

Court No. - 39

Case :- WRIT - A No. - 55731 of 2016

Petitioner :- Motilal Kushwaha

Respondent :- Union Of India And 5 Ors.

Counsel for Petitioner :- Sanjay Kumar Om

Counsel for Respondent :- Shesh Mani Misra, Brij Bhushan Paul, Satish Kr. Rai, Satish Kumar Rai

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Shri Pradeep Kumar Mishra, holding brief of Shri Sanjay Kumar Om, learned counsel for the petitioner and Shri Vivek Kumar Singh, learned counsel for the respondent-Union of India.

2. Present writ petition has been filed against the order of the Central Administrative Tribunal Allahabad, bench Allahabad dated 11.08.2016 passed in Original Application No.330/00998/2016 (Motilal Kushwaha Vs. Union of India and others). By that order the learned Tribunal has dismissed the Original Application filed by the petitioner arising from disciplinary proceedings. Thus, the order of the appellate authority dated 20.11.2013, providing for compulsory retirement of the petitioner, has been confirmed.

3. Undisputedly, the petitioner was engaged as a casual labourer by the Indian Railways, on 17.09.1973. On 04.08.1976 he was engaged as Monthly Rated Casual Labour (hereinafter referred to as MLCR, in short) by order of Station Superintendent, Central Railway, Jhansi. Later, he was appointed as Travelling Ticket Examiner (TTE in short). He was promoted to the post of Senior Travelling Ticket Examiner (Senior T.T.E, in short) and still later to the post of Head Travelling Ticket Examiner (Head T.T.E, in short).

4. While working on the post of Head T.T.E Jhansi, the petitioner was issued charge-sheet dated 02.08.2006 on a solitary article of charge. It reads as below:-

"Shri Motilal Kushwaha HdTTE JHS at the time of his initial appointment, failed to inform the administration about his correct education qualification. He gave a false information that he had passed his 8th class from Shikshak Uchatar Madhyamik Vidhalaya, Gandhi Marg, Jhansi whereas the Principal of the said school had given a certificate on 28.01.2000 that the above named had never studied in that school.

Thus by Shri Motilal Kushwaha has cheated the administration which tantamount to misconduct and thereby contravened the provision of rule 3.1(i), (ii) and (iii) of Railway Service Conduct Rule 1966."

5. In the domestic enquiry, before the enquiry officer the petitioner disputed the handwriting on the Attestation Form (Ex.P-1). The management witness Shri D.S Patel also could not ascertain the handwriting on the said document. Another management witness Shri Abdul Majid stated that since the Attestation Form existed on the original record, it may be presumed to have been prepared in his handwriting.

6. In any case, upon consideration made by the enquiry officer, he made the following observation:-

"Thus, in view of above it is observed that there is no material evidence available to prove CO's handwriting and signature on the Attestation Form. In case of denial of CO it was obligatory on the part of prosecution to examine the case in this direction."

7. However, at the same time the enquiry officer also reached the conclusion that the Attestation Form existed on the original service record of the petitioner and that he alone was the beneficiary of the same. At the end, the enquiry officer recorded the following conclusion:-

"10.00 Conclusion and findings: In view of above discussion and after

due consideration of evidence and records adduced during the enquiry and considering the defence submitted by the CO/ARE, it is concluded that:-

'Article of Charge' is proved on the basis of preponderance of probability."

8. Consequently, vide punishment order dated 30.11.2012 the disciplinary authority awarded major penalty of removal from service, to the petitioner.

9. The petitioner appealed against that order before the appellate authority. Vide order dated 30.11.2012, the A.D.R.M Jhansi, noted that petitioner was not required to hold any educational qualification to be engaged as MRCL. He further found that in the Original Application form submitted by the petitioner to be engaged as MRCL, though the petitioner has disclosed his educational qualification to be 8th pass, he had not made mention of the institution where he may have studied, for that purpose. Thus, the appellate authority specifically recorded that the petitioner has not furnished any wrong information or wrong certificate while submitting his application for Group-D post. Thereafter, the appellate authority further noted that the Attestation Form was filled up using English language. Therein, the name of the institution "Shikshak Uchatar Madhyamik Vidhalaya," Jhansi, was recorded. At the same time the appellate authority also recorded that the petitioner was granted engagement not on the strength of Attestation Form but earlier on the strength of his application form. On that application form no false declaration had been made.

10. Later, while at the stage of the confirmation being granted on 07.11.1979 the petitioner had submitted full details with respect to his educational certificate. It was noted that no false information was submitted at that stage.

