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Constitutional Analysis on Railway Protection Force Amendment Act, 1985 and Railway Protection Force Rules, 1987

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ABSTRACT:

This study attempt to review the Constitutional validity of Railway Protection Force Amendment Act 1985 and Railway Protection Force Rules 1987. The Railway Protection Force established for the purpose protection Railway Property and recruited by Railway Board. The Railway Protection Force employees come under civil servants and they have Right to form Association or Union. The General Manager of Southern Railway has banned the Southern Railway Protection Force Member Association for the reason states that employees are comes under Armed Force. The research question is whether Railway Protection Force is an Armed Force or Civil Service. The article reveals that the Railway Protection Force employees are civil servants and not an Armed Force with the review of various related judgements delivered by Hon'ble Supreme Court and High Courts and Parliament debates about the Railway Protection Force.

Keywords; Constitution of India- Railway Protection Force Act 1957- Railway Protection Force Rules 1987- Railway Establishment Rules- Police Force Restriction Act- Central Administrative Tribunal Act 1985- Armed Force Tribunal Act 2007- Principles of Natural Justice- Civil servant rules..

INTRODUCTION.

The Railway Protection Force has its origin since 1882 when the Railway companies then in

existence appointed their own security for each Department. The parliament of India enacted the Railway Protection Force Act, 1957. Under this Act the Railway Protection Force Rules, 1959 was framed. Railway Protection Force is a Security Service in the Railway premises and they have engaged for maintaining and protecting Railway Property. The laws that govern the condition of service to those Railway employees are complex and ambiguous with respect to getting redressal of grievances. Watch and Ward department functioning in the Indian railways have hitherto been handicapped by lack of adequate powers and well defined status as also of a proper sense of discipline to fulfil their primary functions of protecting railway property and of property entrusted to railways for transport. The Railways have during these years incurred heavy losses on account of theft and pilferage of railway property and of making payment of quite a large number of compensation claims preferred against them. The proposed legislation was designed to bring about a radical change in the functioning of this Department, which was being pre-designated as the Railway Protection Force, so as to achieve quick and effective results. For ensuring better protection and security of railway property, the Railway Protection Force Amendment Act 1985 was enacted. Based on this Act, the Railway Protection Force Rule 1987 was framed.

LEGAL BACKGROUND OF RAILWAY PROTECTION FORCE.

SALIENT FEATURES OF THE RAILWAY PROTECTION FORCE ACT 1957.

Railway Protection Force Bill for the better protection and security. It was only on 29th August 1957 that a Railway Protection Force Act was enacted by the Parliament and Railway Security Force was renamed as Railway Protection Force. The RPF Rules were made on 10 September 1959 and RPF Regulations were formulated in 1966. In the meantime in 1962 "Special Emergency Force" has been raised from the existing strength of RPF during Chinese Aggression, which was especially entrusted the task to protect trains in border districts. In 1965 it

has been renamed as "Railway Protection Special Force" (RPSF). In 1966 RPF has been given legal powers for better protection of Railway property by enacting Railway Property (Unlawful Possession.) Act.

Thus, the Railway Protection Force has given the following powers.

- i). Power of arrest without warrant for the unlawful possession of railway property.
- ii. The offenders are booked under the Railway Property (Unlawful Possession) Act 1966. Railway Protection Force constituted.
- iii. Railway Protection Force has a separate administrative system and functions under the general supervision of the Railway Administration.

iv. Right to form Association.

SALIENT FEATURES OF THE RAILWAY PROTECTION FORCE AMENDMENT ACT 1985:-

For ensuring better Protection and Security of Railway Property, the Railway Protection Force Amendment Act 1985 was enacted.

- (a) Declaring the Railway Protection Force an **Armed Force of the Union** and consequential changes in the nomenclature of different ranks in the Force in consonance with its character as an Armed Force.
- (b) Conferment of additional powers on the members of the Force such as to **arrest without warrant**, to restrain misbehaviour on the part of the members of the Force to effectively intervene for preventing imminent danger to the life of a person concerned with carrying on the work of the railways for the better protection of the railway property.
- (c) **Restrictions have been proposed on the right to form association** on the lines of similar restriction in other Armed Forces of the Union. (section 15A)
- (d) Conferment of additional powers on the superior officers of the Force for enforcement of discipline, imposition of penalties for various offences, regulating procedure for force custody.

