

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WA.No. 2181 of 2015 () IN WP(C).9038/2014

AGAINST THE JUDGMENT IN WP(C) 9038/2014 of HIGH COURT OF KERALA
DATED 13-07-2015

APPELLANT/PETITIONER IN WP[C]:

BABURAJ R., AGED 51 YEARS
S/O. RAVEENDRAN NAIR, ASSISTANT SELECTION GRADE
KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT
THIRUVANANTHAPURAM. RESIDING AT 'SINDHU BHAVAN'
PAPPALA, KILIMANOOR, THIRUVANANTHAPURAM.

BY ADV. SRI. SAJEEV KUMAR K. GOPAL

RESPONDENTS/RESPONDENTS IN WP[C]:

1. THE KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT P O, THIRUVANANTHAPURAM-695023
2. THE CHAIRMAN AND MANAGING DIRECTOR
KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT P O
THIRUVANANTHAPURAM-695 023.
3. THE EXECUTIVE DIRECTOR (VIGILANCE)
KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT P O
THIRUVANANTHAPURAM-695 023.

BY DR. THUSHARA JAMES, SC, KSRTC
SRI. M. GOPIKRISHNAN NAMBIAR, SC, KSRTC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

W.A.No.2181 of 2015

DATED THIS THE 2nd DAY OF NOVEMBER, 2015

JUDGMENT

ANIL K.NARENDRA , J.

This Writ Appeal arises out of the judgment of the learned Single Judge of this Court dated 13.7.2015 in W.P.(C)No.9038 of 2014. The appellant approached this Court in that Writ Petition, seeking a writ of certiorari to quash Exts.P8, P9 and P10 and seeking a declaration that the disciplinary proceedings initiated against him, which culminated in Exts.P8, P9 and P10, is vitiated and liable to be set aside. The learned Single Judge by judgment dated 13.7.2015 declined interference holding that the Disciplinary Authority, the Appellate Authority and the Revisional Authority have found that the appellant is guilty of the misdemeanor alleged warranting imposition of a minor penalty. Aggrieved by the said judgment, the appellant is before us in this appeal.

2. The appellant, who was working as Upper Division Clerk in the Kilimanoor Depot of the Kerala State Road Transport Corporation (hereinafter referred to as 'the Corporation'), was

proceeded against on the charge of 'irregular in duty' for the period from 1.1.2004 to 21.7.2004. By order dated 11.1.2010, the Disciplinary Authority imposed a punishment of 'censure', treating the period of absence as eligible leave without medical certificate to the extent of leave at credit and the remaining period as leave without allowances, not to be counted for any service benefits. The appellant preferred appeal against the said order and the 2nd respondent by Ext.P1 order dated 26.3.2012 quashed the order of punishment.

3. Alleging that the appellant, who was working as Special Assistant in Kattappana Unit of the Corporation, was on unauthorised absence from duty for different spells during the period 20.1.2004 to 23.10.2007, he was issued with Ext.P2 charge memo and statement of allegations dated 17.12.2009 of the 3rd respondent. On receipt of Ext.P2, the appellant submitted Ext.P3 reply. Regarding the charge levelled against the appellant, the Assistant Transport Officer, Kattappana submitted Ext.P4 report before the 3rd respondent. After conducting enquiry, the Enquiry Officer submitted Ext.P5 report, based on which the

Disciplinary Authority issued Ext.P6 show cause notice proposing to treat the period of unauthorised absence as leave without allowances, not to be counted for any service benefits. On receipt of Ext.P6 show cause notice, the appellant submitted Ext.P7 reply. After considering the explanation offered in Ext.P7, the Disciplinary Authority issued Ext.P8 order dated 14.3.2011 imposing a punishment of barring of increment for six months temporarily and treating the period of absence of various spells during the period from 20.1.2004 to 23.10.2007 as leave eligible without medical certificate to the extent of leave at credit and the remaining period as leave without allowances, not to be counted for any service benefits.

