

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2018

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.11259 of 2003

S.V.Natarajan

.. Petitioner

-Vs-

1. The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai - 6.

2. The Director
B.C.G.Vaccine Laboratory,
Guindy, Chennai - 600 032.

3. The Director General of Health Services
Nirman Bhavan,
New Delhi - 110 001.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the records from the first respondent relating to the Award, dated 16.11.2001 passed in I.D.No.478 of 2001, quash the same and consequently direct the respondents 2 and 3 to reinstate the petitioner with continuity of service, back wages and other attendant benefits.

For Petitioner : Mr.V.Ajoy Khose
For Respondents : Mr.S.Arockiam, CGSC

ORDER

This writ petition has been filed seeking to quash the award of the first respondent / Labour Court made in I.D.No.478 of 2001, dismissing the Industrial Dispute raised by the petitioner against the order of punishment of compulsory retirement inflicted on him by the second respondent.

2. The petitioner joined in service at the second respondent as Lab Assistant in the year 1970. While he was in service, in the year 1986, he was placed under suspension on the alleged reason of contemplation of enquiry by way of disciplinary action. Thereafter the enquiry was contemplated and the Enquiry Officer was appointed, before whom enquiry was conducted. Though 18 charges had been framed against the petitioner, the Enquiry Officer gave the report stating that except Charge Nos. 3 and 10, all other charges were proved against the petitioner. Subsequently, second show cause notice was issued to the

petitioner on 02.09.1994, for which the petitioner had given his reply on 15.09.1994. However, the disciplinary authority, having accepted the reasoning given by the Enquiry Officer in his report and after considering the reply given by the petitioner to the show cause notice and the finding given by the Enquiry Officer to state that except 2 out of 18 charges, other charges have been proved and accordingly, inflicted the punishment of compulsory retirement on the petitioner from 22.12.1994.

3. As against the said punishment, the petitioner preferred appeal before the third respondent on 06.01.1995. Since no order has been passed against the said appeal and was kept pending, the petitioner raised Industrial Dispute by referring the matter for conciliation on 05.07.1995. Since the conciliation fail, the failure report to that effect was given to the petitioner on 29.01.1997. Thereafter as per the procedure, the Central Government reference was sought for, which was given only on 22.01.1998.

4. Pursuant to which, the petitioner filed the claim petition by way of Industrial Dispute before the first respondent / Labour Court, which was taken on file, originally by the Tamil Nadu Central Tribunal and subsequently, after creation of the first respondent / Industrial Tribunal, the same has been transferred and renumbered as I.D.No.478 of 2001.

5. The first respondent / Industrial Tribunal, after hearing the parties and considering the merits of the case, had ultimately passed an Award on 16.11.2001, whereby the order of punishment imposed against the petitioner by the second respondent has been confirmed. As against which the present writ petition has been filed.

6. At the time of filing the writ petition, i.e., in the year 2003, the petitioner was 55 years old. Since his superannuation age was 60 years, by the year 2008, he got superannuated during the pendency of the writ petition.

7. With these factual matrix, the learned counsel appearing for the petitioner would submit that, in so far as the findings given by the Enquiry Officer is concerned, even though it can be argued as perverse and based on which, the decision taken by the Labour Court through the impugned Award can be successfully assailed, the learned counsel appearing for the petitioner, however would confine his argument only with regard to the proportionality of the punishment.

8. In order to sustain the said argument, the learned counsel appearing for the petitioner has produced before this Court, the indulgence shown by the respondent / disciplinary

authority in respect of four other co-employees or delinquents, who had also been charged with similar charges and also faced the disciplinary proceedings. At least four orders in respect of similarly placed co-employees, who are also delinquents with same set of facts have been produced in the typed set of papers.

9. In this regard, the learned counsel appearing for the petitioner relied upon the order of minimum punishment awarded against those employees, by order, dated 01.05.1997, 05.09.1997, 17.10.1997 and 23.02.1998 in respect of one R.K.Durai, Office peon one L.Thirunavukarasu, Head Carpenter, one V.Ramachandran, Lower Division Clerk and one S.Pandian, Lab Attendant.

