

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 415 OF 2014.

Shri Ramesh P. Hadkonkar, Vehicle
Driver, Emp. No.2126, Konkan
Railway Corporation Ltd., Near
Railway Overbridge, Margao-Goa-
403 707.

..... Petitioner.

Versus

The Chief Engineer, Konkan Railway
Corporation Limited, having office at
Belapur Bhavan, Sector-II, CBD
Belapur, New Mumbai- 400 614 and
another.

..... Respondent.

Mr. D. Pangam and Mr. P. Sawant, Advocates for the petitioner.

Mr. A. D. Bhobe and Mr. P. Korgaonkar, Advocates for the
respondent nos. 1 and 2.

**Coram:-F. M. REIS,
K. L. Wadane,JJ.**

Date:-20th August, 2015.

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. D. Pangam, learned Advocate appearing
for the petitioner and Mr. A. D. Bhobe, learned Advocate
appearing for the respondent nos. 1 and 2.

2. The above petition inter alia seeks for a Writ
directing or direction, quashing and setting aside the orders
dated 28.3.2013 and 10.6.2013 passed against the petitioner.

3. Brief facts of the case are as follows:-

The petitioner was issued a chargesheet on the ground that the petitioner attempted to assault one Smt. Anita Naik.

4. The inquiry proceedings were accordingly initiated. The petitioner was imposed a penalty of withholding of three increments with cumulative effect by an order dated 12.5.2008.

5. The petitioner preferred an appeal and thereafter the petitioner was issued a show cause notice by the Appellate Authority as to why the penalty should not be enhanced to removal from service.

6. The petitioner filed a reply to the said show cause notice and the Appellate Authority by an order dated 20.1.2011 set aside the inquiry proceeding and directed a fresh inquiry to be conducted with regard to such chargesheet.

7. Disciplinary Authority on 6.8.2012 remitted the matter to a higher officer than the one Mr. Pendekar, who was earlier appointed. On 1.3.2013, the Inquiry Report was submitted in which it was held that it is not proved that Smt. Anita Naik was pushed inside the toilet but, however, it was held therein that Smt. Anita Naik had undergone physical/mental and

sexual harassment. The petitioner thereafter on 28.3.2013 was imposed a penalty of reduction to a lower grade.

8. Being aggrieved by the said penalty and the Inquiry Report, an appeal was preferred by the petitioner before the Appellate Authority which came to be rejected on 10.6.2013.

9. Being aggrieved by the said orders of the Authority below, the petitioner has preferred the present petition.

10. Shri Pangam, learned counsel appearing for the petitioner has vehemently argued that inquiry itself stands vitiated and consequently, the penalty imposed by the Disciplinary Authority cannot be sustained. The learned counsel has thereafter taken us through the Inquiry Report to point out that the findings arrived at by the Inquiry Officer and the allegations that the petitioner had pushed the victim into the toilet have not been established beyond reasonable doubt. The learned Counsel further points out that the only finding in the Inquiry Report against the petitioner is that there was mental harassment meted out to the said victim. The learned counsel further submits that there is no material on record for the Inquiry Officer to come to such conclusion, and, as such, findings arrived at by the Inquiry Officer are perverse. The learned Counsel further submits that the main witness was not

allowed to be cross examined by the petitioner and as such, according to him, principle of natural justice have been breached which would call for quashing of the Inquiry Report. The learned Counsel further points out that penalty imposed on the petitioner is shockingly disproportionate to the nature of charges established against the petitioner. The learned counsel further submits that once it was held that the allegations against the petitioner that he has pushed the victim in the toilet is not established, the question of the Inquiry Officer concluding that there was harassment is totally erroneous, and as such, the Inquiry Report deserves to be quashed and set aside. The learned Counsel has thereafter taken us minutely through the Inquiry Report to point out that the findings itself stand vitiated and the punishment imposed is shockingly disproportionate to the allegations against the petitioner. The learned Counsel, as such points out that the impugned orders deserve to be quashed and set aside.

11. Mr. Bhobe, learned counsel appearing for the respondent nos. 1 and 2 has opposed the petition and submitted that the petition be dismissed.

12. On perusal of the Inquiry Report, which is impugned in the present petition, we find that on the basis of the material on record and evidence adduced by the witnesses before the

Inquiry Officer, the report concludes the fact that the petitioner was present on the date of the incident, at the place of such incident , has not been disputed. It further reveals that when the victim came out from the toilet she started screaming and crying seeing the petitioner. Besides that the victim herself immediately informed about such incident to her higher superior. There was an inquiry conducted by the Women's Committee which has also accepted the version levelled against the petitioner.

13. In such circumstances, the contention of the learned Counsel appearing for the petitioner that the findings arrived at by the Inquiry Officer are perverse cannot be accepted. This Court cannot re-appreciate the findings on record or material produced before the Inquiry Officer to come to a contrary findings, unless such findings are arrived in absence of any material on record or that principle of natural justice have been breached.

14. With regard to the contention of the learned counsel appearing for the petitioner that no opportunity was given to the petitioner to cross examine Mr. Revankar who was the main witness, we find that on the date of hearing when Mr. Revankar was present before the Inquiry Officer, an opportunity was infact given to the petitioner to cross examine such witness. In

such circumstances, contention of the learned counsel appearing for the petitioner that the inquiry stand vitiated for breach of principle of natural justice cannot be accepted.

15. In the present case, the allegations which have been established against the petitioner are that there was sexual harassment at the work place. In such circumstances, we find that the punishment imposed by the Disciplinary Authority cannot be said to be shockingly disproportionate to the alleged offence. Mr. Pangam, learned counsel appearing for the petitioner has brought to our notice that the finding of the Inquiry Officer were in fact in favour of the petitioner as it is clearly held therein, that the allegations that the petitioner had pushed the victim has not been proved beyond reasonable doubt. The learned Counsel further points out that there was a background in filing such complaint by the victim as there was an earlier incident whereby the victim had lodged a complaint against the petitioner in the year 2006. But, however, on perusal of the statement of Mr. Revankar when specific question was put to him whether any complaint was lodged by the victim prior to the incidents, he has stated that no such complaint was lodged.

16. As such, in the facts and circumstances of the case, we find that no case is made out for any interference in the

impugned orders.

17. Petition stands accordingly rejected, with no order as to costs.

18. Rule stands discharged.

vn* K. L. WADANE, J.

F. M. REIS, J.