

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2016

Coram:

The Honourable Mr.Justice R.SUDHAKAR
and
The Honourable Mr.Justice S.VAIDYANATHAN

W.P.No.8927 of 2016

J.Narasimhan

...Petitioner

Vs

1 Union of India
Rep. by the Chief General Manager
BSNL - Chennai Telephones
78 Purasawakkam High Road
Chennai-600 010

2 Deputy General Manager
(NOW-C & A SW) CFA
40 E CIPET Road
TVK Industrial Estate
Guindy Chennai-600 032

3 The Divisional Engineer
BSNL - Chennai Telephones
Tambaram Division
NO.9 M.E.S. Road East Tambaram
Chennai-600 059

4 The Registrar
Central Administrative Tribunal
Madras Bench
High Court Campus,
Chennai-600 104.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the entire records relating to file order passed by the 4th respondent in O.A.No. 1074 of 2013 dated 15-10-2015 and quash the same and consequently direct the 1st respondent to reinstate the petitioner and pay the back-wages attendant benefits and all other statutory service benefits.

For Petitioner : Mr.K.Govindan

O R D E R
(Order of the Court was made by S.VAIDYANATHAN,J)

The petitioner has come forward with this writ petition, challenging the order of the 4th respondent/Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in O.A.No. 1074 of 2013 dated 15-10-2015 and to consequently direct the 1st respondent to reinstate the petitioner and pay the back-wages, attendant benefits and all other statutory service benefits.

2. The petitioner joined the BSNL in the year 1993 and he had all along been a sincere and dedicated employee to BSNL. He worked as Group D employee. During the service, he absented himself from 06.12.2005 to 15.12.2010 without intimation or prior permission or sanction of leave. For his unauthorized absence, departmental proceedings came to be initiated by issuing a charge memo dated 15.12.2010. The petitioner admitted his unauthorized absence. The disciplinary authority appointed an Enquiry Officer, who conducted a detailed enquiry and based on his report dated 01.06.2011, the disciplinary authority, by an order dated 08.06.2012, came to the conclusion that the charges levelled against the petitioner were proved and that he should be imposed with the punishment of compulsory retirement, however, with all other benefits viz., gratuity and pensionary benefits.

3. Aggrieved over the said order of the disciplinary authority, the petitioner, preferred an appeal on 28.06.2012 before the appellate authority, who rejected the plea of the petitioner by an order dated 03.12.2012. Aggrieved over the said order, the petitioner preferred a review petition before the reviewing authority on 03.01.2013, who rejected the same by an order dated 21.11.2013.

4. Being unsuccessful at all levels, the petitioner preferred an Original Application No.1074 of 2013 before the Tribunal, challenging the orders passed by the disciplinary authority, appellate authority as well as the reviewing authority.

5. The Tribunal, after considering the submissions made by the learned counsel on either side and after perusing the materials available on record, accepting the medical records relating to the period from February 2009 to August 2009, by stating that the petitioner has admitted his absence and no material has been placed before the Enquiry Officer to justify his unauthorized absence for a long period from 2005, came to the conclusion that the punishment of compulsory retirement imposed by the disciplinary authority cannot be said to be disproportionate and finding no valid ground to interfere with the order passed by the disciplinary authority, as confirmed by the appellate authority and reviewing authority, dismissed the original application filed by the petitioner.

6. Finding that there is no reason to interfere with the order of the disciplinary authority, appellate authority and reviewing authority, while dismissing the original application, the Tribunal has granted the following relief:-

"I, S.Mohan, AGM (NWO), Tambaram, BSNL CDA Rules, 2006, Chennai Telephones being the competent Disciplinary Authority in exercise of powers under Rule 34 of BSNL CDA Rules, 2006 and schedules appended thereto and in accordance with the procedures laid down in Rule 36 and 37 ibid, hereby order COMPULSORY RETIREMENT of the said Shri.J.Narasimhan (HR.No.200006405) Gr. D, from service as per rule 33 B(i) of BSNL CDA Rules-2006 with immediate effect.

It is further ordered that the said official Shri.J.Narasimhan, (HR.No.200006405) Gr. D shall be paid pension and Gratuity as admissible for the pensionable service rendered by him, if any.."

Aggrieved over the same, the petitioner is before this Court.

7. Heard the learned counsel for the petitioner.

8. At this juncture, it is relevant to extract below the analysis of the reviewing authority based on the materials placed before him.