PARLIAMENT DEBATES ABOUT RPF AMENDMENT ACT 1985¹

After the Amendment of the Railway Protection Force Act, Section 8 says member of force working under the supervision of the **General Manager**.

"Armed Forces are not working under the control of General Manager" .who is an executive and who has overall responsibility for managing both the revenue and cost elements of a company income statement, known as profit & loss responsibility.

After the Amendment of the Railway Protection Force Act, Section 10 says members of the Railway protection force is a **Railway servant**.

"Border Security Force is India's primary border guarding organisation, it is not under the control of ministry of foreign affairs, and it is under the control of Ministry of Home Affairs because it is Armed Force".

"Central Industrial Security Force protection of Industries but it is not under the control of Ministry of Industry, It is under the control of Ministry of Home Affairs because it is Armed Force".

"Railway Protection Force is protection of Railways but it is under the control of Railways and not under Ministry of Defence or Ministry of Home Affairs. Therefore it does not come under Armed Force of the Union".

On 27.11.1992, The Railway Protection Force Amendment bill was taken up further for consideration in the parliament Debate by Hon'ble Minister Shri. Basudeb Acharya; on 07.05.1993 as per the Parliament debates the Railway Protection Force Amendment bill was withdrawn.

WHETHER RAILWAY PROTECTION FORCE IS ARMED FORCE?

The Indian Armed Forces are the military forces of the Republic of India. It consists of three professional uniformed services: the Indian Army, Indian Navy, and Indian Air Force. Additionally, the Indian Armed Forces are supported by the Central Armed Police Forces, Assam Rifles, Indian Coast

Guard and Special Frontier Force and various inter-service commands and institutions such as the Strategic Forces Command, the Andaman and Nicobar Command and the Integrated Defence Staff²²⁶⁴.

The President of India is the Supreme Commander of the Indian Armed Forces but the executive authority and responsibility for national security is vested in the Prime Minister of India and their chosen Cabinet Ministers. The Indian Armed Forces are under the management of the Ministry of Defence of the Government of India.

Central Armed Police Forces (CAPF) is the collective name of central armed police organisations of India under the Ministry of Home Affairs (MHA). These are paramilitary forces, formerly grouped as central Para-Military Forces (CPMF), since 2011, India officially use the term "central armed police forces".

The Armed Forces have four main tasks;

- To assert the territorial integrity of India.
- To defend the country if attacked by a foreign nation.
- To support the civil community in case of disasters (e.g. flooding).
- To participate in United Nations peacekeeping operations in consonance with India's commitment to the United Nations Charter.

Railway Protection Force is under the control of Ministry of Railways, it does not maintain the Public order it was only functioning for commercial purpose. In the RPF amendment Act 1985 the RPF was declared as Armed Force of the Union. In the year 2001 The Repealing and Amending Act repealed the RPF amendment Act 1985 from Sec 2 to 18 and the schedule. In the year 2015 The Repealing and Amending Act repealed the 2001 The Repealing and Amending Act.

In the year 1972 the Southern Railway Protection Force Member Association was

recognized by the Railway Board, after Amendment of Railway Protection Force Act section 15 A included in the principal Act. On 25.09.1985 Southern Railway Protection Force Member Association was banned²²⁶⁵. On 11.08.1999 All India Railway Protection Force Association was recognised by the Railway Board and All India Railway Protection Force Association was registered on 14.09.2001 at Registrar of Society, New Delhi.

According to the Railway Protection Force Act section 8 the RPF is governed under the General Manager of the Railways. A General Manager is an individual overseeing the company's operations including operational costs and revenues. So any Armed Force in India will not come under the General Manager governance.

ARMED FORCE AND FUNDAMENTAL RIGHTS.

The Fundamental Rights are unique and form the basis of the Indian Constitution, and they are available to all citizens of India; however, there are certain reasonable classifications where restrictions on **Fundamental Rights (under Article 33)** may be imposed on some citizens, such as members of the **Armed Forces** or members of Forces charged with maintaining public order, and so on.

Article 33 gives the Parliament the authority to limit or abolish the fundamental rights of members of the armed forces, paramilitary forces, police forces, intelligence agencies, and similar forces. The purpose of this provision is to ensure that they carry out their duties properly and that they maintain discipline among themselves.

- The Armed Forces have imposed restrictions on a limited number of fundamental rights, as specified in **Articles 14, 15, and 19** of the Constitution.

