, the appellate authority modified the penalty to one of compulsory retirement, holding that the penalty of removal from service is too harsh.

7. The entire proceedings as above have been taken against the petitioner on account of the alleged unauthorized absence from 02.12.2015 as noticed earlier. It is the sustainability or otherwise of the afore findings that is to be considered in this writ petition.



8. The petitioner has abstained from duty, essentially on account of an ailment she had on her left knee. It is also true that she had to undergo treatment at the Medical College Hospital, Thiruvananthapuram. However, the treatment and the surgery at the Medical College Hospital were only during the month of September 2015. Even thereafter, she did not report for duty. The respondent Railways has taken a contention in Ext.P11 to the effect that the petitioner ought to have taken the treatment at the Railway facility/hospital. The petitioner contends that the afore interpretation by the Railway is not correct or legal. Ext.P11 has been issued with reference to the provisions of Rule 603 of the Indian Railway Establishment Code (IREC). The said Rule points out that the Railway employees, their family members, and dependent relatives are entitled to free of charge medical attendance and treatment in such Railway hospitals/health units or consulting rooms at or near the place where the patient falls ill. It is only when there is no



such hospital/health unit/consulting room, that the patient is entitled to avail the treatment facility from the Government hospital/health centers. Here, even though, it may be true that the petitioner availed the treatment facility from the Medical College Hospital, Thiruvananthapuram, it cannot be said that the respondent was not having any facility for the treatment offered to the petitioner. Even the petitioner does not have such a case. Instead, the contention raised by the petitioner would show that the petitioner was not comfortable with the doctors at Thiruvananthapuram. However, that is not a reason not to avail the treatment facility as contemplated in Rule 603 referred to earlier.

9. Furthermore, I notice that even after the treatment/surgery in the month of September, 2015, the petitioner had not joined duty. The petitioner was directed to appear at the Railway Hospital, Madurai. The petitioner herself admits that though she appeared before the Madurai Hospital,



she was advised to get admitted there, but she did not get admitted on account of her familial issues. Perhaps the afore contention with respect to the familial reasons might be true. However, that may not be a reason not to avail the treatment facility at Madurai. From this, only an adverse inference with reference to the stand taken by the petitioner can be drawn.

10. Even after the afore, the petitioner did not join for duty, and ultimately, proceedings were taken against the petitioner as seen from Ext.P7 in the month of January, 2016. To that also, the petitioner replied through Ext.P8, stating one reason or the other. This is followed with Ext.P9 dated 12.04.2016, noticing the unauthorized absence from duty, directing the petitioner to rejoin immediately. The petitioner, in reply, submitted Ext.P10, pointing out that she is not in a position to rejoin, in the absence of a certificate issued by a competent doctor. This is followed with Ext.P11, informing that the petitioner may report sick at the nearest Railway Medical Centre or if she is not sick, may join



duty forthwith. The petitioner did not do both the above, again taking the stand that she is not in a position to avail the treatment at the Railway Medical Authorities.

11. The afore-stand of the petitioner, in my opinion, necessarily requires the initiation of proceedings against the employee. Though the learned counsel for the petitioner relied on the provision of Ext.P13 to contend that, even a medical certificate from a registered private practitioner can be acted upon, I notice that the petitioner has not offered herself for an examination before the Railway Medical Officer, and therefore, the said contention cannot be accepted.

12. On the whole, I am of the opinion that the findings in Ext.P18 as regards the unauthorized absence of the petitioner cannot be found fault with.

13. Though, the learned counsel also raised a contention that mere "unauthorized absence" would not amount to misconduct, I notice that the Railway Protection Force Rules,



1987 has prescribed the code of behaviour for members of the Force under Rule 146 and under Rule 146.2 being absent without leave is considered to be a "neglect of duty". Similarly, the petitioner's refusal to appear before the Railway hospital would amount to disobedience of orders under Rule 146.3.

