

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.29192 of 2014

N.Kothandapani

... Petitioner

Vs

1. The Union of India rep.by
The General Manager
Southern Railway, Park Town
Chennai 600 003.
2. The Chief Commercial Manager
Southern Railway, Park Town
Chennai 600 003.
3. The Additional Divisional Railway Manager
Chennai Division, Southern Railway
NGO Annexe, Park Town
Chennai 600 003.
4. The Senior Divisional Commercial Manager
Chennai Division, Southern Railway
NGO Annexe, Park Town
Chennai 600 003.
5. The Chief Vigilance Officer
Southern Railway, Park Town
Chennai 600 003.
6. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order dated 16.09.2014 passed by the sixth respondent in O.A.No.355 of 2011 confirming the order dated 31.01.2011 in No.P

(A)/86/2008/487 of the second respondent and the order dated 19.01.2010 of the third respondent herein in M/CON/C/1445; to quash the same and consequently to direct the respondents 2 to 4 herein to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mrs.AL.Ganthimathi

For Respondents : Mr.V.Radhakrishnan
Senior Counsel for
Mr.V.G.Suresh Kumar for
RR1 to 5
R6- Tribunal

O R D E R

(Order of the Court was made by HULUVADI G.RAMESH,J.,)

The prayer in the writ petition is for the issuance of a writ of certiorarified mandamus to call for the records relating to the order dated 16.09.2014 passed by the sixth respondent in O.A.No.355 of 2011 confirming the order dated 31.01.2011 in No.P (A)/86/2008/487 of the second respondent and the order dated 19.01.2010 of the third respondent herein in M/CON/C/1445; to quash the same and consequently to direct the respondents 2 to 4 herein to reinstate the petitioner into service with all attendant benefits.

2. The crux of the case is as follows:

(i) While the petitioner was working as Ticket Collector in Chennai Central, Southern Railways, he was issued with the charge memo for the following reasons:

(a) that he had instigated one Vijayakumar not to co-operate with the vigilance in the check,

(b) that he abused using un-parliamentary words and attempted to assault the Head Constable, who was participating as independent witness in the Vigilance Team in Train No.2656 on 26.10.2006 and

(c) that the petitioner violated Rule 3.1 (ii) and (iii) of the Railway Service (Conduct) Rules, 1966 and Section 146 of the Railways Act, 1989.

(ii) Enquiry proceedings were initiated and the fourth respondent vide order dated 24.09.2008 passed

an order recommending punishment of compulsory retirement from service and 2/3 rd of pension and gratuity to be paid as per rules to the petitioner and two others.

(iii) Aggrieved by the said order, the petitioner preferred appeal. In the meantime, in the criminal case filed, the petitioner was acquitted. Thereafter, the third respondent vide order dated 19.01.2010 passed an order finding the petitioner guilty of charge No.2 alone and modified the earlier order of punishment ordering compulsory retirement into one of reinstatement into service, however, with reduction to the time scale of Rs.5,200-20,200 with Grade Pay of Rs.2,400/- for a period of 72 months with recurring effect fixing the Basic Pay at Rs.8,560/- with Grade Pay at Rs.2,400/-. Further the intervening period from the date of effecting compulsory retirement to the date of restoration will be treated as neither duty nor leave.

(iv) As against the same, the petitioner filed revision petition and the revisional authority confirmed the order passed by the Appellate Authority. Being dissatisfied with the same, the petitioner moved the Central Administrative Tribunal, Madras Bench and the Tribunal considering the facts and circumstances of the case dismissed the Original Application filed by the petitioner. Being aggrieved by the same, the petitioner is before this Court.

3. Learned counsel appearing for the petitioner submits that the Tribunal has fell into error in not considering any of the grounds raised by the petitioner and in dismissing the application by confirming the order passed by the Appellate Authority. She further submitted that the second charge levelled against the petitioner was not proved in a manner known to law. Even in the criminal case filed, the petitioner was acquitted. In such circumstances, the Tribunal ought to have considered the case of the petitioner and set aside the punishment imposed upon him. She also submitted that for the charges levelled against the petitioner, the penalty imposed is too disproportionate. Accordingly, she prays for setting aside the same.

