

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.24359 OF 2003

ORDER:

Heard Mr.SM.Subhan for petitioner and Mr.Praveen Kumar for respondents 1 and 2.

The petitioner challenges Award dated 10.04.2002 in I.D. No.83/98, as illegal and contrary to the material available on record.

Mr.Subhan confines his submissions to the disproportionality of punishment of removal from service. Therefore, the circumstances relevant for disposal of the writ petition on the limited ground canvassed are adverted to:

The petitioner was working as Conductor in 2nd respondent depot. On 24.01.1995, the 2nd respondent issued charge sheet alleging that the petitioner has altered the way bills and also made corrections in the statistical returns/report as well. The petitioner denied the charges, the respondents conducted departmental enquiry and on 29.08.1996 removed the petitioner from service. The petitioner filed I.D. No.83/98 against the order of removal dated 29.08.1996 and the 3rd respondent through the Award impugned in the writ petition dismissed the I.D. Hence the writ petition.

Mr.Subhan contends that earlier the petitioner was arbitrarily removed from service and the petitioner filed writ petition in this Court. This Court after perusing the material available on record and on being satisfied that the removal of petitioner was unsustainable, directed continuation of petitioner in service. Thereafter, the petitioner was reinstated and there is gap of three

months from the date of removal till reinstatement. The petitioner has not deliberately committed any mistake as alleged in the charge sheet, but on account of gap that has arisen in the service and also that the petitioner has not verified all the bills, the mistake has happened. He submits that the misconduct alleged against the petitioner, according to circulars issued by the Corporation from time to time, shall be identified and fixed within seven days from the date of happening and failure to adhere to the time schedule given in the circular, goes to show that the concerned Officers of 2nd respondent are also not aware of the omission pointed out in the charge sheet. Therefore, he submits that the punishment imposed on the petitioner is shockingly disproportionate and prays for imposing lesser punishment including the punishment of compulsory retirement.

The counsel for 1st and 2nd respondents on the contrary contends that the 3rd respondent framed right points for consideration and after examining material available on record has accepted that the petitioner was given fair and reasonable opportunity in the enquiry and that the charges are proved. Since the misconduct alleged against the petitioner has financial implications, the removal by 1st and 2nd respondents and as confirmed by the 3rd respondent is tenable and prays for dismissing the writ petition.

I have heard the learned counsel for parties and perused the material available on record.

Now the point for consideration is:

Whether the imposition of removal from service warrants interference of this Court under Article 226 of the Constitution of India or not?

The circumstances leading to the removal and the outcome of I.D. are already adverted to. For brevity, I am not referring to these circumstances once again.

The case of petitioner is that even assuming that the charges are proved and guilt is brought home, against the petitioner, the imposition of punishment of removal from service shocks the conscience and ought to shock the conscience of this Court as well. The scope of judicial review on the quantum of punishment is no more res-integra. The Hon'ble Apex Court in *U.P. State Road Transport v. Mahesh Kumar Mishra*¹ has laid down as follows:

“The High Court can interfere with the quantum of punishment inflicted by the punishing Authority if it was convinced that punishment imposed was shockingly disproportionate to the charges proved.”

Let me examine the case on hand with the principle laid down by the Apex Court in the decision referred to above. The Tribunal has framed the following points for consideration.

1. Whether the charges framed against the petitioner are proved?
2. Whether the respondent was justified in removing the petitioner from service?
3. To what relief is the petitioner entitled?

After considering material available on record, the 3rd respondent found as follows:

¹ (2000 (I) LLJ 1113)

“A perusal of the statistical returns and way bills maintained by the petitioner which were marked as Exs.M1 to M.26 would clearly goes to show that the petitioner did not account to the tickets sold by him in the statistical returns and also in way bills. The evidence of MW.1 is sufficient to substantiate the charges 1 to 13. The petitioner as WW.1 categorically stated in his cross examination that entries made in the statistical returns were not tallied with the entries made in way bills. After perusing the documents produced by the respondent and also the evidence of WW.1 and MW.1, I find that charges 1 to 13 framed against the petitioner are proved.”

Now the finding is that for nearly 13 days, the petitioner has not only recorded incorrect details in statistical returns but also committed misappropriation of the amounts collected by him by sale of tickets. The conduct is consistent and the loss incurred by the Corporation is also consistent. Had it been a case of failure to counting for one day, the bona fide mistake for whatever reason can be considered and appreciated. If this practice of wrong entries is accepted, the same results in financial loss to the Corporation as well. It is matter of trust retained by employer on the employee. On point No.2, it is held that the misconduct committed by the petitioner is very serious in nature and punishment of removal is justified in the facts and circumstances of the case. After perusing the material available on record, I am satisfied that no exception to the punishment of removal from service is made out. I am in full agreement with the findings recorded by the 3rd respondent and the writ petition fails and accordingly dismissed. No order as to costs.

Respondents 1 and 2, if, are yet to settle Provident Fund and Gratuity payable to petitioner, the petitioner is given liberty to represent to 2nd respondent as expeditiously as possible preferably within two months from today for consideration of these payments and if it is found that the petitioner entitled to these amounts, the 2nd respondent is directed to make payment forthwith.

Miscellaneous petitions pending if any shall stand closed.

Date:17.03.2017
Sp

S.V.BHATT,J

