

J-WP-7616-2021.odt

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7616 OF 2021

Rajesh Sahadeo Jangid of Kalyan
 Indian Inhabitant, Aged 35 years,
 Residing at Tajsar, Fatehpur, Shekawati,
 Sikar, Rajasthan, Pin – 332301. .. Petitioner

vs.

- 1 Union of India
 Through the Ministry of Railway,
 (Railway Board)
 New Delhi – 110 001.
- 2 The Principal Chief Security Commissioner,
 Railway Protection Force, Having Office
 at Chhatrapati Shivaji Maharaj
 Terminus, Mumbai .. Respondents

Mr.Samir A. Vaidya, for the Petitioner.

Mr.Abhijeet Joshi i/b Induprakash Tripathi for Respondents.

**CORAM : BHARATI DANGRE &
 MANJUSHA DESHPANDE, JJ**

DATE : 26th March 2026

JUDGMENT (PER BHARATI DANGRE, J) :

- 1 The Petitioner is aggrieved by the impugned order dated 13-14/08/2018 passed by the Disciplinary Authority i.e. Assistant

Security Commissioner, Railway Protection Force, Mumbai, thereby, imposing a penalty of removing him from service, pursuant to the disciplinary proceedings being conducted and on he being found guilty in terms of the Railway Protection Force Rules, 1987. In view of the said order, he was directed to deposit his appointment letter, identity card, medical facility certificate, uniform and all other valuables handed over to him as an employee of the Railway.

The aforesaid order was upheld in the Revision by the Appellate Authority on 04/09/2018 and was further upheld by the Principal Chief Security Commissioner, RPF, Mumbai, CSMT on 14/01/2019, when his representation was ultimately rejected.

2 We have heard the learned counsel Mr.Samir Vaidya for the Petitioner and Mr.Abhijeet Joshi for the Respondent-Railway.

Writ Petition having been admitted on 18/01/2021, on completion of the pleadings, we have taken up the same for hearing.

3 The Petitioner was appointed as a Constable with the Railway Protection Force and during the course of his assignment, he was appointed as Commando at Mulund, Mumbai

and thereafter transferred to Kalyan Railway Station .

The alleged incident which formed the basis for removal of the Petitioner from the services, occurred at Kalyan Railway Station.

According to the Petitioner, on 18/06/2018 on completion of duty hours, he was feeling unwell and he positioned himself on a bench on Platform No.4 at Kalyan Railway Station. He was seated next to a lady who was speaking with someone on her mobile, when suddenly a person sitting on his right side sprung up, abused him and slapped him, which took the Petitioner by surprise. After this, the lady sitting to the left side of the Petitioner started wailing and huge crowd surrounded them, but the Petitioner managed to disperse the crowd and directed the person who slapped him to RPF Post situated at Kalyan Station. In the meantime, the lady for whom the ruckus had occurred disappeared.

According to the Petitioner, no complaint was registered against him by any member of public or even the lady, however, the video clip was widely circulated on social media, which reflected the incident which took place at around 22.00 hours on Platform No.4 at Kalyan Junction.

4 It is the case of the Petitioner that followed by the incident, on 20/06/2018 he was called upon by the Inspector at at RFP Post Thane and he abided by the said direction. The Petitioner was asked to furnish his statement/complaint in writing in regard to the alleged incident, which was recorded in form of a video and circulated. He, accordingly, submitted the written statement.

The Petitioner was served with a charge-sheet on 22/06/2018 and he was placed under suspension and was directed to attend the office of Wadi Bunder, CSMT. The charge-sheet resulted in conduct of inquiry between 29/06/2018 to 21/07/2018 and on 21/07/2018 the Petitioner was issued a show cause notice as to why he should not be dismissed from service for the alleged act of indecent behaviour with a woman seated on Platform No.4 at Kalyan Junction Railway Station. He was also informed that the Disciplinary Authority will determine the punishment to be imposed upon him based upon the findings of the Inquiry Officer.

