

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.29897 of 2015

Dr.Peter Bara

.. Petitioner

vs.

1. The Union of India, Rep. by the Secretary,
Railway Board, New Delhi.
2. The Deputy Secretary/E(O)/I,
Railway Board, New Delhi.
3. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.
4. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to 5th respondent/Tribunal's order made in O.A.No.1162 of 2013 dated 29.07.2015, to quash the same and to consequently direct the respondents to reinstate the petitioner in service with all benefits including back wages both service and monetary and other benefits thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.V.G.Sureshkumar (for R1 to R3)

R4 - Tribunal

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records relating to 5th respondent/Tribunal's order made in O.A.No.1162 of 2013 dated 29.07.2015, to quash the same and to consequently direct the respondents to reinstate the petitioner in service with all benefits including back wages both service and monetary and other benefits thereto.

2. The facts which are essential to the disposal of the writ petition would run as follows. The petitioner is a doctor and was appointed under IRMS on 22.09.1984. Subsequently he was promoted as senior scale DMO on 26.10.1989 and further promoted as senior DMO on 25.06.2002. While he was working as senior DMO at Sub-Divisional Hospital, Erode, he was issued with major penalty charge memo on 08.01.2008 alleging that during June 2007 he had demanded and accepted illegal gratification of Rs.100/- from an employee for placing him under the sick list. Pursuant to the above charge memo, the Disciplinary Authority vide his proceedings dated 26.03.2008 appointed R.Rajamani as Inquiry Officer to inquire into the charges framed against the petitioner. According to the petitioner the enquiry proceeded with pre-determination and biased manner targeting the petitioner, in a circumstance that there was no eye-witness, no independent witness and the Decoy witness brought by the vigilance team also did not support the case of the department. The trap was not arranged as per requirements of para 307.4, 307.5 and 307.7 of the Railway Vigilance Manual, 2006. The Enquiry Officer has not followed the principles of natural justice, apart from Rules and Regulations concluded the inquiry by holding that the sole charge against the petitioner stand proved. Therefore the petitioner was directed to submit his explanation for the proposed punishment and the petitioner has also submitted his explanation with the plea of innocence. However, the Disciplinary Authority recommended for major punishment of dismissal from service and the Hon'ble President by his proceeding dated 23.03.2011 imposed petitioner with penalty of dismissal from service w.e.f. 07.04.2011.

3. The further case of the petitioner is that the revision petition filed by the petitioner under Rule 25 of Railway Servants (Disciplinary and Appeals) Rules against the above order of the Disciplinary Authority, without proper appreciation of facts came to be rejected by the Director/E(O)I, Railway

Board, vide his order dated 22.05.2013. Aggrieved over the said order of rejection, the petitioner filed O.A.No.1162 of 2013 before the Central Administration Tribunal, Madras Bench challenging both the above orders dated 23.03.2011 and 22.05.2013 respectively. The Central Administrative Tribunal without proper appraisal of facts, disposed of the above O.A., by modifying the penalty of "Dismissal from Service" to that of "Removal from Service" by its order dated 29.07.2015. Challenging the said order of the Central Administrative Tribunal the petitioner has filed this instant writ petition.

4. The respondents 1 to 3 filed counter affidavit to the writ petition and contented that the petitioner has committed gross misconduct by demanding and accepting an illegal gratification to the tune of Rs.100/- from an employee for placing him under sick list. The Inquiry Officer appointed by the department has conducted his enquiry in a proper prospective by giving reasonable opportunity to the petitioner to prove his innocence. The Inquiry Officer completing his enquiry submitted his report dated 12.10.2008 by holding that the charge against the petitioner stand proved. Hence based on the report of the Inquiry officer, the petitioner was ordered to be dismissed from service w.e.f 07.04.2011. The case was referred to Union Public Service Commission, an autonomous, Constitutional organization which took Judicial and independent view after looking into all the materials on record and advice the case on hand with imposing penalty of dismissal from service. Thereafter it was decided by the Hon'ble President that the penalty of "dismissal from service" should be imposed on the petitioner. The copy of the Railway Boards order dated 23.03.2011 was served on the petitioner. The revision petition filed by the petitioner on 15.07.2011 under Rule 25 of Railway Servants (Discipline and Appeals) Rules 1980 against the penalty of dismissal from service was rightly rejected and the said order was communicated to the petitioner on 25.05.2013. Thereupon, the petitioner filed O.A.No.1162 of 2013 before the Central Administrative Tribunal, Madras Bench challenging the order made in revision petition and the same was disposed of by the Central Administrative Tribunal, Madras Bench by modifying the penalty of "dismissal from service" to that of "removal from service" by order dated 29.07.2015. Challenging the same, the petitioner has filed the present writ petition.

5. We heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner and Mr.V.G.Sureshkumar, learned counsel appearing for the respondents 1 to 3 and all the relevant materials available on records are perused.

