

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

WRIT PETITION No.13004 of 2014

P.Radhakrishnan

... Petitioner

-vs-

1.Union of India, rep. by
The Air Vice Marshal
SOA, Head Quarters, Command,
Indian Air Force
Bangalore - 560 006

2.The Air Officer Commanding
Air Force Station
Tambaram, Chennai - 46

3.The Registrar
Central Administrative Tribunal
Chennai - 104

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for connected records pertaining to the passing of the order dated 17.12.2013 in O.A.No.452/2011 on the file of the third 3rd Respondent and quash the same and consequently direct the second respondent to order reinstatement in service with all benefits.

For Petitioner : Mr.G.Justin

For respondents: Mr.V.Venkatesan, SCGSC
1 & 2

ORDER

(delivered by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order dated 17.12.2013 made in O.A.No.452/2011, by which, the Central Administrative Tribunal, Madras Bench, declined to quash the punishment of compulsory retirement order.

2. While working as MTD Gde-II in Base MT Flt at 413 Air Force Station, Tambaram, the writ petitioner, was issued with a charge-memo dated 18.04.2007, containing three Articles of charges, which are as follows:

Article - I

That the said Shri P Radhakrishnan, PA No.36079-T, while functioning as MTD Gde-II in Base MT Flt at 413 Air Force Station, Tambaram remained absent from duty wef 25 Oct 06 till date without permission and sanction of leave from the competent authority.

Shri P Radhakrishnan, MTD Gde-I, PA No.36079-T has by the above act, failed to maintain devotion to duty thereby violated Rule-3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri P Radhakrishnan, PA No.36079-T, while functioning as MTD Gde-II in Base MT Flt at 413 Air Force Station, Tambaram produced false residential address wilfully, thereby the letters sent to his residential addresses to ascertain whereabouts and directing him to report for duty or to submit reason for the absence have been returned by the postal authorities on two occasions.

Shri P Radhakrishnan, MTD Gde-I, PA No.36079-T has by the above act, exhibited lack of devotion to duty thus committed an act of unbecoming of Govt servant and thereby violated Rule-3(1)(iii) of CCS (Conduct) Rules, 1964.

Article - III

That the said Shri P Radhakrishnan, PA No.36079-T, while functioning as MTD Gde-II in Base MT Flt at 413 Air Force Station, Tambaram became a habitual offender in remaining absent from duty for long period without permission/leave application on several occasions. He was awarded punishment of compulsory retirement from service wef 16 Sep 02 for the willful absenteeism and disobeying of lawful order of the competent authorities and re-instated into service vide appellate authority vide TC/10046/3/127/PC dated 06 Mar 2003.

Shri P Radhakrishnan, MTD Gde-I, PA No.36079-T has by the above act, failed to maintain absolute integrity and thereby violated Rule-3(1)(i) of CCS (Conduct) Rules, 1964.

3. The Inquiry Officer, submitted his Report dated 24.12.2007, holding all the three charges as proved. Accepting the findings, the Disciplinary Authority, Air Commanding Officer, vide order dated 08.02.2010, imposed a punishment of compulsory retirement. Petitioner preferred an appeal dated 20.02.2010 to Air Vice Marshal, SOA, HQ Training Command, Indian Air Force, Bangalore (Respondent No.1). Though the appellate authority, held that the third charge, as not sustainable, considering the period of absence, severity of the other two charges, vide order dated 23.11.2010, opined that the punishment of compulsory retirement is commensurate to the finding of guilt. Thus the appellate authority confirmed the punishment.

4. Being aggrieved by the same, writ petitioner filed O.A.No.452/2011 before the Central Administrative Tribunal, Madras Bench, to quash the order dated 08.02.2010 of the Air Commodore, Air Officer Commanding, Air Force Station, Tambaram, Chennai, the disciplinary authority and the order dated 23.11.2010 of the Air Vice Marshal, SOA, Headquarters Training Command, Indian Air Force, Bangalore, the appellate authority, respectively.

