

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.6995 OF 2004

ORDER: (Oral) (*Per Hon'ble Sri Justice Suresh Kumar Kait*)

Vide the present petition, the petitioner has assailed order dated 17.03.2004 passed in O.A. No.478 of 2002 by the Central Administrative Tribunal, Hyderabad (for short, 'the Tribunal'), whereby the O.A. filed by respondent herein was partly allowed, and consequently, the impugned order passed by the petitioner was set aside insofar as it relate to the punishment of removal from service imposed on the respondent herein and the matter is remanded to the petitioner for consideration and imposing any of the minor penalties by passing fresh orders against the respondent herein within a period of six (6) weeks from the date of receipt of a copy of the order.

2. Learned Tribunal further directed the petitioner herein to reinstate the respondent herein into service with immediate effect. The question of granting any other consequential benefits to the respondent at this stage does not arise, since the petitioner is entitled to consider this aspect while passing the modified orders regarding the punishment.

3. The respondent herein had filed O.A. No.478 of 2002 challenging the impugned order dated 29.11.2001 passed by the petitioner being disciplinary authority and the impugned order dated 04.03.2002 passed by the Ordinance Factory Board, Chennai, who was arrayed as 1st respondent in O.A., as the appellate authority; and sought for setting aside the same with all consequential benefits, such as, continuity of service, pay and allowance, etc. The respondent herein, while working as Driver Grade-II, was served with an order dated 10.08.2000 keeping him under suspension with effect from the said date. Immediately on 16.08.2000, he was served with a memorandum of charges

alleging that he attempted to commit theft of Government property i.e., ten liters of diesel and thereby failed to maintain absolute integrity and conduct unbecoming of a Government servant. Since the respondent herein denied the said charge, the disciplinary authority ordered for regular enquiry, wherein the Enquiry Officer submitted his report dated 28.08.2000 holding that the charges were proved against the respondent. The respondent submitted his explanation dated 14.08.2001 to the enquiry report supplied to him. The disciplinary authority passed the impugned order dated 29.11.2001 removing the respondent herein from service. The respondent thereafter filed statutory appeal to the appellate authority dated 15.12.2001 and the said appeal was rejected by the impugned order dated 04.03.2002 by the appellate authority.

4. Being aggrieved, the respondent challenged the aforesaid orders in the O.A. before the Tribunal and the said O.A. was allowed partly as mentioned above.

5. The case of the petitioner herein is that the respondent was working in the petitioner's factory as CMD Grade-II with effect from 18.11.1985. On 06.08.2000, the respondent was detailed for duty in general shift from 08-00 hours along with Vehicle No.AP 23 6283 to HMT, Hyderabad, to take defence items for testing. After completion of the entrusted job when he came to the factory gate at about 17-30 hours for passing out of the factory after unloading the material inside the factory, the vehicle was subjected to search by DSC Personnel (Security Personnel of the Factory). During search, two cans containing ten litres of diesel (5 litres in each) wrapped in a gunny bag were found concealed under the seat. For this misconduct, the respondent was placed under suspension vide order dated 10.08.2000 and subsequently charge sheeted vide memorandum dated 16.08.2000 on the following charges:

- (1) Attempted theft of Government property.
- (2) Failure to maintain absolute integrity.

(3) Conduct unbecoming of a Government Servant.

6. In his written statement dated 22.08.2000, the respondent denied the charges in single sentence without advancing any evidence in support of his defence and requested to be heard in person. Accordingly, a Court of Enquiry was conducted vide order No.15/1004/VIG/2000/08 dated 25.08.2000. On the basis of the oral and documentary evidence adduced in the Court of Enquiry, the Inquiry Officer came to the conclusion that all the charges are proved against the respondent.

7. Thereafter, the respondent made a representation dated 14.09.2001 and all other documents relevant to the charges including the inquiry proceedings, the Disciplinary Authority agreed with the findings of the Inquiry Officer and held the respondent guilty of the charges and imposed the penalty of removal from service. The Appellate Authority also confirmed the order passed by the Disciplinary Authority.