²²⁶⁴ <https://parliamentofindia.nic.in> last access date 03.02.2023

²²⁶⁵ Information furnished by Railways from RTI petition sought by the activist

LIMITATION ON THE FUNDAMENTAL RIGHTS OF ARMED FORCES

- Article 33 of Indian Constitution, the Parliament imposed these restrictions after considering their pivotal role in discharging their duties and responsibilities to secure our country's sovereignty and integrity, maintain public order, and promote discipline among them.
- This is done as some of the fundamental rights (such as freedom of expression/speech, to form unions on various bases) may create a hindrance in the efficient, effective, and impartial performance of their duties.

FUNDAMENTAL RIGHTS AND RAILWAY PROTECTION FORCE.

Power to investigate, prosecute and arrest persons engaged in activities which violate the Railways Act, 1890.

1. Power to remove obstructions such as illegal constructions and encroachments which obstruct rail transport or passengers.
2. Discretionary power to use non-lethal and lethal force based on the situation while discharging their duties.

It has the power to search, arrest, investigate, and prosecute offenses committed under Railway Property (Unlawful Possession) Act 1966, The Railways Act, 1989 (amended from time to time). However the power of arrests under other penal laws rests in the hands of the Government Railway Police or state police.

The Railway Protection Force Association was formed in 1971 and recognized by the Railway Ministry. Ministry Railways issued a circular regarding recognition of Association of members of RPF on the Zonal Railways. In Southern Railway Protection Force Member Association was registered under Reg. No.165/1973. In the year of 1976 Rail Surakshak Kalyan Nidhi Association was registered.

BANNING OF SOUTHERN RAILWAY PROTECTION FORCE MEMBER ASSOCIATION.

According to the Railway Protection Force Amendment Act, 1985²²⁶⁶, (section 15 A) on 25.09.1985 Southern Railway Protection Force Members Association was banned by the General Manager/ Southern Railway. After banning the association All India Railway Protection Force Association to file a Writ Petition (C) 12232 of 1986 before the Hon'ble Supreme Court of India, particularly the provision of section 15 (A) and section 17.

CONSTITUTIONAL VALIDITY OF RAILWAY PROTECTION FORCE (AMENDMENT) ACT 1985.

On 11.08.1999 without withdrawing from the amendment 1985 the Railway Board recognition was given to All India Railway Protection Force Association²²⁶⁷ it is violation of Article 33 and 34 of Indian Constitution and section 3 and 15(A) RPF amendment Act 1985 and section 3 of Police Force Restriction Act 1966. Intelligence Bureau says only Railway Protection Force is having Association in Armed forces, it is an indiscipline in force²²⁶⁸. Now in Railway Protection Force there are three associations recognised by the Ministry of Railways.

- i) All India Railway Protection Force Association
- ii) Southern Railway Protection Force Member Association
- iii) Railway Sureksha Kalyan Nidhi Association.

In southern Railway, members of the Railway protection Force are also member of Southern Railway Co-Operative Society. In the original Act, the Railway protection Force was considered as a Force, and the Act declared that the member of Railway protection Force was eligible to get the protection of Article 311 which was available to civil servants only. Thus it is clear that the original Act indirectly emphasized that the member of Railway protection Force was considered to be civil servant. Hence extended the constitutional

²²⁶⁶ Railway Protection Force Amendment Act 1985

²²⁶⁷ Railway Board Ir.No.99/Sec (CA)/RPF/Association dated.11.08.1999

²²⁶⁸ <http://indiaindian.com> dated 02.07. 2012 last access date 03.02.2023.

protection against the Dismissal, Removal and Reduction in Rank against the arbitrary exercise of powers. It is also evident from the Rule made under the original Act that is Rule 33, 34 allows formation of union entirely from the member of Railway protection Force. It is also to be noted there the Association is recognised under the above said Rule. It is clear from the above said legal provisions to infer that the Railway protection Force was a civil service and they were also allowed to form or join Association under the original Act and Rule made there under.