14. The learned counsel for the petitioner relied on the judgment of the Apex Court in **Krushnakant B. Parmar v. Union of India and Another [(2012) 3 SCC 178]**, in support of her contention to the effect that mere absence from duty would not amount to misconduct. However, a reading of the afore judgment would show that there was no evidence placed on record to prove that the unauthorized absence was wilful. Similarly, the evidence relied on by the employee in that case, was also ignored by the enquiry authority. Furthermore, there is a finding to the effect that the employee concerned was prevented from signing the attendance register (paragraph 21 of the Apex Court judgment). However, in the case at hand, the



specific case made out by the respondent Railways is that the petitioner did not offer any valid explanation apart from producing the medical certificate. It is also seen that the petitioner did not offer herself for treatment at the Railway Hospital, Madurai. In the case at hand, in Ext.P18, it has been specifically recorded as under:

“The evidence of PW1 Shri. A.K. Prince IPF/TVC, PW4 Shri.D.V. Sudhir R., Associate professional MCH, Trivandrum and PW5 Dr. Marry Mathew CM/RH/TVC and their marking of exhibits proves that CE created outside medical records by the way of denying the Railway Hospital treatment with some ulterior motive.

She had been advised through two ultimatums which were marked in this enquiry as Exp-10 and 16 to joint duty immediately. But she did not obey the lawful instruction and continued her unauthorised absent. On the other side CE denied the Rly. Hospital and created outside medical records with some wrongly intention. This discreditable conduct of her affected the image and reputation of the Force.

Railway has all facilities to give best treatment to CE as member of the Force according to RPF Rule 272. But she refused these facilities and created outside medical records which clearly proves her malafied intention.

The evidence of PW2 Shri.P.V.Jayachandra Pillai, HC-8301391/TVC and PW3 Smt.Sandhya Rajani, WC/SR proves



that the absence of CE at work spot and her home. According to Exp-32 and 33, CE during her absent period, went to Ex-India tour that was to Dubai without departmental permission. According to Rule 272, 9 of RPF Rules 1987, a member of Force on sick list shall not leave the place of treatment without the written approval of the leave sanctioning authority except for such exercise as may be prescribed and notified in the order by the Rly. Medical Officer. Further, RPF Rule 104.3 also states that no member of the Force leave his station even on holiday without the specific permission of authority empowered to grant her casual leave. CE did not adhere the above rules and regulation. This proves during her unauthorised absent period without permission she went to ex-India tour to Dubai and in that CE unauthorised absent more than 1½ years still continuing. This proves that CE wantonly not attended the Rly. Hospital and created outside medical records with intention to go to foreign trips for her private business without permission from the department. It proves that her integrity also not good and always blaming others by creating allegation or bogus records for her personal advantage. In view of the above, I accepted the finding of the EO and fixed the CE that she is guilty of unauthorised absence and disobedient of orders and contravention of Rule 146.2(1), (III), 146. 3(1), 147 (I), (II), (III) and (VI) of RPF Rule 1987 and awarded punishment of removal from service with immediate effect. Her absent period is treated as LWP.



Thus, the findings in Ext.P18 conclusively prove that the charge against the petitioner was proved without any doubt.

15. In this connection, I also rely on the judgment of the Apex Court in **Union of India and Others v. P.Gunasekaran [2015 (2) SCC 610]**, cited by the learned Central Government Counsel, wherein considering the extent of judicial review possible under Article 226 of the Constitution of India in cases of the present nature, it is held as under:

“18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such



assessment. Integrity according to *Oxford Dictionary* is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.”

In the light of the afore principles also, I am of the opinion that the petitioner may not be entitled to any reliefs, prayed for in this writ petition. Resultantly, this writ petition would stand dismissed.