"For the whole period of absence which extends more than five years, the petitioner had submitted a single medical certificate issued by Dr.T.K.Mohankumar, M.B.B.S., D.A., Sr.Assistant Surgeon, Department of Anesthesiology dated 14.03.2011 which warrants more doubts about the genuineness of the disease as per the discharge summaries submitted. The following doubts have no answer in the above medical certificate.

: No medical certificate/inpatient treatment certificate from any hospital is produced for a long period from 16.12.2006 to 20.02.2009 for a severe problem which prevented the petitioner from not even intimating to the office.

: No medical certificate/inpatient treatment certificate from any hospital is produced for a period from 23.04.200 to 25.07.2009 and 18.08.2009 to 15.12.2010.

: Why the medical certificate for an 'Ortho' problem has not been issued by an 'Ortho' specialist. If the petitioner had taken the treatment from Dr.T.K.Mohankumar, M.B.B.S., D.A., Sr.Assistant Surgeon, Department of Anesthesiology during the period from 06.12.2006 to 20.02.2009 & 23.04.2009 to 25.07.2009 and 18.08.2009 to 15.12.2010, other than the inpatient period at

Govt. Stanley hospital, no material evidence is given. This raises serious doubts about the worthiness of the medical certificate issued by the above doctor on 14.03.2011.

: It is quite contradictory that, the serious/grave health problems stated in the discharge summaries dated 22.04.2009 & 17.08.2009 have found no place in the medical certificate vis-a-vis the health problems stated by the medical certificate issued by Dr.T.K.Mohankumar, M.B.B.S., D.A., Sr. Assistant Surgeon dated 14.03.2011, found no place in the history para of discharge summaries.

On perusal of the medical certificate dated 14.03.2011 from Dr.T.K.Mohankumar, M.B.B.S., D.A., Sr. Assistant Surgeon, Department of Anesthesiology, submitted to the Appellate Authority, it is found that the submission of this document is an after thought.

The copy Discharge summary submitted by the petitioner along with appeal dated 27.06.2012, stipulates his inpatient treatment with Govt. Stanly Hospital, Chennai covers periods from 21.02.2009 to 22.04.2009 & 26.07.2009 to 17.08.2009. His unauthorized absence over a period of five years cannot be justified by taking inpatient treatment for a period of 84 days that too during 2009. He has not produced any material evidence before the Inquiry Officer or to that of the Disciplinary Authority justifying his absence.

Moreover, it is also found from the records that the petitioner was found to be absenting himself on several earlier occasions given below:

27.11.2002 to 29.04.2003 ..	154 days	]
05.05.2003 to 21.12.2003 ..	231 days	]
01.01.2004 to 30.03.2004 ..	90 days	]
	Total	849 days
01.04.2004 to 24.10.2004 ..	207 days	]
26.10.2004 to 31.10.2004 ..	6 days	]
21.02.2005 to 31.07.2005 ..	161 days	]

It is quite evident that, during the above three year spell, the petitioner is absent for almost two and half years. This shows the most irregular attendance and his least bothered mentality towards duty. Further, for all the above leave periods, no prior intimation/leave letter was given. All are unauthorized absents".

9. We have carefully considered the submissions made by the learned counsel for the petitioner. We have perused the medical records and also the procedure adopted by the respondent department in the enquiry. We find that the

procedure adopted is in compliance of the principles of natural justice. Sufficient proof was given and explanation was considered and by a reasoned order, the impugned proceedings have been passed. Therefore, we are of the view that there is no reason to challenge the same, alleging irregularity or impropriety in the proceedings. So far as the factual aspect is concerned, there are no genuine reasons for the petitioner's absence for the period from 2005-2008, as records speak only for the period from February 2009 to August 2009 for taking treatment. The petitioner would not have absented himself from duty without prior permission had he been a workaholic. But, unfortunately, he is a known Alcoholic/Smoker as could be seen from the Discharge Summary, dated 21.02.2009, issued by Institute of Surgical Gastroenterology & Liver Transplant, Chennai.

10. In these circumstances, we find that the orders of the authorities are just and reasonable. Hence, the writ petition is dismissed with a direction to the authorities to disburse all the benefits forthwith to the petitioner, as mentioned in paragraph No.6 supra, if any, if not already disbursed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

- 1 The Chief General Manager
Union of India
BSNL - Chennai Telephones
78 Purasawakkam High Road
Chennai-600 010
- 2 Deputy General Manager
(NOW-C & A SW) CFA
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Chennai-600 059.
- 4 The Registrar
Central Administrative Tribunal
Madras Bench High Court Campus Chennai-600 104

+1cc to Mr.K. Govindan, Advocate, S.R.No.15389

BVR(CO)
EU(24/03/2016)