In the year 1985 the Amendment was made to the original Act. In that Amendment section 4 of the Amendment Act inserting "Armed" in the section 3 of the original Act. Accordingly the Amendment was declaring the Railway protection Force considered to be Armed Force. It was changing the nature of the force. In the Amendment Act section 10 inserting "enrolled member" in section 9 of the original Act but the Amendment was not touching upon the applicability of Article 311. Even after the Amendment it was understood Article 311 applicable to enrolled member of Railway protection Force thus section 9 of the original Act was retaining the original nature. That is civil service here after the Amendment section 3 and section 9 contradicting to each other. Section 9 informs that enrolled member of Railway protection Force can get the protection of civil servants that is the enrolled member is a civil servant. But section 3 was declaring the Railway protection Force was Armed Force where they cannot get the protection of civil servant. Thus section 3 and section 9 create a contradiction that is violation of Fundamental Rights of member of the Railway protection Force with respect to Right to freedom of Association.

In the RPF amendment Act 1985 the RPF was declared as armed force of the union. This Act was repealed in the year 2001 in the Repealing and amending Act. This 2001 repealing and amending Act was repealed in the year 2015. So the status after the 1985

Amendment Act continued and there by the Constitution contradiction also continues. The Right to freedom is covered in Article 19 to Article 22 of the Indian Constitution.

Article 19 of the Indian Constitution.

Protection of certain rights regarding freedom of speech etc.

All citizens shall have the right

- (a) To freedom of speech and expression.
- (b) To assemble peaceably and without arms.
- (c) To form associations or unions**
- (d) To move freely throughout the territory of India and
- (e) To reside and settle in any part of the territory of India and
- (f) Omitted
- (g) To practice any profession or to carry on any occupation trade or business.

JUDICIAL INTERPERTATION

Hon'ble Supreme Court also observed

1. In the Case of Ram Sarup Vs Union of India and another²²⁶⁹

Parliament has in exercise of its power under Art. 33 of the Constitution made the requisite modification to affect the respective fundamental right.

2. In Ous Kutilingal Achudan Nair and Others Vs Union of India and others²²⁷⁰

the Hon'ble Supreme Court observed that article 33 of the constitution provides an exception to the proceeding Article in Part III including Article 19(1)(C).

3. In Lt. Col. Prithi Pal Singh Bedi and Others Vs. Union of India and Others²²⁷¹

the Hon'ble Supreme Court affirmed the validity of proceedings under the Army Act though abrogate the fundamental rights as the same proceedings empowered under Article 33 of the constitution.

²²⁶⁹ 1965 AIR 247/ 1964 SCR (5) 931

²²⁷⁰ AIR 1976 SC 1179

²²⁷¹ AIR 1982 1413

4. The Hon'ble Supreme Court held in **R. Viswan and Others vs Union Of India and Others**²²⁷², restriction of members to have trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations is not ultra-vires the Constitution, since it is saved by Article 33 Constitution.

In Union of India (UOI) and Others Vs. Ex. Flt. Lt. G.S. Bajwa²²⁷³, the Hon'ble Supreme Court observed that Article 33 of the Constitution of India expressly empowers the Parliament to determine by law the extent to which any of the rights conferred by Part III of the Constitution, in their application, inter alia, to the members of the armed forces, shall be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them.

ARTICLE 311 OF THE INDIAN CONSTITUTION.

Dismissal, removal or reduction in rank of persons employed in **civil capacities** under the Union or a State

(i) No person who is a **member of a civil service of the Union** or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

In **Union of India and others Vs Major S.P.Sharma and others**²²⁷⁴ the Hon'ble Supreme Court observed that article 311 of the constitution is inapplicable in respect of an employee or officer of the Armed Forces.

In **Bhagat Ram Vs the union of India and others**²²⁷⁵ the Hon'ble Punjab and Haryana High Court observed protection of Article 311 is not available to the members of Armed Forces.

JURISDICTION OF HON'BLE HIGH COURTS AND TRIBUNALS.

High court in exercise of its writ jurisdiction with respect to disciplinary proceedings. It is well settled that the High Court must not act as an appellate authority. The High Court may, however interfere where the departmental authority which held the proceedings against the delinquent are inconsistent with the principles of Natural Justice. The Judicial review in a matter of this nature is very limited and High Court is not an appellate authority to analyse the factors that contributed for transfer or any matter and to substitute its opinion and High court view the Railway Protection Force is a Disciplined Force. However a member is sincere and dedicated to his service, if the superior officer decides, he can terminate his service according to the Railway Protection Force Amendment Act 1985 and Rules 1987.

"Railway servants are not members of Armed Forces, Railway servants are civil servants". Article 323 (A), a Railway Servant can file a case in Central Administrative Tribunal for his or her issues. Since it has become the Armed Force of the Union Members cannot go to Central Administrative Tribunal and file a case to solve their issues. An armed force members can file a case in Armed Force Tribunal under 323 (B) of Indian Constitution.