10. By relying upon these orders, the learned counsel appearing for the petitioner would urge that, in all those cases, similar charges have been framed against each of the co-employees / delinquents and the charges against them were proved. Nevertheless, the appellate authority had shown indulgence by taking a very lenient view in their favour, though the disciplinary authority has given a punishment of compulsory retirement / reduction to lower post and also removal from service respectively. Since those punishment appears to be harsh, by taking a lenient view, the appellate authority, modified the punishment given by the disciplinary authority, to the extent of reduction in pay by two stages without cumulative effect or stoppage of increment for three years without cumulative effect.

11. Therefore the learned counsel appearing for the petitioner would submit that, the lenient view taken in respect of other delinquents, who had also faced similar charges, where the disciplinary authority found guilty of those incumbents and accordingly, the punishment of compulsory retirement, reduction to the lower post, removal from service inflicted against them, could have been taken by the appellate authority, on the petitioner also. Since the petitioner had made an appeal before the appellate authority / the third respondent and no order has been passed, the petitioner approached the Labour Court.

12. The learned counsel appearing for the petitioner would further submit that, those aspects has not been considered by the Labour Court in proper perspective in the impugned order and therefore on that ground, the impugned order may be quashed and appropriate order can be passed by this Court, to meet the ends of justice.

13. Per contra, the learned Central Government Standing Counsel appearing for the respondents submitted that, it is an admitted case that, out of 18 charges, 16 charges had been

proved against the petitioner. All opportunities were given to the petitioner before concluding the disciplinary proceedings. As per the enquiry officer's report, the petitioner had been permitted to appear and after giving such opportunity, the Enquiry Officer concluded the enquiry and gave his findings. As against the said finding given by the Enquiry Officer, further opportunity has also been given to him by giving second show cause notice, which has also been utilised by the petitioner giving his second reply.

14. The learned Central Government Standing Counsel appearing for the respondents further submitted that, the Disciplinary Authority, after having considered the Enquiry Officer's report and the defence taken by the petitioner and the reply he has given in the second show cause notice in this regard, ultimately concluded that, 16 charges out of 18 charges framed against the petitioner were proved. In fact by taking a lenient view only the punishment of compulsory retirement was inflicted against him. The said punishment is only a reduced punishment and it cannot be further reduced, as claimed by the learned counsel appearing for the petitioner, at this juncture.

15. The learned Central Government Standing Counsel would further submit that, in so far as the comparison of other four co-employees / delinquents are concerned, there are some differences between the veracity of the charges and the vigorousness attached with the charges framed against each of the co-employees / delinquents.

16. The petitioner, according to the respondents had led a team and in fact indulged in all sorts of misconduct and the said misconduct had been proved without any doubt. No leniency can be expected from the disciplinary authority since the respondent organisation is a Central Government organisation, where if such persons are permitted to continue, that will have an impact in the affairs of administration and functioning of the authority and therefore, the view taken by the disciplinary authority inflicting compulsory retirement on the petitioner needs no modification.

17. The learned Central Government Standing Counsel would also submit that, the said factual matrix had been considered in proper perspective by the Labour Court and it has been reflected in the impugned Award, where Labour Court has specifically stated that, the degree of charges that has been proved against the petitioner comparing with other delinquents is very serious in nature and therefore the petitioner's case cannot be compared with other delinquents, accordingly, the lenient view taken in respect of other employees / delinquents cannot be taken in favour of the petitioner and therefore, there is no perversity in the award of the Labour Court.

18. I have considered the said submissions made by the

learned counsel appearing for the petitioner as well as the learned Central Government Standing Counsel appearing for the respondents.

19. As has been rightly pointed out by the learned Central Government Standing Counsel appearing for the respondent, there is no gainsaying that the charges framed against the petitioner has not been proved.