4. Per contra, the learned Senior Standing Counsel representing the respondent-Railways submits that the Tribunal after considering the entire facts and circumstances of the case, dismissed the application filed by the petitioner by

confirming the order passed by the Appellate Authority, warranting no interference in this writ petition.

5. To stand-by his contention, he also by citing the judgments of the Hon'ble Apex Court reported in (2014) 9 SCC 315 [Life Insurance Corporation of India and others vs. S.Vasanthi] and (2013) 12 SCC 372 [Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and another submitted that law is well settled and the Apex Court has carved out certain principles relating to the imposition of punishment and interference by the High Courts while exercising its writ jurisdiction. Accordingly, he prays for the dismissal of the writ petition.

6. It is submitted by the learned Senior Standing Counsel appearing for the Railways that the other co-delinquents who were already imposed with the some punishment of dismissal from the service by the original authority have also got their original punishment modified by the Appellate Authority as that of the present case and he further submitted that the said order passed by the Appellate Authority have also become final. He also submitted that in the present case, the petitioner has served the punishment and he is due to retire from service on 30.06.2016 and accordingly, he will get all the benefits as per the procedure in accordance with the modified punishment.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondent-Railways and perused the impugned order.

8. In the judgment reported in (2013) 12 SCC 372 supra, the Hon'ble Apex Court while holding that the judicial review of the quantum of punishment is available with a very limited scope has held that the Courts would interfere only when the penalty imposed appears to be so disproportionate to the nature of misconduct that it is shocking to the conscience of the Court. Accordingly, in para No.19 of the judgment, it has laid down the following principles to be followed, if interference is warranted in the punishment imposed by the disciplinary authority.

"19. The principles discussed above can be summed up and summarised as follows:

19.1. 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.

19.2. 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.

19.3. 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.

19.4 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.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were 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 employee concerned 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 the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

9. In yet another judgment reported in (2014) 9 SCC 315 [supra], the Hon'ble Apex Court while setting aside the judgment passed by the High Court of Madras has held that the High Court has transgressed its limits of judicial review by itself assuming the role of sitting as a departmental appellate authority, which is not permissible in law. It further stated that the High Court has not even stated as to how the penalty imposed was bad in law and simply labelled it to be "harsh" that too with no reasons. While inter-meddling with this penalty, the only epithet used was "to secure the ends of justice". In the absence of any exercise undertaken by the High Court that how it perceived such a penalty to be "harsh", there was no

reason to interfere with the same. It also held that considering the very serious charges levelled against the respondent therein, the penalty imposed was not shockingly disproportionate.

10. Considering the aforesaid well settled legal position and having heard the learned counsel for the respective parties, we are of the view that the punishment imposed upon the petitioner does not require re-consideration. Since the punishment of compulsory retirement imposed by the disciplinary authority was modified by the appellate authority into one of reinstatement into service, however, with reduction to the time scale of Rs.5,200-20,200 with Grade Pay of Rs.2,400/- for a period of 72 months with recurring effect fixing the Basic Pay at Rs.8,560/- with Grade Pay at Rs.2,400/-.

11. The learned Standing Counsel representing the respondent-Railways also produced the work sheet showing that in view of the aforesaid modification in the punishment, there is no monetary loss caused to the petitioner; however, if the punishment of compulsory retirement is imposed, the petitioner would have suffered monetary loss.

12. In the circumstances, knowing our limitations and that the scope of the High Court in exercising the writ jurisdiction is limited as per the aforesaid judgments of the Hon'ble Apex Court and the order impugned could be interfered only if there is any perversity or illegality or the same has been passed in violation of the principles of natural justice, further considering the fact that the appellate authority having taken note of the situation, saved the petitioner from suffering from any monetary loss by modifying the punishment imposed by the disciplinary authority and that the Tribunal also after considering all these aspects had rightly dismissed the application filed by the petitioner, we do not find any reason to interfere with the impugned order passed by the Tribunal.

13. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager
Union of India
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+lcc to Mrs.AL.Ganthimathi, Advocate, S.R.No.24124

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NR(CO)
CA(13/05/2016)

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