5. Before the Tribunal, the writ petitioner assailed the above said orders on the grounds inter alia that the charge memorandum dated 18.04.2007 issued to the petitioner was contrary to the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, Persons with Disabilities Act, 1995). The inquiry was in violation of the principles of natural justice. Finding of the Inquiry Officer, was not supported by evidence and record and therefore, perverse. The disciplinary authority, failed to consider the representation of the petitioner in proper perspective, without appreciating the fact that the service of the petitioner was protected under Section 47 of Persons with Disabilities Act, 1995.

6. Contention has also been made that when the petitioner suffered disability, the respondents ought to have provided an alternate employment other than driver. He has further submitted that the appellate authority has failed to consider the grounds raised, in proper perspective. According to him, charges were not established in the inquiry. On the other hand, petitioner was able to establish that he had applied for leave and produced medical certificates, which was duly recorded by the Inquiry Officer. Further contention has been made that having received leave letters and medical certificates, the department cannot charge him for unauthorised absence, merely because the genuineness of the medical certificate was doubted. For the above said reasons, petitioner has prayed to set aside the orders, stated supra.

7. Defending compulsory retirement, respondents have submitted that the writ petitioner appointed as driver in Indian Air Force Station, Tambaram, with effect from 07.06.1987, was in the habit of abrupt and unauthorised absenteeism from duties, without prior permission/proper leave application and medical certificate. For the acts of omission, commission, on several occasions, action against the writ petitioner was taken resulting in imposition of penalty or warning. Period of absence has been treated as extraordinary leave. On earlier occasions, when he was examined by the Medical Board, Government General Hospital, Madras, he had failed to produce the investigation results, for evaluation of medical records.

8. Respondents have further submitted that from 25th October 2006 to 1st June 2007, for a period of 220 days, the petitioner was continuously absent, without any intimation/leave application. Vide letters dated 19.01.2007 and 29.01.2007, he was directed to report for duty, but the letters were returned undelivered, with an endorsement "left without intimation and returned back to sender". On a reference, vide letter dated 21.07.1995, the police reported that the writ petitioner was not residing in the address given to the department, and that on enquiry, it was found that he was residing at Tambaram. The address given by the petitioner in the Original Application is No.131, Bharatmatha Street, East Tambaram, Chennai - 600 059, was not furnished by him, during his service period and it was not the address furnished during the inquiry also.

9. The writ petitioner reported for duty on 20.06.2007 along with medical certificates/fitness certificate for the period of absence between 25.10.2006 and 01.06.2007. Vide letter dated 08.07.2007, the case was referred to Government General Hospital, Chennai, for second opinion to ascertain the genuineness of the medical certificates. The petitioner did not produce medical treatment records before the Medical Board on 27.07.2007 and hence, Medical Board, Government General Hospital, Chennai, vide Medical Report dated 08.08.2007, informed that the genuineness of his leave, could not be ascertained and therefore, the Board did not recommend regularisation of his leave on medical grounds. Subsequently, when he was directed to appear for the second time on 28.09.2007, he failed to appear before the Medical Board.

10. Before the Tribunal, the respondents have submitted that the petitioner has sent a reply to Article-I of the charge memorandum stating that he had taken treatment for 'disc prolapse' and reported for duty on completion of treatment and fitness certificate. As regards Article - II of the charge, petitioner has submitted that he was in a rented house, bedridden and hospitalised for treatment and therefore, he could not intimate the change of address. As regards Article - III of

the charges, petitioner has submitted that he was not a habitual offender for a long period and he had taken leave due to illness, which was also sanctioned and regularised, as per the leave rules.

11. The respondents have further submitted that, on all the occasions of absence, the writ petitioner submitted leave applications along with medical certificates, on or after joining duty for regularisation of his absence on medical grounds and he never claimed assessment of his case under Section 47 of the Persons with Disabilities Act, 1995. The respondents have further submitted that the Inquiry Officer has followed the procedure, prescribed under CCS (CCA) Rules, 1965 and provided sufficient opportunity to the writ petitioner. They also submitted that the findings were substantiated by evidence on record. The disciplinary authority, after going through the charges, evidence and the material record, accepted the findings of the Inquiry Officer and having regard to the gravity of the charges imposed punishment of compulsory retirement.

