

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.02.2017**

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.**13435 of 2003**
& WMP No.16855 of 2003

T.Bojan

.. Petitioner

Vs.

1. The General Manager
Tamilnadu Tea Plantation Corpn.Ltd.,
Coonoor, The Nilgiris 643 101

2. The Joint Managing Director
Tamilnadu Tea Plantation Corpn.Ltd.,
Coonoor, The Nilgiris 643 101

.. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the order/proceedings No.E2/21981/2001 dated 30.7.2002 of the General Manager, Tamil Nadu Tea Plantation Corpn.Ltd., the first respondent herein as confirmed by the order of the second respondent dated 27.1.2003 in Proc.No.E2/26879/2002(i) and quash the same.

For Petitioner .. Mr.T.R.Sathiyamohan

For Respondents .. Mr.Sharoon Al rasheed

ORDER

T.Bojan, the petitioner herein, was working as Superintendent in Tamil Nadu Tea Plantation Corporation Limited and on 8.10.2001, he did not report to duty at 10.00 a.m and therefore the Divisional Manager

marked him "A" (absent). It appears that Bojan had come late to the office and put his signature over "A" in the attendance register. He was issued with a charge memo for the overwriting done by him and after getting his explanation, a domestic enquiry was conducted, in which the charge against him was held to be proved. The disciplinary authority, the first respondent herein, by the impugned order dated 30.7.2002 imposed the penalty of postponement of two increments without cumulative effect, against which he preferred an appeal before the 2nd respondent and the same was dismissed by him on 27.1.2003, challenging which this writ petition is filed by Bojan.

2. Heard Mr.T.R.Sathiyamohan, learned counsel for the petitioner and Mr.Sharoon Al rasheed, learned counsel for the respondents.

3. The learned counsel appearing for Bojan submitted that Bojan was forced to come late on 8.10.2001 because he had to go to M/s.Viswanathan and Co., Ooty, a customer of the respondent Company, to collect the xerox copy of a cash receipt from them and therefore, he was delayed. He attended the office at 11.30 a.m., on 8.10.2001 and on finding that he has been marked "A", he put his signature because the company was not maintaining the late attendance register. Therefore, the learned

counsel contended that the entire disciplinary proceeding stands vitiated because Bojan had gone on official duty.

4. Per contra, the learned counsel for the respondents submitted that Bojan had taken this plea only after he was issued with a show cause notice on 9.10.2001 and he also did not establish this fact during the domestic enquiry. The learned counsel further submitted that non-maintenance of late attendance register cannot give a right to Bojan to make an overwriting in the attendance register without permission of the authorities.

5. This Court gave its anxious consideration to the rival submissions.

6. Admittedly, on 8.10.2001, the Divisional Manager had marked "A" in the attendance register. On finding that the Divisional Manager issued a show cause notice dated 9.10.2001, calling upon Bojan to explain as to why disciplinary proceedings should not be taken against him for the said conduct, in his reply letter dated 9.10.2001, Bojan took a stand that he had been to M/s.Viswanathan and Co., for collecting xerox copy of the cash receipt and that he attended office at 11.30 a.m. He did not stop with that. He has further stated as follows in his reply dated 9.10.2001:

"The Divisional Manager should have enquired the Superintendent for the late coming. Instead, a memo was issued to explain for the late coming on 8.10.2001. It shows the personal vengeance upon the Superintendent by the Divisional Manager. If it continues, the discipline and decorum of the office will be spoiled for which the Divisional Manager will be held responsible for the same and the matter will be reported to the General Manager (C) Coonoor."

In other words, he not only justified his conduct, but also gave a veiled threat to the management that if action is taken against him, it will spoil the decorum in the office and that the Divisional Manager will be responsible for that.