On 01/08/2018, the Petitioner filed his detailed and exhaustive reply refuting all the allegations levelled against him and maintained that he has not committed any act of indecency

as alleged. Being not satisfied with the explanation offered and despite the fact that no person had approached the Commandant and/or the Assistant Security Commissioner, RPF, with any complaint, nor the woman had made any complaint, the Petitioner adopted a plea that the punishment of dismissal proposed to be imposed upon him, is grossly disproportionate and not in accordance with the settled principle of law and without considering the relevant facts and the material on record. However, on 14/08/2018 the impugned order was passed by the Assistant Security Commissioner, RPF, thereby removing him from service and this order has been upheld by the Revisional/Appellate Authority.

5 Mr.Sameer Vaidya , the learned counsel representing the Petitioner, has urged before us that the Petitioner faced charge of misbehaviour with a women seated next to him on Platform No.4 at 22.00 hours and despite no complaint being preferred by the woman or nobody reporting the incident to the Railway Authority, charge-sheet was issued to him, accusing him of improper conduct on the basis that a video clip allegedly recorded was viral on social media and this act of the Petitioner brought discredit to Railway.

6 Responding to the charge-sheet, the Petitioner adopted a specific stand in the Disciplinary Proceedings that he was disturbed due to internal family matters and was feeling sleepy and in the wage of sleep the incident/mistake had occurred, but the act of which he is accused, was not intentional. According to Mr.Vaidya, the incident was not reported by anyone to the Police Station or to the Railway and even the lady against whom the act is attributed, did not react nor lodged any complaint to the Department or to any Authority competent to initiate action. He would, therefore, submit that the initiation of the inquiry against the Petitioner itself is not justified.

It is also his submission that assuming for a moment that the initiation of inquiry was based on the basis of the video which was widely publicised on social media, the Petitioner had admitted that inadvertently when he tried to stretch his arms, he had touched the lady, but he had no intention to cause any wrongful act and in absence of it, he could not have been said to be guilty of a demeaning act which according to the Disciplinary Authority attracted misconduct as per the Service Rules.

Another submission of Mr. Vaidya is, the disproportionate penalty imposed for such minimal act and he would place reliance

upon the decision of the Apex Court in *Om Kumar & Ors. vs. Union of India*¹ while submitting that the Court is entitled to exercise the power of judicial review, in determining the proportionality of an administrative action by applying *Wednesbury* principle. He would also place reliance upon the decision of the Apex Court in *Union of India & Anr. vs. G. Ganayutham*², in which it is held that the principle of proportionality could be applied to administrative or executive actions affecting fundamental freedoms and if it applies, the Court would test the action on the basis of its 'rationality' and 'proportionality'.

Relying upon the aforesaid authoritative pronouncement, according to Mr. Vaidya, the Petitioner is entitled for leniency as the punishment of removal from service is grossly disproportionate to the act complained of, in the wake of the surrounding circumstances which resulted into the impugned order of dismissal which is upheld by the higher Authorities.

7 Contesting the submissions advanced, Mr. Abhijeet Joshi, representing the Respondent has placed before us the Railway

1 (2001) 2 SCC 386

2 (1997) 7 SCC 463

Protection Force Rules, 1987 and by laying his emphasise upon the duty to be discharged by a Constable attached to the Protection Force, he would submit that it is a disciplined force, where the code of behaviour is specifically prescribed, which is expected to be followed, whether the member of the force is on duty or off duty and any breach of the provisions on part of the member of force, shall constitute misconduct, which is punishable under the Railway Servants (Discipline & Appeal) Rules, 1968.

Inviting our attention to the various acts which according to the Rules amount to misconduct, he would submit that the discreditable conduct of an employee definitely amount to misconduct as in terms of Rule 146.4, no member of the Force shall act in any manner prejudicial to discipline or conduct himself in such manner which is reasonably likely to bring discredit to the reputation of the force.