4. Aggrieved by Ext.P8 order of the Disciplinary Authority, the appellant filed appeal before the 2nd respondent. The Appellate Authority, taking a lenient view, modified the order of punishment, by Ext.P9 order dated 26.3.2012, as barring of increment for three months temporarily. All other aspects of Ext.P8 order of the Disciplinary Authority was upheld. Challenging Ext.P9 order passed by the Appellate Authority, the appellant

filed revision before the Kerala State Road Transport Appellate Tribunal, which ended in dismissal by Ext.P10 order dated 28.12.2013. Exts.P8, P9 and P10 orders were under challenge in W.P.(C)No.9038 of 2014. The learned Single Judge by judgment dated 13.7.2015 declined interference holding that, the Disciplinary Authority, the Appellate Authority and the Revisional Authority have found that the appellant is guilty of the misdemeanor alleged warranting imposition of a minor penalty.

5. We heard the arguments of the learned counsel for the appellant and also the learned Standing Counsel for the respondent Corporation.

6. The materials on record clearly indicate that, the appellant was on unauthorised absence from duty for different spells during the period 20.1.2004 to 23.10.2007. The appellant has also no case that, he was sanctioned with leave for any spells mentioned in the statement of allegations. Therefore, the conclusion of the Disciplinary Authority in Ext.P8 order on the question of unauthorised absence of the appellant cannot be termed either perverse or patently illegal. A reading of Ext.P8

order would show that, though the Disciplinary Authority found that the charge proved against the appellant warrant imposition of stringent punishment, taking a lenient view he was imposed with a punishment of barring of increment for six months temporarily and treating the period of absence for various spells during the period from 20.1.2004 to 23.10.2007 as leave eligible without medical certificate to the extent of leave at credit and the remaining period as leave without allowances, not to be counted for any service benefits. Challenging the punishment imposed by the Disciplinary Authority, the appellant filed appeal before the 2nd respondent. Before the Appellate Authority, the appellant could not even prove that he had availed leave with prior sanction from the concerned authority.

7. The Appellate Authority, on a perusal of the disciplinary files, found that in the disciplinary proceedings initiated on the charge of 'irregular in duty' for the period from 1.1.2004 to 21.7.2004 (vide file No.VLA1/24207/04) the appellant submitted medical certificate and fitness certificate issued by Dr.P.G.Krishna Warriar of Kilimanoor for the period

14.8.2004 to 7.3.2005, to readmit him to duty. However, in the present proceedings he claimed before the Enquiry Officer that, during the aforesaid period he availed treatment from another doctor Dr.T.Thomas of Government Ayurveda College, Thiruvananthapuram and produced medical certificate from that doctor for the very same period. It was in such circumstances, the Appellate Authority concluded in Ext.P9 order that, the medical certificates produced by the appellant were not genuine and obtained only for claiming the absence as leave on medical grounds. Further, on perusing the service records of the appellant, the Appellate Authority found that he is a habitual absentee and there is no evidence to prove that before availing leave he had applied for leave with medical certificates. Though the Appellate Authority found no grounds to interfere with the quantum of punishment awarded by the Disciplinary Authority, taking a more considerate view, modified the punishment as barring of increment for three months temporarily.

8. Ext.P9 order passed by the Appellate Authority was under challenge before the KSRTC Appellate Tribunal in Revision

Petition No.3 of 2012. The Tribunal by Ext.P10 order confirmed the findings of the Disciplinary Authority in Ext.P8 order and that of the Appellate Authority in Ext.P9 order and held that, the modified order of punishment imposed on the appellant by the Appellate Authority is not excessive and is proportionate to the gravity of the charge proved against him and as such there is no ground to interfere with the order of the Disciplinary Authority and that of the Appellate Authority.

