

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4640 OF 2015

[Prakash s/o Ramkrushna Nandane .vs. The High Court of Judicature at Bombay and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.D. Sharma, counsel for the petitioner.
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CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATED : SEPTEMBER 08, 2015.

By this petition, the petitioner impugns the order of the Principal District and Sessions Judge, Amravati, dated 11.7.2012 removing the petitioner from service.

The petitioner was employed as a watchman in the District Court, Amravati in the year 1997. The petitioner remained absent from time to time without seeking leave. He was censured and warned by the Disciplinary Authority. The petitioner, however, did not change his ways and the Disciplinary Authority issued a show cause notice to the petitioner, dated 28.6.2010 as to why a departmental inquiry should not be initiated against him. The reply of the petitioner was not satisfactory and an inquiry was initiated against the petitioner for his absence from duty to the extent of 919 days. The charge of long and unauthorised absence was levelled against the petitioner. The petitioner was on leave without pay for 457 days and for 339 days, the petitioner had secured Earned Leave. The petitioner sought medical leave to the extent of 123 days and his over all attendance was only 50% of the total working days of his service. The petitioner accepted his misconduct before the Inquiry Officer on 28.4.2011. The petitioner declined to participate in the inquiry proceedings and engage a Lawyer. The Inquiry Officer found that the petitioner was guilty of the charges levelled against him. A show cause notice was then served on the petitioner seeking his explanation. The petitioner admitted his mistake

and prayed for leniency. The disciplinary authority removed the petitioner from service by the impugned order. The petitioner challenged the order of the disciplinary authority in a departmental appeal. The appellate authority dismissed the appeal filed by the petitioner by the order dated 7.4.2015.

On hearing the learned counsel for the petitioner and on a perusal of the order of the appellate authority as also the memorandum of appeal, it appears that the impugned order is not liable to be interfered with. The petitioner took a false defence in the reply to the charge-sheet and then decided to accept the misconduct before the Inquiry Officer. The petitioner did not challenge the inquiry proceedings on the ground that the principles of natural justice were violated. The petitioner challenged the order of the Disciplinary Authority only on the ground that the punishment was disproportionate to the act of misconduct committed by the petitioner and unavoidable circumstances prevented the petitioner from attending the duties. The appellate authority rightly considered that there was no defect in the inquiry proceedings and the petitioner had not tendered any evidence to refute the charges. It was found that the petitioner had failed to enter into the witness box or examine any witness on his behalf. The appellate authority, therefore, held that in the circumstances of the case, the punishment inflicted on the petitioner cannot be said to be disproportionate to the act of misconduct committed by the petitioner. The petitioner had not attended his duties for more than 50% of the total working days of his service and it was, therefore, found that a strong message was required to be conveyed to the employees that absence from duties for long could not be ignored. The appellate authority also found that on occasions, the petitioner was given a warning and his two increments were also withheld. Despite the warning, since the petitioner persisted in remaining absent, the appellate authority rightly held that the petitioner did not deserve leniency. We do not find anything wrong with the order of the Disciplinary or the Appellate Authority so as to interfere with the same in exercise of the writ jurisdiction. The submission made on behalf of the petitioner that the charges were

vague and, therefore, the inquiry is vitiated is liable to be rejected. Firstly, a ground in regard to the vagueness of the charges was not raised by the petitioner before the appellate authority and secondly, we do not find that the charges are vague as they were accompanied by documents which gave the details of the absence of the petitioner. Moreover, the petitioner had admitted his guilt before the Inquiry Officer and, therefore, the petitioner cannot be heard to challenge the inquiry on the basis of the alleged vagueness of the charges.

Since there is no merit in the writ petition, the same is dismissed, with no order as to costs.

JUDGE

JUDGE

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