According to Mr. Joshi the punishment of removal imposed upon the Petitioner is after following the due procedure for imposing major punishments as prescribed in Rule 156 and not even for the sake of submission, the Petitioner had ever contended that the procedure has not been followed. On the

contrary, according to Mr. Joshi, the stand adopted by the Petitioner, that the alleged act was mere mistake on his part without any intent to inappropriately touch the woman and for this reason even when he was slapped by a person sitting next to him, he did not take the matter ahead.

Mr. Joshi would rely upon the decision of the Apex Court in *State of Uttarakhand & Ors. vs. Prem Ram*³, where, reversing the decision of the High Court when a Constable was found guilty of drunkenness and misbehaviour with the members of the public, the Apex Court, considering the seriousness of the misconduct and the Respondent being a member of police force, a disciplined force, arrived at a conclusion that there was no justification for the High court to substitute the punishment of dismissal.

Further reliance is placed upon another decision of the Apex Court in *Anil Kumar Upadhyay vs. The Director General, SSB & Ors.* when the Head Constable in Shashastra Seema Bal (SSB) was removed from services, when he was found guilty of entering the Mahila barrack of the Battalion at midnight. The Apex Court held that his removal from service was not disproportionate and upheld the imposition of punishment.

3 (2020) 12 SCC 658

8 The facts placed before us reveal that the Petitioner was appointed as a Constable in the Railway Protection Force, constituted under the Railway Protection Force Act, 1957. The Act provide for constitution and regulation of an armed force of the union for the better protection and security of railway property, passenger area and passengers and for matters connected therewith.

The Railway Protection Force is constituted and maintained by the Central Government and consist of such number of superior officers, subordinate officers and other enrolled members as set out in the Act.

By virtue of Section 11, it is the duty of every member of the Force to protect and safeguard railway property, passenger area and passengers and to do any other act conducive to the better protection and security of railway property, passenger area and passengers.

In exercise of the power conferred under Section 21 of the Act, the Central Government has enacted the Railway Protection Force Rules 1987 governing the persons who are subject to the Act of 1957, subject to the exception that is carved out in Rule 1.3. Admittedly, the Petitioner, being appointed as a Constable, is

covered by the Railway Protection Force Rules, 1987. The said Rules have set out the organization and structure of the Force alongwith the powers and responsibilities of the Superior Officers, who are expected to exercise administrative and disciplinary power over the members of the Force placed under their command as are specified in Schedule II to IV and such other powers which are conferred on railway servants of equivalent rank by the Central Government or the Director General in this behalf.

The Rules also set out general powers and functions of enrolled members of the Force and the primary functions of the enrolled members are set out in Rule 41.1 and this include protection and safeguarding of railway property and to combat crime against it. Some of the functions of the enrolled members of the Force are specifically notified to the following effect :-

- “a) to protect and safeguard railway property and to combat crime against it;
- b) to do any other act conducive to better protection and security of railway property;
- c) to remove obstruction in the movement of railway property; and
- d) to perform other functions of an armed force of the Union and to exercise of a railway servant as conferred by or under the Indian Railways Act, 1890.”

Rule 41.2 has set out other functions of the enrolled members of the Force, which include identification of the

situations that have potential for commission of crime against the railway property either static or in transit or mobile and to take remedial measures or suggest improvement in the basic security arrangement or faulty procedures where necessary to the railway administration.

The enrolled members are also under obligation to reduce the opportunities of thefts, pilferages, misappropriation, frauds etc. against railway property.

In short, it is the duty of the Railway Protection Force to protect the Railways from being subjected to any adverse scenario and to protect any crime against it and to aid, co-operate and coordinate the measures of railway agencies or the police or other authorities in implementing measures for ensuring prevention of crime against railway property and providing for its better security.

9 The Rules also prescribe for recruitment, training and career planning of the Protection Force. It also include the Chapter on Discipline and Conduct by clearly specifying that public interest shall be the guiding factor in deciding whether or not the member of the Force including when he is on leave

should be placed under suspension, if at all a decision has to be taken to place a member of the Force under suspension, when disciplinary proceeding is contemplated or is pending.