But in section 10 of Railway Protection Force Act the Members of the Force to be called Railway servant, so the member of the Railway Protection Force cannot file a case in the Armed Force Tribunal. Because of this the members of the Railway Protection Force file cases in Hon'ble High Court under article 226. The members of Railway Protection Force cannot file cases In Central Administrative Tribunal and Armed Force Tribunal. Also BSF, CRPF, CISF, SSB, AR, IDBP, NSG cannot file cases in Central Administrative Tribunal and Armed Force Tribunal.

CONSTITUTIONAL VALIDITY OF THE RAILWAY PROTECTION FORCE RULES 1987.

²²⁷² SCR 1983 (3)60

²²⁷³ SCC 2003 (9) 630

²²⁷⁴ SCC 2014 (6) 351

²²⁷⁵ AISLJ 1982(1) 569

According to the Amendment Act the Railway Protection Force Rules 1987 were framed published in the Gazette of India on 3rd December 1987(G.S.R.951(E) and were presented before the houses in the parliament. But on Wednesday 16th of March 1988, Bulletin-part II, Motion No.2164, the Lok Sabha annulled the Railway Protection Force Rules, 1987²²⁷⁶. On 14th February 1991, Rajya Sabha has not passed any resolution concerning the Railway Protection Force Rules, 1987. But till now these rules are followed. This is violation of section 21 of Railway protection Force (Amendment) Act.

LEGAL PRACTITIONER.

As per Rule: 153.8 the enrolled member charged shall not be allowed to bring in a legal practitioner. But as per Rule: 182 an accused who has been remanded for trial, shall be afforded reasonable opportunity for preparing his defence and shall be allowed proper communication with his "friend" who can be another enrolled member of the force or a legal practitioner. A person so assisting him may advise him on all points and suggest the question to be put to witness but shall not examine or cross-examine witnesses or address the security court. As per Rule No.182 the charged member of the Force can have a legal practitioner to assist him. But as per Rule No.265.6 (f) a legal practitioner is not allowed to appear before a court of enquiry. This is Contradictory and unclear.

ULTRA VIRUS IN THE RAILWAY PROTECTION FORCE RULES 1987.

Railway Protection Force Act is applicable to i) Superior Officer ii) Subordinate Officer iii) Under Officer iv) Other under Officer. And according to Railway Protection Force Rules, 1987 section 1.3 is applicable to the above four officers. But chapter XI and chapter XII of Railway Protection Force Rules 1987 (Discipline and conduct, Disciplinary and Penal punishments) is not applicable for superior officers.

It is the different kind of approaches in the Rules itself regarding the applicability in the Rules.

Rule 1.3 is contradictory to rule 132.2 regarding the applicability of Rules.

As per Rule No.132.1 Railway servants (Discipline and Appeal) Rules 1968 it is stated that it is applicable to superior officers subject to the Modification. But as per Railway servants (Discipline and Appeal) Rules 1968²²⁷⁷ it is stated that it is not applicable to the Member of Railway Protection Force.

PRINCIPLES OF NATURAL JUSTICE.

In English Law, natural justice is technical terminology for the rule against bias.

There are mainly two Principles of Natural Justice.

- 1). ***Nemo iudex in causa sua***. (No one should be made a judge in his own cause).
- 2). ***Audi alteram partem***. (Hear both sides).

In **Gullapalli Nageshwar Rao Vs APSRTC**¹⁵ case Supreme Court observed any order made in violation of principles of natural justice is void ab-initio and is liable to be annulled and cancelled.

In **Nawabkhan Abbaskhan Vs State of Gujarat**²²⁷⁸ case Supreme Court held that an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity.

In Railway Protection Force Rules, 1987, the Principles of Natural Justice has not been followed anywhere. Without getting explanation from the charged employee and non-supply of the relied upon documents the superior officer directly appoints the enquiry officer to conduct the enquiry. As per Rule 158, the superior officer can give punishment to the charged member without giving him any relied upon documents. In Railway Protection Force Rules, 1987 the fine amount to any amount not exceeding seven days' pay, the procedure to be implemented is not found. But if the superior officer decides, he will implement. In India, the principles of natural justice are firmly grounded in Article 14 & 21 of

²²⁷⁶ www.indianrailways.gov.in last access date 03.02.2023.