12. Before the Tribunal, respondents have further contended that the appellate authority, examined the proceedings of inquiry, with reference to grounds of appeal, and after holding that the writ petitioner, neither produced any evidence in support of his defence nor medical records to substantiate his plea of protection under the Disabilities Act, 1995, confirmed the findings of the disciplinary authority, as regards charges 1 and 2. The appellate authority, held that Article - III of the charge, should not have been mentioned in the charge-memo dated 18.04.2007, and accordingly held that the finding of the disciplinary authority, on charge No.3 as not sustainable. However, considering the long period of absence, the appellate authority, confirmed the penalty of compulsory retirement. For the above said reasons, the respondents prayed to sustain the orders impugned before the Tribunal.

13. Adverting to the averments, submissions advanced, and after considering the judgments of the Hon'ble Apex Court in Appeal (Civil) No.939 of 2003, State of Rajasthan & Anr vs. Mohammed Ayub Naz dated 03.01.2006, wherein the Apex Court held that "absenteeism from office for prolonged period of time without prior permission by the Government servants has become a principal cause of indiscipline which have greatly affected various Government Services" and by further observing that if there is some legal evidence on which findings would be based, then adequacy or even reliability of such evidence would be outside the pale of judicial review, as held in High Court of Judicature vs. Shastrikant S.Patil reported in (2000) 1 SCC 416, and taking note of the decisions of the Hon'ble Apex Court in State of Andhra Pradesh vs S.Sree Rama Rao reported in 1963 (3) SCR 25 : 1963 AIR 1723, Apparel Export Promotion Council vs

A.K.Chopra reported in (1999) 1 SCC 759, State of Madras vs. G.Sundaram reported in AIR 1965 SC 1103, wherein, in the above judgments, the Hon'ble Apex Court reiterated the principles of law that it is not open to the courts/tribunals to interfere with disciplinary proceedings except in the case of no evidence, perversity or surmises or conjectures, the Tribunal held that reappraisal of evidence is not permissible.

14. On the aspect of the writ petitioner's contention regarding protection under Section 47 of the Disabilities Act, 1995, on the facts and circumstances of the case, the Tribunal, has observed that the writ petitioner has not made out a case for disability, supported with material records/certificate and that he had not presented any treatment records before the Medical Board, though his case was referred for the second time. Tribunal has categorically recorded a finding that petitioner would give his leave application, fitness certificate/medical certificate, only after prolonged absence. Taking note of the judgment of the Hon'ble Supreme Court in Om Prakash vs. State of Punjab & Ors reported in (2013) 2 SCC (L&S) 253 : (2011) 14 SCC 682 and by observing that the writ petitioner is reported to be a habitual absentee without prior leave and therefore', does not deserve any sympathy, the Tribunal declined to quash the orders of the disciplinary and appellate authorities, respectively.

15. Though the orders of the Tribunal made in O.A.No.452 of 2011 dated 17.12.2013 is assailed on several grounds, inviting the attention of this court to Article - III of the Charge Memorandum, wherein, there is reference to habitual absenteeism and the order of the appellate authority holding that such charge ought not to have been mentioned in the charge memo at all and the finding of the appellate authority that the guilt of the third charge as not sustainable, Mr.G.Justin, learned counsel for the writ petitioner submitted that when the charge of habitual absenteeism itself was held as not to have been included, the Tribunal committed an error, in confirming the punishment on such alleged habitual absenteeism.

16. Learned counsel for the writ petitioner further submitted that, earlier, alleging that the petitioner was in the habit of repeating willful and unauthorised absenteeism and not intimating the reason from 29.05.2001 to 07.06.2001 and for not reporting to the medical authorities, when directed to do so and for other punishments, he was inflicted with a compulsory retirement was imposed with effect from 16.09.2002, and that the same was cancelled and therefore, the Tribunal has committed an error, in referring the petitioner as a habitual absentee to sustain the penalty of compulsory retirement. According to the learned counsel for the petitioner, though on the basis of proven charges 1 and 2, the respondents, are always empowered to impose penalty, but the same should be proportionate to the

charges and compulsory retirement is disproportionate. According to him, the punishment is disproportionate, and hence required modification.

