

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITON Nos. 6564 and 1261 OF 2006

COMMON ORDER:

Petitioner in W.P.No.6564 of 2006 is a Senior Security Officer and petitioner in W.P.No.1261 of 2006 is a Senior Security Guard working in M/s.Hindustan Shipyard Limited. In connection with discharging of their duties alleging misconduct falling within the scope of Rule 5 of the Hindustan Shipyard Officers' Conduct, Discipline, and Appeal Rules, 1978, a common charge Memo was issued against both the petitioners. In terms of the charge memo issued to the petitioner in W.P.No.6564 of 2006 the allegation is with respect to his failure to verify the daily entries and compare whether the total number of workers as recorded in the token registers are correctly reflected in the monthly attendance abstracts prepared by token room incharge. So far as the petitioner in W.P.No.1261 of 2006, the specific allegation is that he in collusion with N.Sanyasi Raju has permitted more number of contract workers than recorded between July to December, 2000 which resulted in under reporting of 63,731 man days in the attendance abstracts and in payment of PF & ESI Contributions in respect of workers engaged by the contractors. A common enquiry officer was appointed for both the petitioners and he found that the charges are proved against the petitioners. Appeals filed by the petitioners before the appellate authority and the Revisions also came

to be dismissed. Challenging the same, petitioners have approached this court by these writ petitions.

2. Though the learned counsel for the petitioner in W.P.No.6564 of 2006 has raised number of grounds in the writ petition at the time of argument, he has confined his argument only to the extent of pleading the disproportionate punishment having been meted to the petitioner. It is the specific submission of the learned counsel for the petitioner that petitioner is a senior superior officer entrusted with overall supervision and it is not his duty to verify the daily entries and compare the total number of workers as recorded in the token registers and whether they are correctly reflected in the monthly attendance abstracts prepared by token room incharge. The explanation submitted by the petitioner to the show cause notice as to why his services cannot be terminated based on the enquiry report categorically stated that he was the only officer who was entrusted with the duties in Hindustan Shipyard Limited, however, he has owned up responsibility for improper supervision. Learned counsel also would further submit that though a vague allegation was made that there was some element of dishonest gain, there was neither any specific charge nor even remote material before the enquiry officer to substantiate such allegation. In those circumstances, learned counsel submits that the imposition of a major penalty of removal from service under Section 25(f) is not warranted. Learned counsel also would submit that the appellate authority failed to assign any reasons and

non assignment of the reasons in the order itself is a ground for setting aside the orders of the appellate authority. Learned counsel would place reliance on the judgment of the Supreme Court reported in ***S.R.Teswari v. Union of India and Another***¹.

3. Learned counsel appearing for the writ petitioner in W.P.No.1261 of 2006 submits that the petitioner was not permitted to take defence assistance and thereby he was denied with the fair trial before the enquiry officer. Learned counsel also submits that during the period there being huge rush there was some lapse but that by itself does not warrant the imposition of a major penalty especially considering the unblemished service of the petitioner. Learned counsel would also submit that the appellate authority failed to record reasons. Further, the learned counsel would submit that there is discrimination while in case of one S.Mangadas and N.Yesupadam and in spite of the grave and serious charges proved against them, they were given a lesser punishment. In those circumstances, learned counsel prays for setting aside the dismissal order.

4. On the other hand, learned counsel appearing for the respondents by drawing specific attention to the counter affidavit and enquiry report would submit that so far as N.Sanyasi Raju, petitioner in W.P.No.6564 of 2006 is concerned had availed the services of one N.Bhima Rao as defence assistant. As a matter of fact, when an adjournment was sought on the ground that the said Bhima Rao was

¹ (2013) 6 SCC 602

not available on 25.07.2003, 07.08.2003 and 05.04.2000, on 18.08.2003 as they were not able to bring the said defence assistant to the enquiry they opted to participate and defend themselves on their own. In those circumstances, learned counsel submits that there is no infirmity in conducting of the enquiry and as such the action of the disciplinary authority and imposing punishment, which is commensurate with the offence alleged and with the charges proved, cannot be found fault and thus prays for dismissal of the writ petition.

5. Having considered the respective submissions and on perusal of the material on record, at the outset, it may be mentioned that the charges leveled against the petitioner in WP No.6564 of 2006 and petitioner in W.P.No.1261 of 2006 are different. So far as Sanyasi Raju is concerned, he is overall incharge of supervision of the discharge of duties by his subordinates. Though it can be said that being a overall in charge he is required to take responsibility, in the absence of any specific allegation on deliberate and wanton neglect to discharge his duties amounting to dereliction of duty, it can be said to be a slippage in supervision and cannot be said to be a grave misconduct. It may be noted that Rule 5 of the Rules sets out as many as 39 types of misconducts.

6. So far as petitioners are concerned, in the charge sheet misconduct alleged against the petitioner falling within rule 5(1), 5(2), and 5(5). Rule 4 is mentioned which enumerates the general duties. In the present case, the charge memo issued with respect to both the

petitioners does not fall within the misconduct as defined under Rule 5 either 5(1) or 5(2). At best, the same may fall within the scope of Rule 5(5) i.e., acting in a manner prejudicial to the interests of the Company.

7. There is no financial irregularity, as such, which was alleged against both the petitioners. Admittedly, it is the duty of the Senior Security Guard to ensure allowing of the individuals who are authorized to enter into the premises and ensure maintenance of proper record. It is an admitted fact that more number of workers were permitted into the shipyard premises than the authorized. The act of misconduct alleged against the security guard and the lapse on the part of the petitioners is of serious nature as allowing unauthorized persons into the yard may result in sabotage activities besides exposing the persons allowed to accidents etc. It may be born in mind that the very purpose of engaging the CISF is to ensure the absolute safety of the organizations both with respect to the organizations men and material.

8. In that context, it cannot be said that the findings of fact recorded against the petitioners in these writ petitions is incorrect. The finding that the misconduct attributed to the petitioners having been proved the argument otherwise cannot be accepted. Likewise, so far as the petitioner in W.P.No.1261 of 2006 though there is an element of laxity on the petitioner, considering the nature of the duties imposed on him particularly in the context of the only security incharge during that period, and in the absence of motives, the same may only be termed as an element of dereliction of duty. In strict sense the same

does not fall within the definition of 'misconduct' as defined under Section 5(5). While R.25 enumerates the nature of penalties both major and minor, which can be imposed, there is no clarity when a major penalty can be imposed or a minor penalty can be imposed. The same has been left to the absolute discretion of the disciplinary authority. In those circumstances, there is a duty cast on the disciplinary authority to weigh the nature of the proved misconduct vis a vis the penalties that may be imposed.

9. In the facts of the present case, both the petitioners have been imposed with major penalty of removal and dismissal from services respectively. In the absence of clear allegations of any fraud or dishonesty or proven financial irregularity against the petitioners, the imposition of major penalties of removal and dismissal appear to be disproportionate. In those circumstances, the same require re-consideration. The order of the disciplinary authority, as confirmed, is set aside directing the disciplinary authority to reconsider the matter to the limited extent of the punishments imposed against the respective petitioners considering the nature of duties which they discharge.

The Writ Petitions are accordingly disposed of. Considering the fact that both the petitioners have already attained the age of superannuation, the entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. As a sequel,

the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

December 27, 2016
LMV