²²⁷⁷ Railway servants (Discipline and Appeal) Rules 1968
²²⁷⁸ AIR 1959 SC 308.

the constitution. With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice results in arbitrariness; therefore, violation of natural justice is a violation of Equality clause of Article 14.

APPLICABILITY OF RPF RULES 1987.

Railway Protection Force Act is applicable to i) Superior Officer ii) Subordinate Officer iii) Under Officer iv) Other under Officer. And according to Railway Protection Force Rules, 1987 section 1.3 is applicable to the above four officers. Railway Protection Force Act section 9 states that Article 311 of the Indian Constitution is applicable to enrolled member of the force.

RPF Act 1957 (2) (1) (C) **“Member of the force”** means a person appointed to the force under the RPF Act.

1. I) Superior officer.
2. II) Subordinate officer.
3. III). under officer.
4. IV). Other Under officer.

RPF Act 1957 (2) (1) (b a) **“Enrolled Member”** of the Force means any

1. I). Subordinate officer.
2. II) Under officer.
3. III) Other Under officer.

CHAPTER XI- DISCIPLINE AND CONDUCT (Rule 132 to 147).

As per Rule No.132.1 of Railway Protection Force Rules 1987, Railway servants (Discipline and Appeal) Rules 1968 it is stated that it is applicable to superior officers subject to the Modification. But as per Railway Servants (Discipline and Appeal) Rules 1968 it is Stated that it is not applicable to the Member of Railway Protection Force. This is the contradiction.

“Railway Protection Force Act is applicable to i) Superior Officer ii) Subordinate Officer iii) Under Officer iv) Other under Officer. And according to Railway Protection Force Rules, 1987 section 1.3 is applicable to the above four

*officers. But Rule 132.2 states **chapter XI and chapter XII** of Railway Protection Force Rules 1987 (Discipline and conduct, Disciplinary and Penal punishments) is **not applicable for superior officers** of the Railway Protection Force^{172279”}.*

In M.S. Sunil Vs Ministry of Railway and others²²⁸⁰ Central Administrative Tribunal, Principal Bench, New Delhi Observed the superior officers in Railway Protection Force would be a member of the force. So that not accepts the petition of RPF employee because the no jurisdiction CAT on RPF employee. So it is not accepted that the petition of the RPF employee because it does not come under the jurisdiction of Central Administrative Tribunal.

Rule 132.2 The Enrolled Member of the force shall in such matters, be governed by the rules in Chapter XI and Chapter XII. As per this rule chapter XI and XII is applicable to

- i). Subordinate officer
- ii) Under officer
- iii) Other Under officer

Not in those chapters not applicable to superior officers.

Subordinate officer (2) (1) (ea)

1. Inspector
2. Sub-Inspector
3. Assistant Sub-Inspector

Under Officer

1. Constable
2. Head Constable

Other under Officer

Ancillary staffs.

Railway Protection Force Rules 1987 Rule 133 states Suspension of enrolled member of the force not for superior officer. But Rule 134 states Any Superior officer or an enrolled member of the force may be placed under suspension.

As per Rule 135,136,137,138,139,140,141,142,143,144,145,146 states it is applicable to Member of the Force that

²²⁷⁹ Railway Protection Force Rules 1987.

²²⁸⁰ OA.3687/2015 CAT/New Delhi

means Superior Officer also applicable this rules but Chapter XI and XII not applicable to Superior Officers.

MARKING ATTENDANCE IS ILLEGAL DURING SUSPENSION.

The Hon'ble Delhi High Court observed, Rule no.143.2 of Railway Protection Force Rules, 1987 is wholly misplaced²²⁸¹.

Rule No.143.2 of Railway Protection Force Rules 1987.

"Every member of the force shall during the period of his suspension stay at his headquarter or at such place which may be specified by the disciplinary authority and shall present himself daily for attendance to the authority nominated by the disciplinary authority".

Rule No. 141 a member of the force, under suspension or deemed to have been placed under suspension, shall draw subsistence allowance and other allowance in accordance with "**extant Railway Rules**". But the "Railway extant rules state that marking attendance is illegal during suspension". In **Zonal Manager, FCI &Ors vs. Khaled Ahmed Siddiqui**²²⁸² Division Bench of Andhra Pradesh High Court observed the employee to attend office and mark attendance daily during period of suspension is illegal.

"In any Armed Force there is no suspension if a member has committed a mistake. He has to be taken in Force Custody and enquired in the Security Court".