Rule 146 prescribe the code of behaviour for members of the Force, and Rule 146.1 reads thus :

“146.1-All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. 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.

Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under section 9 or section 17.”

Further Rule 146.4, in relation to the discreditable conduct reads thus :

“No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force.”

Rule 152 has prescribed the Authority to institute proceedings and as per Rule 152.1 the Appointing Authority or any Authority otherwise empowered by general or special order , may institute disciplinary proceedings against any enrolled member or direct a disciplinary authority to institute disciplinary proceedings against any enrolled member of the Force on whom the disciplinary authority is competent to impose, under these Rules, any of the punishments specified in Rules 148 and 149.

10 Rule 153 of Rules of 1987 in detail has set out the procedure for imposing major punishment and we deem it appropriate to reproduce the relevant Rules :-

“153.2.1 Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.

153.2.2 Where the disciplinary authority itself holds the inquiry, any reference to the Inquiry Officer in these rules shall be construed as a reference to the disciplinary authority.

153.3 On receipt of complaint or otherwise, the disciplinary authority on going through the facts alleged or brought out shall decide whether it is a case for major or minor punishment. No attempt shall be made to convert cases punishable under section 16 A or section 17 into disciplinary cases nor divert cases in respect of which major punishments are imposable to the category of cases where minor or petty punishments are imposable.”

The further provisions under Rule 153 prescribe the manner in which the inquiry shall proceed, including, conveying the substance of imputations of misconduct or misbehaviour, definite and distinct article of charges, examination of witnesses and preparation of report by the Inquiry Officer of the Inquiry proceedings on its conclusion, recording his findings on each of the charges, with reasons therefor. The Rules also specify that the findings must be of ‘guilty’ or ‘not guilty’ and no room shall be allowed for ‘benefit of doubt’ or ‘personal surmises’.

11 Rule 154 then prescribe the action to be taken on the inquiry report and Rule 156 provide for imposition of punishment of dismissal. We deem it appropriate to reproduce Rule 156 which contemplate dismissal and removal in different contingencies and Rule 156 reads thus :

“156. Imposing of punishment of dismissal, etc. :

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following cases, namely:

(a) Dismissal:

- (i) conviction by a criminal court;
- (ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;
- (iii) discreditable conduct affecting the image and reputation of the Force;
- (iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;
- (v) insolvency or habitual indebtedness.
- (vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment;

(b) Removal from service:

- (i) any of the misconduct for which he may be dismissed under clause (a) above;
- (ii) repeated minor misconducts;
- (iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause.”

12 It is in light of the Railway Protection Force Rules 1987 the Petitioner was subjected to inquiry for his discreditable conduct as Rule 146.4 prescribe that no member of the Force shall act in any manner prejudicial to discipline or conduct himself in a manner which is likely to bring discredit to the reputation of the Force.

In respect of the alleged incident, when the video clip recording was circulated on social media, the disciplinary authority deemed it appropriate to initiate an inquiry and it can be seen that Rule 153.3, permit the Disciplinary Authority to impose major punishment, if it is of the view that it is necessary to inquire into such a conduct, that calls for imposition of major or minor punishment and this can be done on receipt of the complaint or otherwise.

We find that the Disciplinary Authority issued charge-sheet, when the video of one uniformed personnel being assaulted became viral and not only this, it was also recorded in the CCTV footage of Platform No.5 at Kalyan Railway Station. The Disciplinary Authority deemed it appropriate to initiate an inquiry by issuing charge-sheet since it was of the view that the alleged act which was widely publicised brought discredit to the reputation of the Force and we do not find that merely because the lady did not make a complaint, the inquiry initiated is without jurisdiction.