11. In light of above, the appellate authority recorded the below quoted finding in unequivocal terms:-

"Therefore the allegation that Shri Motilal Kushwaha has submitted false

information/ documents for his selection is not correct."

12. Having reached that unequivocal conclusion, the appellate authority then proceeded to modify the penalty to compulsory retirement with full pensionary benefits. In doing that, the appeal authority appears to have been swayed by the fact that the petitioner had been found guilty by the enquiry officer on preponderance of probability.

13. Submission of learned counsel for the petitioner is, once the appellate authority had found the petitioner not guilty of the solitary charge of false declaration levelled against him, there survived no jurisdiction or occasion with it to consider the quantum of punishment. An employee who is proven not guilty, remains in the category of an innocent employee. Therefore, the disciplinary proceeding ought to have been dropped in entirety without any exception. Second, it is his submission, the petitioner served the Railways without any past conduct as may have warranted disciplinary proceeding, over a long period of 33 years. Not only he was confirmed in 1979, he was later appointed as T.T.E and promoted, twice. At the fag end of his career, barely two years before his superannuation, the disciplinary proceeding was drawn up and the petitioner unduly harmed. Reference has also been made to the fact that the complainant with whom the petitioner had a personal issue was never examined during the disciplinary proceedings.

14. On the other hand, learned counsel for the respondent-Union would submit, in the entirety of the facts and circumstances of the case especially wherein the petitioner had produced two educational qualifications, during the course of the enquiry proceedings, no leniency was warranted. The appellate authority has granted sufficient relief to the petitioner inasmuch as though, the (wrong/ false) declaration on the Attestation Form exists to the benefit of the petitioner, he has been let off lightly. Reliance has also been placed on the two judgments of the **Supreme Court in M/s Indian Oil Corporation Ltd. Vs. Shri Rajendra D. Harmalkar 2022 SCC OnLine SC 486 and Union of India and others Vs. Subrata Nath 2022 LiveLaw (SC) 998.**

15. Having heard learned counsel for the parties and having perused the material on record, at first, it may be noted that in the scope of the disciplinary proceedings under service jurisprudence, a punishment order may arise not only as a direct consequence of disciplinary proceedings but a punishment may be awarded only if an employee is held guilty of the offence charged. Here, only one charge was levelled on the petitioner of having furnished false declaration on the Attestation Form with respect to the institution from which he had passed class-8th exam. Though, the enquiry officer found the petitioner guilty on preponderance of probability, the appellate authority reversed that finding and found the petitioner not guilty of the charge levelled against him.

16. Neither the respondent challenged the order of the appellate authority nor any other charge was levelled on the petitioner with respect to the two education qualifications set up by him in the course of the present enquiry proceedings.

17. Therefore, once the appeal authority held the petitioner to be not guilty as charged, there survived no occasion with the appellate authority to consider the issue of quantum of penalty to be awarded.

18. Not only the charge may be levelled by the disciplinary proceeding, the burden to bring home the charge remains a burden to be discharged by the disciplinary authority alone. Once the appellate authority found that burden not discharged, it has to be held, by way of a consequence in law that the petitioner was innocent.

19. Looked in that light, there arose no occasion with the appellate authority to consider the quantum of punishment. The decisions being relied upon by the learned counsel for the respondent-Union are, therefore, wholly distinguishable, on facts. In *Subrata Nath (supra)*, the issue involved was completely different being if in an exercise of judicial review findings of fact may be interfered with. In the present case we are not offering any interference with the findings of the fact recorded by the appellate authority. Rather, we have only examined if in the face of the finding of innocence of the petitioner recorded by the appellate authority, there

survived no legal justification or bases to sustain the penalty, to any extent.

20. Also, the ratio in the case of India Oil Corporation Ltd. (supra) is wholly distinguishable as in that case the issue of breach of trust/ loss of confidence had been pleaded in the context of finding of guilt returned and sustained. Once the finding of guilt has been reversed by the appellate authority, the plea of loss of confidence or breach of trust would never arise.

21. Accordingly, the writ petition is allowed. The appellate order is set aside to the extent the appellate authority has modified the punishment awarded. Let all service dues of the petitioner be computed and paid out with consequential benefits on retiral dues within a period of three months, failing which the same may attract interest at the rate of 6% from today till the date of actual payment.

Order Date :- 13.10.2023

A Gautam

(Rajendra Kumar-IV,J.) (S. D. Singh,J.)