COMPARISON RULE 134 AND 143.2

Rule 134 states that

(d) Continuance in office will prejudice investigation, inquiry or trial.

(e) Continuance in office is likely to serious subverting discipline in the force in which he is working.

(f) Continuance in office appears to be against the wider public interest.

But Rule 143.2 states that Every member of the force shall during the period of his suspension

stay at his headquarter or at such place which may be specified by the disciplinary authority and shall present himself daily for attendance to the authority nominated by the disciplinary authority.

This clearly shows that rule 134 and rule 143.2 contradict each other.

In **Redhey shyam Vs Union of India** the Hon'ble Delhi High Court observed.

"Attending office and marking attendance by an employee under suspension is not in conformity with the intention of suspension. An employee/officer suspended pending a case may have chances of tamper with evidence and influencing witnesses if he is allowed regular approach to the office. The provision in the RPF Rules, perhaps, needs a change. However for leaving the station of posting the employee has to seek permission.

Normal Discipline and Appeal Rules for Central Govt. Staff do not permit the facility/restriction provided in RPF Rules. The RPF Rules position may not also sustain legal scrutiny. An amendment to the Rules is, therefore, suggested".

CHAPTER XII-DISCIPLINARY AND PENAL PUNISHMENTS (Rule 148 to 210)

This chapter says about punishments and procedure to imposing punishments to enrolled member of the force.

Rule 153.Procedure for imposing major punishments.

153.1 "Without prejudice to the provisions of the Public Servants Inquires Act, 1850, no order of dismissal, removal, compulsory retirement or reduction in rank shall be passed on any enrolled member of the Force (save as mentioned in rule 161) without holding an inquiry, as far as may be in the manner provided hereinafter, in which he has been informed in writing of the grounds on which it is

²²⁸¹ Redhey shyam Vs Union of India W.P. (C) 5935/2013.

²²⁸² Lab.I.C.1140 (AP). / (1982) 2 SLR 779 (AP).

proposed to take action, and has been afforded a reasonable opportunity of defending himself". As per Public Servants Inquires Act, 1850 section 12 States that Prosecutor's right to address.

As per Rule: 153.8 the enrolled member charged shall not be allowed to bring in a legal practitioner. But as per Rule: 182 an accused who has been remanded for trial, shall be afforded reasonable opportunity for preparing his defence and shall be allowed proper communication with his "friend" who can be another enrolled member of the force or a legal practitioner. A person so assisting him may advise him on all points and suggest the question to be put to witness but shall not examine or cross-examine witnesses or address the security court. As per Rule No.182 the charged member of the Force can have a legal practitioner to assist him. But as per Rule No.265.6 (f) a legal practitioner is not allowed to appear before a court of enquiry. This is Contradictory and unclear. Here the Rules itself contradicting regarding the access availability of legal practitioner.

In ***State Bank of India and Others v. D.C.Aggarwal and Another***²²⁸³, the Hon'ble Supreme Court has observed "The disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself".

In Railway Protection Force Rules, 1987 the fine amount to any amount not exceeding seven days' pay, the procedure to be implemented is not found. But if the superior officer decides, he will implement.

However an enrolled member is sincere and dedicated to his service, if the superior officer decides, he can terminate his service according to the chapter XI, XII of Railway

Protection Force Rules 1987. Railway Protection Force Rules, 1987 exists only to curb the freedom of the enrolled member of the force and to enslave him. This rule is against article 14, 16, 21 and 311 of the Indian Constitution and principles of Natural justice.

In India, the principles of natural justice are firmly grounded in Article 14 & 21 of the constitution. With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice results in arbitrariness; therefore, violation of natural justice is a violation of Equality clause of Article 14.

Two Types of Rules

There are two types of Rules in Railway Protection Force Rules 1987 to implement punishments. One for Civil servant (Rule 132 to 166) and the other for Armed Forces (Rule 167 to 210,265).

COMPOSITION AND CONSTITUTION OF SECURITY COURT.

As per Rule No.30 Magisterial power is given to the rank of Assistant Inspector-General, Senior Commandant and Commandant of the Force shall constitute a security court and can conduct enquiry on a charged member of the Force.