Sd/-

HARISANKAR V. MENON, JUDGE

In

APPENDIX OF WP(C) 33835/2018

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE DISCHARGE SUMMARY ISSUED BY THE MEDICAL COLLEGE HOSPITAL, TRIVANDRUM DATED 19.9.2015.
- EXHIBIT P2 A TRUE COPY OF VARIOUS MEDICAL RECORDS INDICATING THE PETITIONER'S TREATMENT PRIOR AND AFTER THE SURGICAL PROCESS AT THE MEDICAL COLLEGE HOSPITAL, TRIVANDRUM ON 19.9.2015.
- EXHIBIT P3 A TRUE COPY OF STATEMENT GIVEN BY THE PETITIONER ON 13.10.2015 TO SRI.ANIL J, INSPECTOR, RAILWAY PROTECTION FORCE.
- EXHIBIT P4 A TRUE COPY OF STATEMENT GIVEN BY THE PETITIONER'S HUSBAND ON 7.11.2015 TO SRI.ANIL J, INSPECTOR, RAILWAY PROTECTION FORCE.
- EXHIBIT P5 A TRUE COPY OF HOSPITAL PERMIT BEARING NO.321878 DATED 26.11.2015 ISSUED BY THE SR.DIVISIONAL MEDICAL OFFICER, SOUTHERN RAILWAY HOSPITAL, QUILON.
- EXHIBIT P6 A TRUE COPY OF REPRESENTATION DATED 28.11.2015 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF COMMUNICATION BEARING NO.VXP/DAR/MISC DATED 18.1.2016, ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P8 A TRUE COPY OF REPRESENTATION DATED 22.1.2016 SUBMITTED TO THE 2ND RESPONDENT.
- EXHIBIT P9 A TRUE COPY OF COMMUNICATION BEARING NO.VXP/DAR/MISC DATED 12.4.2016 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P10 A TRUE COPY OF REPRESENTATION DATED 26.4.2016 SUBMITTED TO THE 2ND RESPONDENT.



- EXHIBIT P11 A TRUE COPY OF LETTER BEARING NO.VXP/DAR/MISC DATED 17.5.2016 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P12 A TRUE COPY OF REPRESENTATION DATED 31.5.2016 SUBMITTED TO THE 2ND RESPONDENT.
- EXHIBIT P13 A TRUE EXTRACT OF RULE 521 OF THE INDIAN RAILWAY ESTABLISHMENT CODE VOL.I.
- EXHIBIT P14 A TRUE COPY OF MAJOR PENALTY CHARGE MEMORANDUM BEARING NO.VXP/227/15301/16 DATED 21.6.2016 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT.
- EXHIBIT P15 A TRUE COPY OF REPRESENTATION DATED 18.7.2016 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P16 A TRUE COPY OF THE LETTER BEARING NO.VXP/227/153/I/16 DATED 5.8.2016, ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P17 A TRUE COPY OF THE REPORT DATED 15.4.2017 COMMUNICATED TO THE PETITIONER BY THE 2ND RESPONDENT UNDER NO.VXP/227/153/I/16 DATED 21.4.2017.
- EXHIBIT P18 A TRUE COPY OF THE COMMUNICATION BEARING NO.VXP/227/153/01/16 DATED 5.6.2013 ISSUED BY THE DISCIPLINARY AUTHORITY.
- EXHIBIT P19 A TRUE COPY OF THE APPEAL DATED 9.7.2017 SUBMITTED BY THE PETITIONER ADDRESSED TO THE 7TH RESPONDENT APPELLATE AUTHORITY.
- EXHIBIT P20 A TRUE COPY OF THE COMMUNICATION RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT BEARING NO.VXP/227/153/I/16 DATED 25.8.2017.
- EXHIBIT P21 A TRUE COPY OF REPRESENTATION DATED 27.8.2017 SUBMITTED BY THE PETITIONER ADDRESSED TO THE 7TH RESPONDENT.



- EXHIBIT P22 A TRUE COPY OF THE COMMUNICATION BEARING
NO.X/P277/1718 DATED 5.10.2017, ISSUED FROM
THE OFFICE OF THE 7TH RESPONDENT.
- EXHIBIT P23 A TRUE COPY OF THE REPRESENTATION DATED
12.10.2017, SUBMITTED BY THE PETITIONER
ADDRESSED TO THE 7TH RESPONDENT.
- EXHIBIT P24 A TRUE COPY OF THE APPELLATE ORDER
COMMUNICATED UNDER LETTER BEARING
NO.VXP/227/153/01/16 DATED 15.11.2017.
- EXHIBIT P25 A TRUE COPY OF THE COMMUNICATION BEARING
NO.VXP/227/153/01/16 DATED 9.1.2018 ALONG
WITH ITS ENCLOSURES.
- EXHIBIT P26 A TRUE COPY OF REVISION DATED 28.1.2018,
ADDRESSED TO THE 6TH RESPONDENT CHIEF
SECURITY COMMISSIONER.
- EXHIBIT P27 A TRUE COPY OF THE COMMUNICATION UNDER
NO.VXP/227/153/01/16 DATED 8.5.2017 (2018?)
ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXHIBIT R1 (A) TRUE COPY OF THE LETTER DATED 10.03.2017
RECEIVED FROM THE BUREAU OF IMMIGRATION.