6. It is the contention of the learned counsel for the petitioner that the inquiry conducted by the Enquiry Officer is not in accordance with Rules and not as contemplated in para 307.4, 307.5 and 307.7 of the Railway Vigilance Manual, 2006. The Learned Counsel for the petitioner would draw our attention to the Indian Railway Vigilance Manual, 2006 to the above said relevant paras. For better appreciation of the case the above said paragraphs of the Indian Railway Vigilance Manual is extracted hereunder:

Indian Railway Vigilance Manual, 2006
[Chapter-III]

307. Department trap cases-Procedure & Guidelines:

307.4- In addition, the Investigating Officer/Inspector should immediately arrange one or more officials (gazetted or non-gazetted or a combination of gazetted & non-gazetted) to act as independent witness/witnesses. It is imperative that all Railway employees should assist and witness a trap, whenever they are approached by the Vigilance bench. Refusal to assist or witness a trap without sufficient reason can be construed as breach of duty, making the person liable to disciplinary action.

307.5- Proper execution of the trap is very important. The following important points should be kept in view:

i) One or more responsible and impartial witness/ witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification. This would squarely meet the likely defence of he accused that the money was actually received as a loan or something else.

ii) The transaction should be within the sight and hearing of the independent witness/witnesses.

iii) There should be an opportunity to catch the culprit red-handed immediately after the bribe money has changed hands so that the accused may not be able to get rid of it.

iv) The witnesses selected should not have appeared as witnesses in earlier case of the department. It is safer to take a witness a Government employee who belongs to some other department.

v) It is preferable to take a written complaint from the decoy. The complainant must specifically give the name of the person receiving the money, motive for receipt, the actual amount, date time and place of the transaction.

307.7- At the time of the check, the independent witness witnesses should take up position in such a place where they can see the transaction and also hear the conversation between the decoy and the delinquent employee, so as to satisfy themselves that money was demanded, given and accepted as bribe.

7. The contention put forth by the learned counsel for the petitioner is that at the time of trap the Investigating Officer should arrange one or more officials to act as independent witness/ witnesses. In the present case on hand there is no independent witness. The decoy (SW1) Railway Employee Mr.Sathasivam is a habitual witness/ stock witness for the vigilance. Therefore the trap procedure stands totally vitiated, thus the vigilance authorities failed to prove the alleged demand and acceptance of illegal gratification by the petitioner beyond any reasonable doubt. Further, the petitioner having an unblemished service record of about 27 years, ought not to have inflicted with major penalty of dismissal from service. This court has carefully considered the above submission of the Learned Counsel for the petitioner. It is noteworthy to look into the procedure to be followed while executing a trap, that in para 307.4 of Indian Railway Vigilance Manual, 2006 the procedure to be followed by the Investigating Officer is that he should arrange one or more officials to act as independent witness/witnesses. But in this case the trap was not arranged as per requirements of para 307.4, 307.5 and 307.7 of the Indian Railway Vigilance Manual, 2006 and there was no independent witness to prove the charge against the petitioner.

8. One another submission of the learned counsel for the petitioner is that the Central Administrative Tribunal having come to the conclusion that the punishment is shockingly disproportionate and further held that the petitioner was put in 27 years of service and there is no adverse remark during his service. However, without setting aside the impugned order therein, but has merely modified the penalty as "removal from service" instead of "Dismissal from service". The modification of the punishment from dismissal from service to removal from service does not make any difference as the petitioner was about to reach the age of superannuation at that time and he cannot join in any other government service.

9. Per contra, the learned counsel for the respondents contended that the petitioner has committed gross misconduct by demanding and accepting on illegal gratification to the tune of Rs.100/- from an employee for placing him under sick list. Only after a due enquiry by the Inquiry officer and on proper appreciation of the material facts a report dated 12.10.2008 confirming the misconduct of the petitioner came to be filed before the Disciplinary authority. Based on which the petitioner was rightly ordered to be dismissed from service w.e.f. 07.04.2011 for his grave misconduct. The same can be well ascertained from the recommendation of the Union Public Service Commission, an autonomous, Constitutional organization, which advised a penalty of dismissal from service to be imposed on petitioner. The same received the approval of the Hon'ble President; therefore the same does not require any interference by this court. Hence the revision petition filed by the petitioner was rightly rejected and the said order was communicated to the petitioner on 25.05.2013. Whereupon the petitioner filed O.A.No.1162 of 2013 before the Central Administrative Tribunal, Madras Bench and the same was however by showing some indulgence was modified as "removal from service", so as to enable the petitioner to enter into any other Public service.

10. Though very many contentions were raised by the petitioner with regard to the manner of conduction of Trap, the credibility of the decoy & witnesses, the inquiry and finding thereon, in view of the decision of our Hon'ble Apex court in R.S. Saini Vs State of Punjab and others JTI 1999(6) SC 507, wherein it was held that "the court while exercising writ jurisdiction cannot reverse the findings of Inquiry Authority that the evidence adduced before it is insufficient", therefore this court is not inclined to go into the same, since the same would amount to re -appreciation of evidence.