Investigation of charges mentioned in Rule 170, as per rule the above said officers shall assemble a court of enquiry referred to in Rule 265. But as per rule 265 it is stated that a court of enquiry shall consist of an officer, presiding officer not below the rank of Inspector To conduct the enquiry. This is not clear and it is Contradictory. Armed Force there is no suspension if a member has committed a mistake. He has to be taken in Force Custody and enquired in the Security Court.

In other departments under the Government of India there is regular procedure adopted for enquiry and punishment to the charged employee.

The procedure is as follows.

²²⁸³ AIR 1993 SC 1197

- a. Charge sheet along with the relied upon documents are given to the charged employee.
- b. Explanation is called for from the charged employee.
- c. If the explanation is not sufficient then the Disciplinary Authority will fix an enquiry on the charged employee.
- d. Enquiry report will be given and a defence statement is asked from the charged employee.
- e. Finally the Disciplinary Authority imposes punishments to the charged employee.

But **Rule 154.1 & 2** states while communicating the order imposing the punishment, a copy of the findings of the Inquiry Officer shall also be given to the party charged.

Therefore it clearly indicates that no other department in India except Railway Protection Force the charged employee is punished under Rule 154.1 & 2.

Since the armed force comes under 33 of the constitution the enrolled members of the RPF cannot utilize the Fundamental Rights in Articles 14, 16, 21 and 311 of the Constitution.

CONCLUSION.

Hence in the above circumstances the Railway Protection Force Amendment Act 1985 and Railway Protection Force Rules 1987 are unconstitutional and in violation of article 14, 16, 19, 21, 311 and 323 (A) (B) and Principles of Natural Justice.

Nature of service in RPF is not clearly dealt with respect to the considering the RPF as civil service or Armed service.

Purpose of the RPF is commonly understood so as to protect Railway property in the coach and Railway junction. Since the RPF maintains and protects the Railway property. It is understood there are Railway employees and they have some responsibility to maintain order for smoothly running of Railways which may be understood that they are employed

only in the Railway premises. Not maintaining Public order in any places.

The Act and Rules does not clearly indicate the ways to redress the grievances by an appropriate method or institution.

In the case of CISF are involved in Industrial Security in various places but they are not in the employ of Industry. They are governed by Ministry of Home Affairs that is not in the case of Railway Protection Force. Rules relating to allowing the legal practitioner also contradict in the Rules.

The entire operation of RPF is supervised by the General Manager of the Zonal Railway according to section 8. There is no other Armed Force working under a General Manager; it is against the nature of Protection Force.

Under this scenario the difference of remedies available institution working condition for similar services is deliberate violation of Article 14. According to section 3 they are considered to be an Armed Force but in Section 9 application of Article 311 is incorporated which is available for the civil services and this is indirectly significant that the employee in Railway Protection Force is civil servant.

Moreover section 10 confirms that they are employed in Railway that is not clear are they belong to civil service or Armed service consideration of this question raised when employee in Railway Protection Force approaching Central Administrative Tribunal for their grievances. It is practice of accepting that petition because they are Armed services. Again if they are approaching Armed Forces Tribunal getting remedy their petition is also rejected. Because they are Railway employee so this internal contradiction creating a hardship for getting remedies in the Administrative conflict. It is violation of Article 14, 21.

Reference;

1. Indian Constitution Law
2. Armed Force Tribunal Act 2007.
3. Central Administrative Tribunal Act 1985.



4. Police Force Restriction Act 1966.
5. Railway Establishment Rules.
6. Railway Protection Force Act 1957.
7. Railway Protection Force Rules 1987.
8. JT 1999(10) SC464. All India Railway Protection Force Association Vs Union of India.
9. AIR 1965 247, Ram Sarup Vs Union of India and another.
10. AIR 1976 SC 1179. Ous Kutilingal Achudan Nair and Others Vs Union of India and others
12. AIR 1982 1413. Lt. Col. Prithi Pal Singh Bedi and Others vs. Union of India and Others.
13. SCR 1983 (3)60. R. Viswan and Others vs Union of India and Others.
14. SCC 2003 (9) 630. Union of India (UOI) and Others vs. Ex. Flt. Lt. G.S. Bajwa.
15. SCC 2014 (6) 351. Union of India and others Vs Major S.P.Sharma and others.
16. AISLJ 1982(1) 569. Bhagat Ram Vs The union of India and others.
17. AIR 1959 SC 308. Gullapalli Nageshwar Rao Vs APSRTC.
18. SCR 1974 (3) 427. Nawabkhan Abbaskhan Vs State of Gujarat.