Therefore, we reject the submission of Mr.Vaidya that initiation of inquiry was not based on any concrete material as according to us the CCTV footage as well as the video which was

widely circulated reflecting the Petitioner and he being slapped, recorded the entire incident which took place between 21:57:47 to 22.03:39 on Platform No.5 and this was sufficient enough to initiate the proceedings as the incident had taken place on Railway platform and the person responsible was a member of the Railway Protection Force.

13 In the proceedings of departmental inquiry conducted by Inspector/RPF Mr.M.K. Srivastav against the Petitioner, the charges were made known to him and he was also furnished the necessary documents including the statement of the Petitioner recorded on 20/06/2018, the video clip which was made viral on social media as well as the CCTV footage of the spot at Kalyan Railway Station. During the inquiry, the Superintendent was examined and the proceedings were conducted by the Petitioner himself and he chose not to produce any defence or examine any defence witness.

The delinquent was rendered all due facilities and the copy of the statements recorded were given to him on the date when it were recorded.

Mr.Ajit Mane, Inspector in charge, RPF Thane, who was

examined as a witness by the Railway, relied upon a CD (Exhibited as Exh.1) which had recorded the video of one uniformed personnel being assaulted and the CCTV footage of Platform No.5 of Kalyan Railway Station which was shown to him on Laptop and he certified that it is the same CD which has been sent to ASC/RPF/KYN alongwith the report of the office dated 20/06/2018 (Exhibited as Exh.2)

PW 1 Mr.Mane also deposed that on 20/06/2018 he received one video clip on social media in which one uniformed personnel was seen slapped in public by unknown person and when the video was observed minutely it was established to be the RPF Personnel Mr. Rajesh S. Jangid (delinquent) posted at RPF Thane, Kalyan.

PW 1 also deposed that RPF staff was called and on being inquired about the matter, he disclosed that on 18/06/2018 after attending orderly room he returned and went duty at 21.00 hours and he went to Platform No.4-5 at Kalyan and was sitting on the passenger bench located in the middle of the platform 4-5 Kalyan. In the wage of the sleep within some time some unknown person slapped him and he realised that something had gone wrong and, therefore, he was slapped. He apologized and

moved from there and the matter was not reported to anybody by the delinquent constable.

14 PW 1 also referred to the statement of the delinquent recorded to the effect that, he was disturbed because of internal family matter and was feeling sleepy and the incident would have occurred by some mistake.

In cross-examination by the delinquent, Mr.Mane identified Rajesh Jangid to be the person in the video clip and he also admitted that apart from being alcoholic he had not received any other complaint against him. Since the delinquent did not chose to cite any defence witness nor did he submit any document, the prosecution closed its case.

15 The Inquiry Officer considered the material brought on record and also considered the say of the delinquent constable that the alleged act was inadvertent and was not intentional. The Inquiry Officer also dealt with the objection, that the lady or any other person had not made any complaint in respect of the incident, but the Inquiry Officer expressed that non-reaction or non lodging of any complaint to any Agency do not absolve the

delinquent from his disgraceful act which is clearly visible in the said video. The Inquiry Officer, therefore, concluded that the charges levelled against him were based on the evidence of PW 1 Mr. Mane, with reference to the video clip which was widely circulated on social media and on its careful examination, revealed that the person present in the uniform was the delinquent and the explanation offered by him that he was in the wage of sleep when he realized that he was slapped, the Inquiry Officer held that the charges against him are proved and he is liable for appropriate action.

The copy of the Inquiry Report was furnished to the delinquent and even he was issued with a show cause notice on 21/07/2018, informing him that upon the charges being proved, why he should not be subjected to imposition of major penalty.

The delinquent once again responded to the disciplinary authority by stating that in the eyes of law any crime committed by a person not in sound state of mind is not misconduct. He also stated that it is necessary to establish intention and motive before a person is held guilty of any crime.

