

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1794 of 2011

ORDER:

Initially petitioner was appointed as conductor on contract basis in the year 1999 and was regularized in the year 2001. On 29.08.2007, a charge sheet was issued alleging that petitioner was unauthorizedly absent from duties from 17.09.2007 to 27.09.2007. After conducting enquiry, Enquiry Officer held the charge as proved vide Enquiry Report dated 20.01.2008. Accepting the findings of the Enquiry Officer, the Disciplinary authority issued show cause notice dated 18.02.2008. Petitioner filed his explanation to the said show cause notice. By order dated 10.04.2008, petitioner was removed from service. Aggrieved thereby, petitioner preferred appeal on 19.04.2008. The Appellate Authority having regard to the grounds raised in the appeal, modified the punishment of removal to that of reduction of basic pay by two incremental stages with cumulative effect and also directed treatment of period of removal from service as period 'not on duty'. Aggrieved thereby, this writ petition is filed.

Heard learned counsel for the petitioner as well as the learned Standing Counsel for the respondent-Corporation.

Learned counsel for the petitioner submits that the petitioner was absented from duties for a period of ten days on account of his illness. According to learned counsel, petitioner was suffering from Jaundice and he took treatment in his native village. After recouping from illness he reported to duty. Therefore, punishment imposed on the petitioner by the appellate authority is too severe and disproportionate to the delinquency alleged and proved. Learned counsel further submits that the appellate authority while considering the appeal also took into consideration the subsequent absence from duties from 29.03.2008 to 09.04.2008. He, therefore, submits that appellate authority was influenced by the subsequent absence while

imposing the modified punishment, which is illegal.

Learned Standing counsel submits that charge is proved and the fact that petitioner was subsequently absented also shows his recklessness to work properly. Hence, the punishment is validly imposed. He further submits that no material was produced by the petitioner in support of the contention that his absence was due to illness and during that period he took treatment. Learned Standing counsel also submits that there was no justification for the petitioner to take treatment for his ill-ness in his village when the hospitals run by the Corporation are available and the petitioner ought to have taken treatment in any of the hospitals run by the Corporation. He further submits that petitioner ought to have informed competent authority about his ill-ness and applied for sick leave. He, therefore, justifies the punishment imposed by the appellate authority.

Admittedly, the petitioner was absented from duties from 17.09.2007 to 27.09.2007, for ten days. According to petitioner, his absence was on account of his ill-ness as he was suffering from Jaundice. As per prevailing practice, he took native treatment in his village. Thus, for a period of ten days on account of ill-ness, petitioner was absent from the duties.

The only question for consideration is 'whether in the factual background, the punishment as modified by the appellate authority was validly imposed and whether the punishment is disproportionate to the delinquency alleged and proved?'

The orders of the disciplinary authority as well as the appellate authority and the other material available on record are silent as to the conduct of the petitioner prior to relevant period of his absence. The Appellate authority was conscious that it was the first instance of absence from duties by the petitioner. Thus, it is clear that it was the

solitary instance in the service of the petitioner from the year 2001 till 2007. The absence was for ten days, that too on medical ground and it is also not in dispute that the petitioner was not subjected to medical examination by the competent authority after he returned to duties to find out whether the claim of the petitioner that he was unwell and that was the reason for not attending the duties is true. Thus, the stand of the petitioner that he was unwell and took treatment in his village is not seriously denied by the Corporation. It is not unusual that persons attacked with Jaundice would take native treatment in preference to allopathic treatment. Further more, though Appellate authority agreed with the contention of the petitioner that punishment of removal from service is severe and disproportionate, still imposed a severe penalty of reduction of basic pay for two years with cumulative effect, apparently influenced by the subsequent absence of the petitioner from duties for a period of 12 days, which was after the show cause notice for removal and before the removal order was passed. As seen from the order dated 10.04.2008, the disciplinary authority does not refer to subsequent absence in the interregnum period. It is not denied that no show cause notice was issued to the petitioner calling for explanation for the alleged absence. Thus, without ascertaining the reasons for subsequent absence, the appellate authority could not have taken into consideration the subsequent absence while imposing the punishment in modification of punishment of removal from service. To this extent, the decision of the appellate authority needs to be interfered with. If this subsequent period of absence is ignored, the only period of absence remains for consideration for imposing appropriate punishment is 10 days between 17.09.2007 to 27.09.2007.

In view of the fact that petitioner was not subjected to any disciplinary action earlier and that the petitioner has valid reason for absence i.e. his ill-ness on account of Jaundice and that the petitioner

was not subjected to medical examination subsequent to reporting to duties, I am of the considered opinion that punishment of reduction of basic pay for two years with cumulative effect and treating the period of 'removal from service' as 'not on duty' is disproportionate and not commiserate with gravity of the allegations proved. Hence, the order of appellate authority is set aside and the matter is remitted to the appellate authority to reconsider for imposing appropriate punishment commiserate with the delinquency alleged in the charge sheet and proved and consider imposing lesser punishment than the punishment imposed on him. Entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

Accordingly, the impugned order is set aside to the extent indicated above i.e. to the extent of imposition of punishment and the matter is remitted back to the appellate authority as observed above.

Miscellaneous Petitions pending in this Writ Petition, if any, shall stand closed. No order as to costs.

P.NAVEEN RAO, J

19th July, 2016
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