8. Learned counsel appearing on behalf of the petitioner submits that the learned Tribunal has not gone into the full facts of the case at the sequences as to how the Disciplinary Authority imposed the penalty of removal from service and the same was confirmed by the Appellate Authority. The offence committed by the respondent is a grave one as he is a senior staff member in the MT section. He himself was taking out Government material, which was viewed seriously by the Disciplinary Authority. Learned counsel further submits that the respondent had made a mention about two other cases before the Tribunal regarding theft of items by the factory employees and penalty imposed. He submits further that no comparison can be made about the past cases, as the value of the items seized is not taken into consideration when a penalty imposed. He further submits that the learned Tribunal appraised about the settled law and that the Tribunal should not to interfere in penalty awarded in disciplinary

proceedings. Even the Hon'ble Supreme Court in **Shri Paramananda v. State of Haryana and others**¹ held that the Tribunal could exercise only such powers which the Civil Courts or the High Courts could have exercised by way of judicial review. The Hon'ble Supreme Court further observed as under:

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equivated within Appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the Competent Authority either by an act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the Rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is the matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of the penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal cannot also interfere with the penalty if the conclusion of the Inquiry Officer or the Competent Authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

9. Learned counsel further submits that the learned Tribunal has ignored the settled position of law, however, allowed the O.A. filed by the respondent.

10. The stand taken by the respondent before the Tribunal was that two cans containing ten litres of diesel seized from the vehicle bearing No.AP 23 6283, which he was driving at about 17-40 hours on 06.08.2000 by the Security Personnel at the main gate of the Ordinance Factory, was purchased by him from outside the factory, however, has not been accepted by the Inquiry Authority.

¹ (1989) 2 SCC 177

11. After considering rival contentions of both the parties, the learned Tribunal recorded its finding that it is not permissible to interfere with the finding recorded by the Disciplinary Authority. The settled law is that while exercising the power of judicial review, the Tribunal is not entitled to re-appreciate the evidence to find out the correctness or otherwise of the findings recorded by the authorities as if the Tribunal is an Appellate Authority.

12. It is not in dispute that the Courts have a limited jurisdiction to find out whether the findings recorded by the Inquiring Authority, which have been accepted by the Disciplinary Authority on the charges alleged against the delinquent officer, are based on the evidence placed on record. Since the findings recorded by the authorities are based on proper appreciation of evidence placed on record both oral and documentary, it is not permissible to be interfered with by the Courts.

13. As contended by the respondent herein that the punishment of removal from service imposed on him under the impugned orders passed is shockingly disproportionate to the nature of the charges established against him. He submits that in respect of two of the employees of the factory, namely, Vijendra Reddy and Parameswar Goud, on similar allegation of non-disclosure of personal property only, minor penalty was imposed. In response to the said ground taken by the respondent herein, the petitioner herein submitted that the respondent cannot compare cases settled or of other factories, however, the Disciplinary Authority takes decision on the merits of each case.

14. It is not in dispute that the petitioner has not specifically denied the allegation that the said two employees were imposed minor penalties on identical charges.

15. The respondent herein has relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.7939 of 2001 decided on 25.02.2003, wherein

the order passed by the Tribunal setting aside the dismissal order and ordering for reinstatement of the respondent therein in service without back wages but continuity of service was upheld observing that the appellant therein had taken only cotton swap without the permission of the authority from out of the factory premises and according to him, it was taken only for the purpose of sealing the tiffin box to avoid spilling over the food and no doubt, the said act of the appellant amounts to misconduct.

16. We note the learned Tribunal observed that it is difficult to say that the respondent herein had definite or deliberate intention to commit any theft. Since it is found that two other employees of the same factory of the petitioner were imposed with minor penalties on identical charges, learned Tribunal on this ground remanded the matter to the Disciplinary Authority for reconsideration of the case of the respondent herein.

17. The incident is of the year 2000 and the respondent was thereafter reinstated into service, however, subject to the order of outcome of the present writ petition. It is not in dispute that the Courts can interfere to the limited extent, if the punishment is disproportionate to the misdemeanor committed by the delinquent officer. No doubt, stealing of any article even value of one rupee comes under the misconduct, but certainly, for said misconduct, service of the delinquent officer cannot be terminated. Keeping in view the misdemeanor committed by the respondent herein, the punishment awarded by the petitioner is disproportionate to his misconduct.

18. In view of the above, we find no illegality or perversity in the order passed by the Tribunal. Finding no merit in this writ petition, the same is accordingly dismissed. There shall be no order as to costs.

19. As a sequel, miscellaneous petitions pending, if any, shall also stand dismissed.

SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

Date:08-06-2017

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