IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2587 OF 2005

Shri. P.G. Mathew ...Petitioner
Versus
The Divisional Commercial
Manager, Central Railways and ors. ...Respondents

Mr. Naren Kavi i/b Mr. Sanjeev P. Kadam for the Petitioner.
Mr. T.J. Pandian for Respondent Nos.1 to 3.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 21.06.2018.

ORAL JUDGMENT:

1] Heard Mr. Naren Kavi i/b Mr. Sanjeev Kadam for the petitioner and Mr. T.J. Pandian for respondent Nos.1 to 3.

2] The petitioner challenges the judgment and order dated 13.08.2004 passed by the Central Administrative Tribunal (CAT), Mumbai dismissing the petitioner's O.A. No.345 of 2002 questioning the petitioner's dismissal from services with effect from 20.10.2000.

3] Mr. Kavi, learned counsel for the petitioner, has very skilfully argued the matter, by submitting that the charges levelled against the petitioner were extremely vague and misleading. He submits that similar charge-sheet had been issued earlier to the petitioner and even enquiry had commenced on the basis of the first charge-sheet. He points out that for no rhyme or reason, the enquiry was abandoned and the second charge-sheet was issued to the petitioner on the basis of which, fresh enquiry was held. Mr.Kavi submits that this is clearly impermissible and second charge-sheet as well as the enquiry proceeding therein deserves to be quashed.

4] Mr. Kavi submits that since the charges in the second charge-sheet were quite vague and unclear, the petitioner was severely prejudiced in the matter of his defence. Further, Mr. Kavi submits that the respondents informed the petitioner that in case the petitioner accepts guilt, the petitioner will be let off with a minor penalty. In this manner, the petitioner was persuaded to accept the charges, which, in any case, were extremely vague. The petitioner, accepted the charges by stating that due to mental unrest and compelling domestic difficulties he committed a mistake. Mr. Kavi submits that such statement does not amount to acceptance of charge and enquiry officer completely erred in making its enquiry report on the so called admission of guilt. Mr. Kavi submits that such admission of guilt is *ex facie* under pressure and coercion and not voluntary.

5] Mr. Kavi submits that this is a matter where no financial loss as such has been caused to the respondent. The petitioner had put-in almost 29 years of service. Thus, construed, penalty imposed upon the petitioner is shockingly disproportionate and defies the doctrine of proportionality, which is one of the essential concomitant of the right to be treated non-arbitrary as enshrined in Article 14 of the Constitution of India. Mr. Kavi submits that at least the penalty of dismissal warrants interference in the peculiar facts and circumstances of the present case. The last submission was made by Mr. Kavi, without prejudice, to his earlier submissions, that the penalty imposed upon the petitioner deserves to be quashed and set aside.

6] After the matter was heard, we had adjourned the matter in order to enable Mr. Pandian, learned counsel for respondent Nos.1 to 3, to take instructions as to whether the petitioner could be permitted to proceed on compulsory retirement in substitution to the penalty of dismissal from service. This was mainly because Mr. Kavi had submitted that the petitioner had put in 29 years of service, prior to his dismissal. Mr. Pandian, on the basis of instructions, imparted to him, has, however, reported that such reduction in the penalty may not be possible in the facts and circumstances of the present case.

7] Mr. Pandian points out that the charges against the petitioner were quite serious, inasmuch as, with the active connivance of the petitioner payments were made to some imposters by attempting to pass off such imposters as employees in the Chief Catering Inspector's office. He points out that there was also a charge of the petitioner's affixing his signature on the dividend pay orders issued by Central Railway Employees' Co-op. Credit Society Ltd. in token of his identification of some employees, who had in fact already expired. Mr.Pandian submitted that first enquiry referred to by the petitioner was only a preliminary enquiry in which the petitioner had pleaded not guilty. Based upon the same, a decision was taken to hold a regular enquiry, which was fixed on 14.08.2000. Mr. Pandian submits that on this date, the petitioner and two witnesses were also present. Before the enquiry could proceed any further, the petitioner accepted the charges. Accordingly, the enquiry officer recorded the acceptance of charges and filed his report. Mr.Pandian submits that this is not a case of abandonment of first enquiry.

8] Mr. Pandian submits that the chargesheet levelled against the petitioner are quite serious and the penalty is quite proportionate.

9] The rival contentions now fall for our consideration.

10] Although, Mr. Kavi, learned counsel for the petitioner, has argued the matter very well, we are unable to accept any of the contentions in the facts and circumstances of the present case.