7. In the opinion of this Court, this is not in good taste. When the matter was brought to the notice of the disciplinary authority, a charge memo was issued to Bojan and one Mr.H.Venuprasad was appointed as enquiry officer. This Court perused the enquiry proceedings. Copies of the charges sheet and the relevant documents, namely photo copies of the relevant pages of the attendant register, were furnished to Bojan. The following charges were framed against Bojan:

"II. Charges that were framed:

This obedience to the superior (The Divisional Manager has marked "A" in the attendance register. But the delinquent officer has signed in the attendance register over the Divisional Manager's markings)

8. Bojan denied the charges and the enquiry proceeded further. In the enquiry, page Nos.22 and 23 of the attendance register were marked as documentary evidence, with the consent of Bojan. No witness on behalf of the management was examined and the management relied only upon the primary evidence, namely the attendance register, which contained the signature affixed by Bojan over the marking "A" on 8.10.2001. Before the enquiry officer, Bojan explained that he had been to M/s.Viswanathan and Co., to collect a photo copy of the receipt and that was the reason for the delay. When a specific question was posed by the enquiry officer, whether he had obtained the prior permission of Divisional Manager to go to M/s.Viswanathan and Co., for collecting the said receipt, he has stated that he had not obtained any prior permission, but it is the general practice to do such works even without formal permission. Except examining himself, he has not examined any other witnesses.

9. The enquiry officer by his report dated 12.3.2002 held that the

charges are proved. A copy of the enquiry report was furnished to Bojan. On 6.4.2002, his further explanation was called for. After obtaining his explanation, the disciplinary authority by the order dated 30.7.2002 imposed the aforesaid punishment, which was confirmed by the appellate authority.

10. On a careful reading of the report of the enquiry officer, this Court finds that sufficient opportunity was afforded to Bojan for defending himself and this Court does not find any infirmity in the enquiry proceedings.

11. Even before the enquiry officer, except saying that he had been to M/s.Viswanathan and Co., to collect receipt, he did not adduce any evidence that he had collected the receipt and submitted the same to the office.

12. As regards the contention of the learned counsel for the petitioner that in the absence of late attendance register, the act of Bojan in signing over the marking "A" cannot be said to be a misconduct, this Court is unable to agree with this submission. The disciplinary authority in his order dated 30.7.2002 has considered this plea and has held as follows:

"He being Superintendent should have opened the late attendance register for which he is responsible."

In any event, non-maintenance of late attendance register will not give an employee an automatic right to make overwriting or corrections in the attendance register. After coming late, if he finds that he has been marked "A", he should have given a representation to the Divisional Manager stating the reasons for coming late and if the reasons are accepted by the Divisional Manager, only then correction can be made in the attendance register. Admittedly, Bojan did not do this and instead, he affixed his signature straight away in the attendance register over the marking "A" that was made by the Divisional Manager. This Court also perused the copy of the attendance register and it is limpid that he has signed over the letter "A". That apart, the punishment imposed on Bojan for this misconduct cannot be said to be excessive.

13. However, the learned counsel for the petitioner brought to the notice of this Court that by communication dated 30.10.2001, his one day salary on 8.10.2001 has been temporarily withheld on the ground that the disciplinary proceedings are pending. Now that the disciplinary proceedings have culminated, this Court directs the respondents to disburse one day salary for 8.10.2001 to Bojan, if not already disbursed,

since it is not the case of the management that on 8.10.2001, he did not report to duty at all. The allegation against Bojan was that, he ought not to have signed over the marking "A" in the attendance register, without the permission of the authorities.

14. In the result, this writ petition is devoid of merits and accordingly is **dismissed with the above direction**. No costs. Consequently, the connected Miscellaneous Petition is closed.

07.02.2017

ajr

To

1. The General Manager
Tamilnadu Tea Plantation Corpn.Ltd.,
Coonoor, The Nilgiris 643 101
2. The Joint Managing Director
Tamilnadu Tea Plantation Corpn.Ltd.,
Coonoor, The Nilgiris 643 101

P.N.PRAKASH, J.
ajr

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