

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7640 OF 2014

Avinash G.Petkar

.. Petitioner

Vs.

Nuclear Power Corporation of India Ltd. And anr. .. Respondents

Mr.R.S.Upadhyay, Advocate for Petitioner.

Mr.Vijay Kantharia a/w Ms.L.Munim i/b Rajesh Kothari & Co.,
Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 05th March 2015

P.C. :

. Heard Mr.R.S.Upadhyay, learned Counsel for the petitioner and Mr.Vijay Kantharia, learned Counsel for respondent No.1 at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and part I award dated 23/12/2003 as also the judgment and part II award dated 10/03/2014 made by the learned Presiding Officer, Central Government Industrial Tribunal No.2 , Mumbai (for short 'Tribunal'). By part I award, the Tribunal held that the enquiry held against the petitioner – workman is fair and proper and that the findings of the Enquiry Officer are not perverse. By part II award, the Tribunal rejected the reference.

3. In support of this petition, Mr.Upadhyay reiterated the submissions that were advanced before the Tribunal. He submitted that the petitioner was issued a charge-sheet for abusing and manhandling the employees thereby violating the provisions of section 14 (h) under Schedule I of Model Standing Orders (Central Rules) under Industrial Employment (Standing Orders) Act, 1946 as also for threatening the employee thereby violating the provisions of section 14 (h) under Schedule I of Model Standing Orders (Central Rules) under Industrial Employment (Standing Orders) Act, 1946 and that for creating panic amongst fellow employees and disturbing peaceful working condition.

4. Mr.Upadhyay submitted that no enquiry was conducted for proving misconduct and only on the basis of purported admissions given by the petitioner, the Enquiry Officer held that the misconduct was proved. Mr.Upadhyay submitted that the petitioner belongs to the reserved category namely Scheduled Caste and that at the relevant time, he was suffering from mental disorder namely Schizophrenia. After taking treatment, now, the petitioner is not suffering from any disorder. That apart, he submitted that the penalty of dismissal is shockingly disproportionate. For all these reasons, he submitted that petition requires consideration .

5. On the other hand, Mr.Kantharia supported the impugned awards. He submitted that after the charge-sheet was

issued to the petitioner, he admitted his guilt by submitting the application dated 24/01/2009. The petitioner thereafter gave letter dated 07/05/2009 and expressed regret for the incident and requested for taking a lenient view. This was followed by letter dated 05/09/2009. In that letter, he accepted the charges leveled against him in toto without any hesitation and pleaded guilt. He also apologized for his actions. He submitted that while imposing penalty, the past conduct of the petitioner was considered. In the past, penalty for unauthorised absences and reduction of pay for physically assaulting a fellow colleague and also indulging in riotous and disorderly behavior during working hours at the establishment were considered. He, therefore, submitted that no case is made out for invocation of powers under Articles 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, on account of acts and omissions amounting to misconduct, petitioner was issued a charge-sheet. The petitioner admitted misconduct. Accordingly, the Enquiry Officer held him guilty and submitted his report to the Disciplinary Authority. Perusal of the material on record also shows that the petitioner had admitted his guilt on several occasions and also pleaded guilt. While imposing penalty, the authority also considered

the past conduct of the petitioner. In view thereof, I do not find that the Tribunal committed any error in passing part I and part II awards. The submissions made by Mr.Upadhyay that even if, the petitioner admitted his misconduct, it is obligatory for the management to hold enquiry, is stated to be rejected. Once the employee admitted misconduct, there is no requirement for holding enquiry. No judgment was cited by Mr.Upadhyay in support of his submissions. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)