9. It is well settled that, in matters relating to disciplinary proceedings, this Court cannot act as a Court of Appeal. This Court, in exercise of the jurisdiction under Article 226 or Article 227 of the Constitution of India, shall not venture into re-appreciation of the evidence. This Court can only consider whether the enquiry is held by a competent authority and in accordance with the procedure prescribed in that behalf; whether there is any violation of the principles of natural justice in conducting the proceedings; whether the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the

case; whether the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; whether the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; whether the Disciplinary Authority had erroneously failed to admit the admissible and material evidence; whether the Disciplinary Authority had erroneously admitted inadmissible evidence which influenced the finding; and whether the finding of fact is based on no evidence. Under Article 226 or Article 227 of the Constitution of India, this Court shall not re-appreciate the evidence; interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; go into the adequacy of the evidence; go into the reliability of the evidence; interfere, if there be some legal evidence on which findings can be based; correct the error of fact however grave it may appear to be; or go into the proportionality of punishment unless it shocks its conscience. [See: Union of India and others v. P.Gunasekaran (2015 (2) SCC 610)]

10. Relying on the judgment of the Apex Court in

Krushnakant B.Parmar v. Union of India and another (2012 (3) SCC 178) the learned counsel for the appellant would contend that in the absence of a finding in the enquiry report that the unauthorised absence of the appellant was wilful, the Disciplinary Authority as well as the Appellate/Revisional Authority ought not to have come to the conclusion that he is guilty of the charges levelled against him. In the aforesaid decision the Apex Court was dealing with a case in which the delinquent employee was proceeded departmentally on the charge of unauthorised absence from duty for the period from 3.10.1995 to 7.11.1995, 9.11.1995 to 10.12.1995 and 10.12.1995 to 2.8.1996. The delinquent employee defended the charges by contending that, the Controlling Officer prevented him from signing the attendance register and to attend office and that for certain periods of absence he had also applied for leave. The Apex Court noticed that, though the delinquent employee produced materials to show that the Controlling Officer prevented him from signing the attendance register, the Enquiry Officer ignored such defence evidence based on irrelevant facts and

circumstances and found the delinquent employee guilty of charge. It was in that context, the Apex Court held that if the absence is the result of compelling circumstances under which it was not possible for the delinquent employee to report or perform duty, such absence cannot be held to be wilful. The absence on duty without any application or prior permission, may amount to unauthorised absence, but it does not always mean wilful. In a departmental proceedings, if allegation of unauthorised absence from duty is made, the Disciplinary Authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

11. The judgment of the Apex Court in Krushnakant's case (supra) is on an entirely different factual matrix. In the said case the delinquent employee was on unauthorized absence for short spells. The materials on record indicated that, the Controlling Officer prevented him from signing the attendance register and the Enquiry Officer found him guilty of charge, ignoring such defence evidence and basing his conclusions on irrelevant facts

and circumstances. Therefore, the Apex Court set aside the order of dismissal and ordered reinstatement of the delinquent employee on payment of 50% back wages, considering the fact that he had suffered a lot since the disciplinary proceedings was drawn in the year 1996.

12. In the case on hand, the appellant was on unauthorised absence from duty for different spells during the period from 20.1.2004 to 23.10.2007. He was on unauthorised absence for 120 days for the period from 3.2.2004 to 1.6.2004, 253 days for the period from 12.7.2004 to 21.3.2005, 75 days for the period from 27.4.2005 to 10.7.2009, 89 days for the period from 1.3.2006 to 28.5.2006 and 496 days for the period from 15.6.2006 to 23.10.2007. The appellant has absolutely no case that he was prevented in any manner from attending duties. He could not also produce any reliable materials to show that, he had availed leave for the aforesaid periods with prior sanction from the concerned authority. Based on the materials on record, the authorities came to a definite conclusion that the appellant is a habitual absentee and there is no evidence to prove that before

availing leave he had applied for leave with medical certificates. This is nothing but wilful absence from duty. Therefore, the judgment of the Apex Court in Krushnakant's case (supra) in no way supports the case of the appellant.