17. Based on the counter affidavit filed by the Air Officer Commanding, Air Force Station, Chennai, 2nd respondent herein, Mr.V.Parivallal, learned counsel for the respondents submitted that the writ petitioner was unauthorisedly absent for many days and that he had also wilfully produced false residential address. He further submitted that disciplinary proceedings were initiated under Rule 14 of the CCS (CCA) Rules and that three charges were framed. The Enquiry Officer held all the charges as proved. Concurring with the same, the Disciplinary Authority has imposed a punishment of compulsory retirement. On appeal, the finding of Charge No.3 alone, was set aside and other findings of the Enquiry Officer, remain undisturbed. Considering the gravity of the charges, the appellate authority sustained the punishment of compulsory appointment.

18. Learned counsel for the respondents submitted that though past conduct of the writ petitioner, had been taken note of, by the Tribunal, while concurring with the orders of the disciplinary and appellate authorities, still the nature and gravity of the charges, levelled against the petitioner, does not require any modification of the punishment, as prayed for. He also submitted that even the notice issued by the Department, had to be served through the Office of the Deputy Superintendent of Police and that the charge, in this regard, has been held to be proved. Both the disciplinary as well as appellate authorities, the fact finding authorities, have held the charges as proved, and rightly the Tribunal declined to interfere with the same. In such view of the matter, punishment of compulsory punishment does not call for any interference. For the reasons, stated supra, he prayed for dismissal of the writ petition.

Heard the learned counsel appearing for the parties and perused the materials available on record.

19. As regards intimation of change of address, the respondents have contended that during the absence period, he was directed to report for duty, vide letters, dated 19.01.2007 and 29.01.2007, which were sent to the available addresses, by Registered Post. Letters were returned by the postal authorities with remarks, "left without intimation" and were returned to the sender. On verification, during the inquiry, vide letter No.9PM/C 654/1/Prov, dated 24.08.2007, it was found that the sister of the petitioner was staying at the address furnished to the department and the petitioner was residing at No.13, Mettu Street, Ayanavaram, Chennai. During inquiry, the petitioner has stated that when he was on duty, the above letters were returned by the postal authorities, whereas, the letters mentioned in the

Article-II, were indeed sent during his absence from duty. During the inquiry, the petitioner has stated that the address to which, the letters dated 19.01.2007 and 29.01.2007 respectively were sent, was the permanent address, whereas, in his representation he has stated that he was in a rented house, vacated the premises and moved to another house.

20. Nowhere in the medical certificates, it has been mentioned that he was bed-ridden and hospitalized, in any Government Hospital, and not produced any hospital documents or medical treatment records, either before the medical board or the inquiry officer and not even before this Court/Central Administrative Tribunal. Both the charges are held as proved. Procedural irregularity alleged has not been substantiated.

21. In Union of India v. G.Ganayutham reported in 1997 (7) SCC 463, the Hon'ble Supreme Court summed up the legal position relating to proportionality and at Paragraphs 31, held as follows:

31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegally or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards....."

22. In State of Meghalaya and others Vs. Mecken Singh N.Marak, reported in (2008) 7 SCC 580 at paragraph Nos.14 to 17, the Hon'ble Supreme Court held as follows.

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court,

to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.

.....

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

23. In Chairman cum MD, Coal India Limited v. Mukul Kumar Choudhuri reported in 2009 (8) MLJ 460 (SC), after referring to a catena of decisions on the proportionality, the Hon'ble Supreme Court, at Paragraph 26, held as follows:

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

24. In Lucknow K.Gramin Bank (Now Allahabad, U.P.Gramin Bank) & Anr., Vs. Rajendra Singh, reported 2013 (12) SCC 364, on the Doctrine of Proportionality, at paragraph No.16, the Hon'ble Supreme Court, summarised as follows :

"16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;-

(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the

appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

On the facts and circumstances of the case, punishment of compulsory retirement imposed on the petitioner, cannot be said to be disproportionate. Penalty imposed does not shock the conscience of this Court.

25. None of the contentions raised by the petitioner, deserve merit. There is no perversity in the finding and the same satisfy the test of preponderance of probability. No serious flaw in the procedure is made out. In the light of the above decisions, penalty of compulsory retirement, cannot be said to be disproportionate to the charges. In the light of the above discussion and decisions, this Court is not inclined to reverse the order impugned or modify the penalty.

In the result, the Writ Petition is dismissed. No costs.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

asr

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

2.The Air Vice Marshel
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W.P.No.13004 of 2014

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