He reiterated that with reference to his statement dated 20/06/2018, he had stated to the reporting officer that on the

given date and time in question, due to some serious internal family problem/tiredness on return from duty, he sat at Kalyan station platform at 22.00 hours and being very tensed and tired and due to cold breeze, he went to sleep and he was not aware as to who was sitting next to him on bench either on the left side or right side. He adopted a stand that when someone slapped him he got up and felt that he might have done something wrong and he requested for a pardon as he was conscious that some person might have prepared his video and thereafter he left the spot and went to Kalyan Barrack and slept.

He, therefore, adopted a stand that he had not committed any mistake with intention, but he was not in mentally sound state and no action shall be taken against him.

16 The aforesaid stand adopted by the delinquent did not find favour with the Disciplinary Authority, and consequently the Disciplinary Authority imposed a penalty of removal from service by invoking Rule 146.1, 146.2(i), 146.3(i), 146.4 and 147(ii).

This order is upheld by the Revisional Authority on 14/01/2019, where the Principal CSC/RPF/Central Railway recorded thus :-

"I have perused the complete DAR case file. It is seen that the contentions put forth by the revisionist in his revision petition and in his appeal petition to the appellate authority are the same. He has not brought out any new point in his revision petition. I am satisfied that the disciplinary proceedings have been conducted fairly and adequately. The Disciplinary Authority has exercised his function appropriately and there is little ground to interfere with the proceedings.

I too agree with the conclusions drawn by the disciplinary authority and appellate authority and find that the procedures prescribed in the rules have been followed, the findings are warranted and based on evidences on record and the penalty that has been imposed is commensurate with the gravity of the charges for which he has been held guilty.

Being a member of the Armed Force of Union, the revisionist is bound to observe and respect the code of behaviour and maintain complete discipline both on and off duty, but he failed to do so and acted in a manner not befitting to the member of the discipline Force. Such undesirable activities on the part of revisionist cannot be tolerated, which has brought discredit to the reputation of the Force. Thus the revisionist committed grave misconduct and I also hold him guilty. The punishment awarded is reasonable and proportionate to the delinquency committed by the revisionist. I do not find any reason to interfere in punishment awarded. Hence his revision petition is rejected."

Further on 24/08/2020, Respondent No.2 also dismissed the Appeal by recording that the charges are grave in nature and the penalty of 'removal from service' is not excessive and no new fact has been brought on record in the Mercy Petition and, therefore, the same is dismissed.

17 After hearing the submissions, with the able assistance of Mr. Joshi we have perused the video clipping which was made viral and also the CD, as they were part of the Inquiry

Proceedings being marked as Exhibit 1 and 2 respectively.

We clearly noted from the video footage that the act of the Petitioner could not be said to be unintentional, but the manner in which he moved his hand, clearly reveal to us his intention and it can also be seen that he is not asleep or he was not in a state of being not conscious of the surrounding circumstances, as we have noticed that he was conscious of the lady sitting next to him and taking advantage that she had her back towards him, he indulged himself into a despicable act which amounted to outraging the modesty of a women.

It appear that a passenger sitting opposite on the bench indicated the person sitting on the right side of Petitioner and being perturbed by the act, he was slapped. Realising that he has committed a mistake, the Petitioner profusely apologized and in fact is bold enough to say that he did not initiate any action for the person who had slapped him.

It is obvious for the reason that since people had gathered on the spot, there were witnesses who had watched the incident taking place and would have spoken about the unpardonable act of the Petitioner, who himself was supposed to protect the passengers on the railway platform as he was recruited in a

disciplined force i.e. RPF. This disparaging act is committed by him in the precincts of the Railway property i.e. on Platform itself and while he was in uniform, realising that he will have no stand to take action against the person who slapped him, he left the platform.

It cannot be ignored that Railway platform is a transitory place where people come and go and the lady who faced ignominy at the hands of the Petitioner immediately left the platform and did not deem it appropriate to lodge a complaint and take the issue ahead. However, we appreciate the railway administration of taking cognizance of such serious reprehensible and disparaging act committed by the Petitioner which was clearly recorded in the CCTV footage as well as the video, which was made viral.