11. On the other hand, coming to the proportionality of the punishment imposed on the petitioner, it is witnessed by this court that in the case on hand as rightly contended by the learned counsel for petitioner that The Central Administrative Tribunal, Madras Bench was completely displeased and shocked over the dis-proportionality of punishment imposed on the petitioner as against the charge leveled. The same stands expressed by The Hon'ble Central Administrative Tribunal in Para12 of the impugned order, which is extracted hereunder:

"The applicant has put in service of 27 years by the date of departmental test check. There seem to be no adverse remarks in his service and indeed he earned promotions from time to time and reached

the stage of senior scale DMO. The authority which imposed the penalty as well the Union Public Service Commission which tendered advice missed to note of these factual aspects. Penalty of dismissal from service imposed on the applicant, in the given facts and circumstances, is shockingly disproportionate and therefore we are of the view that penalty of removal from service".

12. Therefore it is obvious that the Tribunal having felt that punishment of dismissal from service imposed over the petitioner has chosen to modify the same as removal of service. It is needless to say that both do not have much difference, whereas the former would act as a bar to any future public employment and the latter would not so. It is noteworthy that in the case on hand the petitioner has served for a period of 27 years without any adverse remark and he was at the verge of his superannuation at the time of imposition of punishment. Therefore it is palpable that the mercy of the Central Administrative Tribunal, as against the dis-proportionality of punishment imposed on the petitioner by modifying the punishment as "removal of service" instead of "dismissal of service" do not make any difference in the petitioner's case, who is at the verge of retirement.

13. Therefore, this Court is of the opinion that the Central Administrative Tribunal having come to the conclusion that the punishment is shockingly disproportionate and further having found that the petitioner has rendered 27 years of unblemished service with no adverse remark against him, ought to have modified the same as compulsory retirement.

14. Considering the above facts and circumstances of the case, we are of the view that the penalty of removal from service should be modified as compulsory retirement which would meet the ends of justice.

15. In the result, this writ petition is allowed. The order of the 5th respondent/Tribunal made in O.A.No.1162 of 2013 dated 29.07.2015 is modified to the extent indicated above. No cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

VS

To

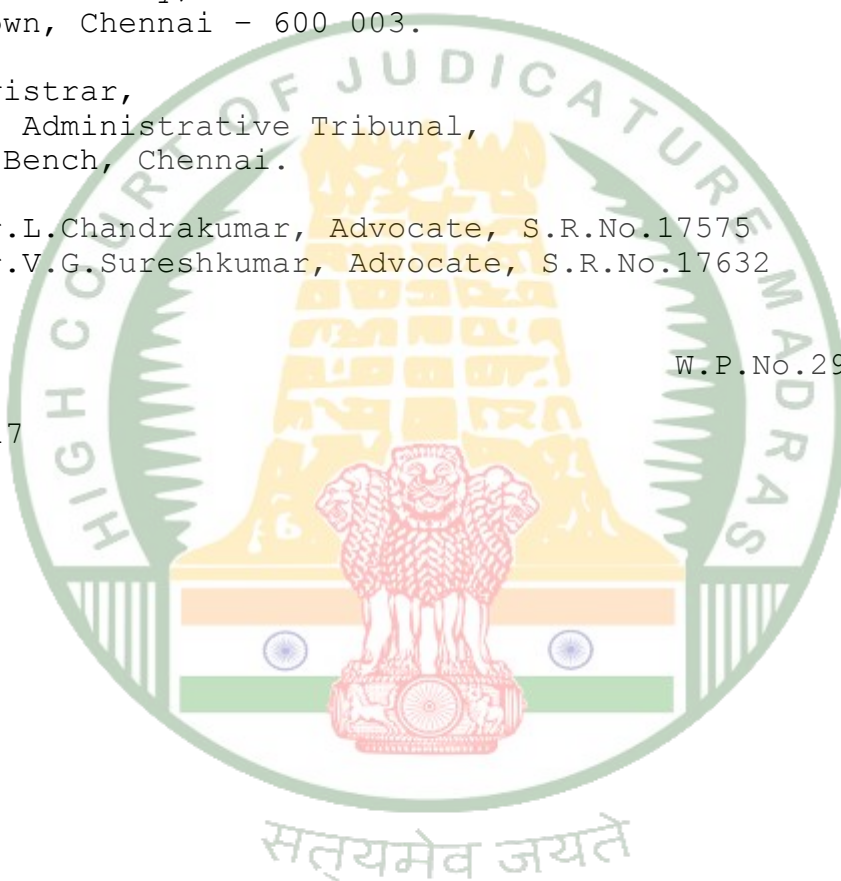
1. The Secretary,
Union of India,
Railway Board, New Delhi.
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3. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.
4. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.17575

+1cc to Mr.V.G.Sureshkumar, Advocate, S.R.No.17632

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CS/20/07/17



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