11] In the first place, there is nothing on record to indicate that acceptance of the charges by the petitioner was under some coercion or pressure or on the basis of some assurance given by the respondents that the matter would be viewed leniently. At no stage, within some reasonable proximity of the acceptance of the charges, the petitioner, chose to retract his acceptance. The appellate as well as revisional authorities have also considered the case of the petitioner on the aspect of so called coercion or pressure. The CAT has also examined the matter. In the exercise of powers of judicial review, we find no good ground to interfere with the impugned judgment and order.

12] The record does indicate that a charge-sheet was issued to the petitioner on 15.05.1998 in respect of the incident dated 28.1.1998, in which, the petitioner is alleged to have witnessed the payment in cash to some imposters by forging the signature of Shri.M.W. Deshpande, facilitating withdrawal of wages in an amount of Rs.7569/-. Similar charge was made against the petitioner in respect of salary amount of Rs.7029/- actually due to Shri. Ramkumar Pardeshi for the month of December 1997. In this enquiry, some witnesses were also examined.

13] On 3.12.1999, a fresh charge-sheet was issued to the petitioner in respect of similar *modus operandi* allegedly adopted by the petitioner concerning the salaries payable to Ramkumar Pardeshi and Shri. Ganapthi which resulted in misappropriation of the Railway/Government cash. In this charge-sheet, it was also alleged that the petitioner has affixed his signature on two dividend pay orders issued by the Railway Employees Cooperative Credit Society Limited in token of identification of employees Shri. R.B. Yadav, V.M. Vishweskar and Solomon Samson despite full knowledge that these employees had already expired.

14] Thus, the two charge memorandums relate to substantially separate charges though, there may be slight overlapping insofar as misappropriation of wages of Shri.Ramkumar Pardeshi are concerned. The enquiry officer, took up the charge memorandum dated 3.12.1999 for consideration and it is at the stage when enquiry into this charge-sheet was about to begin, the petitioner, admitted the charges leveled against him by stating that due to mental unrest and compelling domestic difficulties, he committed a mistake. It has never been a case of the petitioner that on account of any mental unrest, he admitted the charge levelled against him. Rather, it has been the case of the petitioner that on account of mental unrest coupled with domestic difficulties, he committed a mistake alleged in charge memorandum dated 3.12.1999.

15] As noted earlier, there is no material on record to suggest coercion or exertion of pressure. There is also no material on record to suggest that any leniency was assured to the petitioner in case the petitioner admits the charges referred to in the charge-sheet dated 3.12.1999. Since, action was taken on the basis of the charge-sheet dated 3.12.1999, it is possible that the issues arising in charge-sheet dated 15.5.1998 may not have been pursued. However, on the basis of such facts, we are unable to agree with the contentions of Mr. Kavi that the very issuance of second charge-sheet was not valid.

16] The petitioner had not demonstrated any prejudice and the CAT has rightly relied upon the rulings of the Hon'ble Supreme Court in case of ***State Bank of Patiala vs. S.K. Sharma – (1996) 3 SCC 364,*** to hold that there was no prejudice of rule or procedure and in any case, in the absence of any prejudice, the petitioner cannot succeed in quashing the enquiry proceedings or the penalty imposed on the basis of such proceedings.

17] Mr. Kavi had submitted that since the charges were vague, the penalty imposed is vitiated. To elaborate, he submitted that there were several employees and the petitioner was not reasonably expected to know each and every employees by face. Again, we are unable to accept such contention. There is no dispute that the petitioner, at the relevant time, was functioning as a Head Clerk under the Chief Catering Inspector. There is also no dispute that the petitioner has actually affixed his signature on the dividend pay order in token of his identification of three employees, who had already expired. In case, the petitioner was not acquainted with the employees face or otherwise, the petitioner could have very well refused to identify them.

18] In fact, it is the duty of the petitioner to be extremely careful as to which person is identified, because, on the basis of his identification, amounts belonging to the

Railways and the Society were to be disbursed. In this case, the amounts, which possibly were required to be paid to the legal representatives of the deceased employees were virtually siphoned of by imposters on the basis of acts of commission or at least omission on the part of the petitioner.

19] This is also not a case based upon only on some oral evidence, but this is a case where there are documents, which nail the petitioner, particularly, signatures of the petitioner on the salary payments to imposters and on the dividend pay orders. Thus, even if the petitioner were to deny the charges, on the basis of documentary evidence itself, the findings of guilt could have been sustained.

20] The CAT had considered the issue of proportionality of punishment in some details and by applying valid parameters. Taking into consideration the charges leveled, it cannot be said that the penalty imposed is disproportionate. The authorities have taken into consideration the years of service rendered by the petitioner. However, taking into consideration the charges held as proved, it cannot be said that the penalty imposed is shockingly disproportionate so as to warrant interference.

21] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. Accordingly, this petition is dismissed. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**