13. Another decision of the Apex Court relied on by the learned counsel for the appellant is that in **Chhel Singh v. M.G.B.Gramin Bank, Pali and others** (Civil Appeal No.6018 of 2014). That was a case in which the delinquent employee absented from duty from 11.12.1989 to 24.10.1990 without obtaining prior permission of the competent authority. He was departmentally proceeded against for unauthorised absence. The delinquent employee submitted reply contending that he was seriously ill between 11.12.1989 and 24.10.1990 and therefore the absence was beyond his control and that he never intended to contravene any of the provisions of the Service Regulation. The delinquent employee submitted copies of medical certificates issued by Doctors in support of his claim after rejoining the post. During the enquiry, the delinquent employee submitted list of seven defence witnesses. However, the Enquiry Officer called

only two witnesses and refused to call rest of the five witnesses. The Apex Court noticed that, there was no allegation that the unauthorised absence of the delinquent employee from duty was wilful and deliberate. The Enquiry Officer has also not held that his absence from duty was wilful and deliberate. It is neither case of the Disciplinary Authority nor the Enquiry Officer that the medical reports submitted by him were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, the Apex Court held that, it was not open to the Enquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of 24 days delay.

14. Therefore, the judgment of the Apex Court in Chhel Singh's case (supra) is also on an entirely different factual matrix. In the case on hand, the authorities have found that the appellant is a habitual absentee and there is no evidence to prove that before availing leave he had applied for leave with medical certificates. In the disciplinary proceedings initiated on the charge

of 'irregular in duty' for the period from 1.1.2004 to 21.7.2004 (vide file No.VLA1/24207/04) the appellant submitted medical certificate and fitness certificate issued by Dr.P.G.Krishna Warriar of Kilimanoor for the period 14.8.2004 to 7.3.2005, to readmit him to duty. However, in the present proceedings he claimed before the Enquiry Officer that, during the aforesaid period he availed treatment from another doctor Dr.T.Thomas of Government Ayurveda College, Thiruvananthapuram and produced medical certificate from that doctor for the very same period. Therefore, the Appellate Authority concluded in Ext.P9 order that, the medical certificates produced by the appellant were not genuine and obtained only for claiming the absence as leave on medical grounds. In that view of the matter, the judgment of the Apex Court in Chhel Singh's case (supra) in no way supports the case of the appellant.

15. In the case on hand, the charge levelled against the appellant is unauthorised absence on duty for different spells for the period from 20.1.2004 to 23.10.2007 while he was working as Special Assistant in Kattappana Unit of the Corporation. The

materials on record shows that he was on unauthorised absence for 120 days for the period from 3.2.2004 to 1.6.2004, 253 days for the period from 12.7.2004 to 21.3.2005, 75 days for the period from 27.4.2005 to 10.7.2009, 89 days for the period from 1.3.2006 to 28.5.2006 and 496 days for the period from 15.6.2006 to 23.10.2007. During the enquiry, the appellant could not prove that he had availed leave with prior sanction from the concerned authority. The Appellate Authority as well as the Appellate Tribunal after considering the materials on record came to a definite conclusion that the appellant is a habitual absentee and there is no evidence to prove that before availing leave, he had applied for leave with medical certificates. The appellant could not make out a case that the conclusion made by the Disciplinary Authority, the Appellate Authority and the Appellate Tribunal are wholly arbitrary or based on irrelevant or extraneous considerations. The reasoning of the Appellate Authority in Ext.P9 order and that of the Tribunal in Ext.P10 order, after considering in detail the contentions raised by the appellant, are neither perverse nor patently illegal warranting an interference of this

Court under Article 226 of the Constitution of India. In that view of the matter, we find absolutely no grounds to interfere with the reasoning of the learned Single Judge in the impugned judgment.

In the result, the Writ Appeal fails and the same is dismissed. No order as to costs.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

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P.S. to Judge