18 We ourselves have viewed the video clipping and from the said video, the intention of the Petitioner is evidently clear, being to outrage the modesty of the woman and we do not find that the action of the Railways holding him guilty of the charges and imposing major penalty upon him after following the procedure prescribed in law and as per the Rules, suffer from any

arbitrariness or excessiveness. We find the conduct of the Petitioner to be disgraceful and definitely immoral. He is the member of Protection Force, but he himself became the perpetrator of a shameful act.

19 It is urged by Mr. Vaidya that the penalty is disproportionate, but after viewing the video clip we do not find any merit in the submission as we find that the action of the Petitioner was not unintentional, but it was fully intentional and he was conscious of the lady sitting next to him and he was also aware what he was actually indulging himself in.

In *Anil Kumar Upadhyay* (supra) , the Apex Court was dealing with the a Head Constable in 15 Battalion of Shashastra Seema Bal (SSB), who was charged for violation of good order and discipline under Section 43 of the SSB Act, 2007. He was accused of entering Mahila barrack of the Battalion at 00.15 hours on the intervening night of 14th and 15th April 2013 and was charged for indiscipline and misconduct leading to compromising the security of the occupants of the Mahila Barrack. A departmental inquiry was initiated against him and he pleaded not guilty. He was found to be guilty of the charges

and imposed with a penalty of dismissal which was subsequently converted to 'removal from service'.

When the Head Constable approached the High Court, the learned Single Judge set aside the order of punishment and remitted the matter back to the Disciplinary Authority for imposing lesser punishment, as it expressed the view that action of removing from service was solely based on the ground that the female constable had allowed entry of the delinquent during her sentry duty and after holding her guilty she was inflicted with lesser penalty, but major penalty was inflicted on the Head Constable.

Being aggrieved by the decision, the Disciplinary Authority approached the Division Bench which set aside the Judgment passed by the Single Judge and that is how the matter was heard by the Supreme Court.

In the peculiar facts, the Apex Court held thus in Para 9 of the Law Report :-

"9. In the present case, the appellant was imposed the penalty of 'removal from service' after the charges levelled against him stood proved by the disciplinary authority in an enquiry held against him after following the procedure prescribed under the SSB Rules. The nature of allegations against the appellant are grave in nature. He entered the Mahila Barrack in the midnight at around 00:15 hours, may be to meet his alleged friend Rupasi Barman, but such an indisciplined conduct leading to compromising the security of the occupants of the Mahila Barrack cannot be tolerated. As a member of

the disciplined force SSB, he was expected to follow the rules. He was apprehended inside the Mahila Barrack by six female constables. As observed by this Court in the case of Diler Singh (supra), a member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy. The nature of misconduct which has been committed by the appellant stands proved and is unpardonable. Therefore, when the disciplinary authority considered it appropriate to punish him with the penalty of 'removal from service', which is confirmed by the appellate authority, thereafter it was not open for the learned Single Judge to interfere with the order of punishment imposed by the disciplinary authority."

20 In the case before us, we have noted that the Petitioner belong to Railway Protection Force which is a Disciplined Force constituted for a particular purpose and when the act of misconduct is proved before the Disciplinary Authority and upheld by two superior Authorities, considering the seriousness of the charge of misconduct, we see no reason for showing any leniency.

In *State of Uttarakhand & Ors.* (supra) the Apex Court refused to grant any indulgence to a constable who was drunk and misbehaved with public when the charge of intoxication was duly proved in the medical report.

21 In the wake of the aforesaid authoritative pronouncements and applying our mind to the facts before us and specifically by viewing the video clip which has clearly lead us to believe that the

conduct of the Petitioner was truly deplorable and despite being in uniform and on the property of the Railway, he had dared to indulge into such an act and therefore we find complete justification in the Railway, in initiating an inquiry against him, finding him guilty and imposing a punishment of removal from service, which is lesser penalty than dismissal from service.

Finding no merit and substance in the submission, Writ petition is dismissed. Rule is discharged.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]