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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11883 OF 2013

Union of India & anr. ...Petitioners

Vs.

Shri P.R. Ramnathan ...Respondent

………..

Mr. Suresh Kumar, Advocate for the petitioners.

None present for the respondent.

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CORAM : SMT. V.K. TAHILRAMANI ACTING C.J. AND M.S.KARNIK, J.

DATE : 16th JANUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

The petitioner – Union of India by this petition challenges the order dated 7th August, 2013 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ("the Tribunal" for short), in O.A.No. 438 of 2008.

2. On the eve of retirement of the respondent he was served with the charge-sheet dated 30th October, 2001. The

respondent retired on 31st October, 2001. Following are the charges set out in the charge-sheet :-

> "(i) He failed to issue costly Railway material to he contractors in proper form and without clear receipt of the contractor. He also failed to make recovery for the material lost on contractor's account. Thus caused a loss of Rs.19 lacs to the railway.
>
> (ii) He failed to maintain the accountal of stores properly. Thus, Shri P.R. Ramanathan acted in a manner unbecoming of a Railway servant and thereby violated Rules 3.1(i), (ii) & (iii) of the Railway Services (Conduct) Rules 1966."

3. The inquiry was conducted in which Inquiry Officer held charge No.(i) partly proved and charge No.(ii) fully proved. The report of the Inquiry Officer was accepted by the disciplinary authority and the respondent was imposed with the penalty of reduction in his monthly pension by 10% for a period of five years. This order was challenged by the respondent by filing O.A. The Tribunal did not interfere with the findings that the charges are proved. However, the Tribunal was of the opinion that the penalty imposed on the respondent is harsh in the peculiar facts and circumstances of the case. The Tribunal

was pleased to modify the penalty and accordingly, 10% cut in pension for five years was reduced to three years.

4. Learned Counsel for the petitioner – Union of India assailing the order of the Tribunal contended that once the charges levelled against the delinquent are duly proved, merely because in the opinion of the Tribunal lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty. Relying upon the decision of the Apex Court in the case of **Deputy Commissioner, KVS & Ors Vs. J. Hussain – (2013) 10 SCC 106** and **Union of India Vs. State of Haryana - 1989 (2) SCC 177,** learned Counsel contended that the order of the Tribunal imposing a lesser penalty on the respondent cannot be sustained. In his submission, it is not for the Tribunal to have substituted a penalty unless the penalty is excessive, disproportionate, totally unreasonable and arbitrary.

5. Having heard learned Counsel for the petitioner, in our opinion, the order passed by the Tribunal warrants no

interference. The law in so far as proportionality of punishment and the scope of judicial review is well settled by the Apex Court in as much as the Tribunal or this Court can interfere with the discretion of disciplinary authority only if the penalty is excessive, disproportionate, totally unreasonable and arbitrary. It is further well settled that merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty.

6. We have gone through the order passed by the Tribunal. It would be material to reproduce the findings of the Tribunal forming the basis of the reduction of the penalty.

> "25. Nevertheless, in our view, the penalty imposed on the applicant appears to be a little too harsh in the peculiar facts and circumstances of the case. Admittedly, the alleged misconduct was committed by the applicant during 1997-98. But the administration issued the charge sheet only on the eve of the retirement of the applicant. There is absolutely no explanation as to what prevented the administration from initiating Disciplinary Proceedings against him at the earliest point of time. The administration had waited for four years to do so. Why? There is no answer.

26. As has been noticed already the entire case relating to the alleged misconduct was borne out by the records. No other agency like Central Vigilance Commissioner (CVC) or CBI was involved. Therefore, the administration was not justified in dragging its feet in the matter for four years before instituting the Disciplinary Proceedings.

27. Still further, the Enquiry Officer had submitted his report in July 2003 and the applicant had submitted his representation in response to the findings in the report in August 2003 itself. But the Disciplinary Authority passed Annexure AI order only in March 2008. In short, the sword of Damocles in the form of Disciplinary Proceeding hang over the head of the applicant for more than 7 years. His retiral dues were withheld till 2013. Even the gratuity was released to him only in 2013. We are informed that the amount payable under leave encashment has not yet been released. The mental agony of a retired employee like the applicant is understandable. The mental torture suffered by him all these years cannot be compensated. Therefore, keeping in view the peculiar facts and circumstances of the case particularly the failure of the respondents in offering any explanation for the delay we are satisfied that the penalty imposed on the applicant can be reduced slightly."

7. Thus, the Tribunal in view of the peculiar facts and circumstances of the case and particularly the failure of the

petitioners in offering any explanation for the delay in completing the disciplinary proceeding and in view of the fact that though the respondent retired on 31st October, 2001, his retiral dues were withheld till 2013 that the Tribunal modified the penalty in the interest of justice. Even the gratuity was released to him only in 2013. The Tribunal also took into consideration that as on the date when the order was passed by the Tribunal the amount payable under leave encashment had not yet been released. The Tribunal also took into consideration that though the Inquiry Officer's report was submitted in July, 2003, the disciplinary authority passed an order only in March, 2008. Having regard to all these factors and failure of the petitioners in offering any explanation for delay in passing the penalty order, the Tribunal interfered with the order of the punishment by reducing 10% cut in pension for 5 years to 3 years.

8. It is thus apparent that the charge-sheet was served to the respondent on the eve of his retirement on 30th October,

2001. The respondent retired on 31st October, 2001. The Inquiry Officer's report was submitted in July, 2003. In response to the inquiry report the respondent submitted his representation in August, 2003. The order imposing penalty was passed by the disciplinary authority in March, 2008 i.e. almost after 4 ½ years from the submissions of the findings of the Inquiry Officer's report. The penalty imposed by the disciplinary authority as indicated earlier is 10% cut in pension for 5 years. The retiral dues of the respondent were withheld till 2013. Even the gratuity was released to the respondent in the year 2013. As on the date of the order passed by the Tribunal the amount payable under leave encashment had not been released. The Tribunal by taking into consideration the delay was of the opinion that the penalty of 10% cut in pension for 5 years be reduced 10% cut in pension for 3 years. In this view of the matter, if the Tribunal was of the opinion that the punishment should be so reduced, we do not find the view is untenable or unreasonable so as to warrant any interference in the exercise of our writ jurisdiction under Article 226 of the Constitution of India.

9. The Writ Petition being devoid of any merits is dismissed with no order as to costs.

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