20. Even though attempt was made by the learned counsel appearing for the petitioner that, some of the charges still have not been proved, the learned counsel appearing for the petitioner is not in a position to defend in toto that all the charges framed against the petitioner, i.e., 18 charges have not been proved.

21. Moreover, all opportunities, which are required to be given under the law, had been given to the petitioner before concluding the disciplinary proceedings. Therefore there is no infirmity in the said conclusion of the disciplinary proceedings.

22. In view of the said factual matrix, this Court can easily come to the conclusion that there is no reason to interfere with the finding given by the disciplinary authority as well as the Labour Court in the impugned order that the charges framed against the petitioner have been proved, excepting two charges.

23. Therefore, the only question to be looked into in this writ petition is, whether on the basis of the lesser punishments given to four other employees of the same organisation with similar or same set of charges, such benefit also to be extended by taking the similar lenient view in respect of the petitioner.

24. In order to explore the said aspect, the orders passed by the appellate authority against the punishment given by the disciplinary authority in respect of other four employees of the respondent organisation can be usefully looked into.

25. In this regard for the sake of clarity and convenience, some of the orders passed by the appellate authority in respect of other employees, who are also similarly placed are extracted hereunder :

"Whereas disciplinary proceedings were initiated against Shri.R.K.Durai, Office Peon, B.C.G.Vaccine Laboratory, Guindy, Chennai, vide charge Memo. No.C.14013/1/88-Admn., dated 18.11.88 by the Director B.C.G.Vaccine Laboratory, Guindy, Chennai, who is the prescribed Appointing / Disciplinary Authority in respect of Shri R.K.Durai, on account of the

following charges :

1. Displayed obscene posters alongwith Shri.S.Pandian, Lab Attendant on 13.3.86 on the wall of the tea room.
 2. Damaged and removed the mirror and fittings from the scooter of an Engineer on 1.8.86.
 3. On 1-8-86, the charged officer bent up the Lab. Peon.
 4. Spoke threatently his Administrative Officer.
 5. Demonstrated against the arrest and conviction by Court of Law of DMK party leader.
 6. Damaged the Government vehicle.
 - 7&8. Threatened one Shri.Ramteke and used abusive languages and damaged his bicycle's tyre.
 9. Charged officer entered the office of an engineer and threatened him with abusive language.
 - 10&11. Addressed letter to the Hon'ble Prime Minister and others making allegations against some of the employees.
 - 12 &13. Addressed letters to the Post Master General and others making false complaint against co-employees.
 14. Tried to bring outside influence by sending letters to higher authorities.
- Enquiry into the above charges were conducted. Out of 14 charges, 12 charges have been proved as per the findings of the Inquiring Officer. Findings of the Inquiring Officer were sent to the charged officer to enable him to submit a representation on the findings of the Inquiring Officer. On consideration of the findings of the Inquiring Officer and the representation of the Charged Officer, the Disciplinary Authority vide his order No.C.14014/1/87-Admn., dated 22-12-94 imposed the penalty of compulsory retirement on the Appellant.
- The appellant has preferred an appeal dated 24.1.95 to the undersigned against the order of compulsory retirement. The appellant has refuted all the charges framed against him for various reasons like non-examination of the complaint (s) during the enquiry, minor variation in the chief / cross examination and his claim that he was not present at the time of alleged incidents as he was under suspension. However, on perusal of the records of the case, it is seen that there appear enough documentary / circumstantial evidence in

support of the charges proved during the course of enquiry. Further there appears no procedural lacunae.

However, keeping in view the facts and circumstances of the case / status of the appellant, the undersigned is of the view that the penalty imposed upon the appellant is little harsh and needs reduction. Ends of justice will, therefore, be met if the penalty of compulsory retirement imposed upon Shri.R.K.Durai, Office peon, is reduced to the penalty of reduction of his pay by three stages in the time scale of his pay applicable to him at the time of imposition of the penalty of compulsory retirement for a period of 2 years with further directions that during this period of reduction of his pay, he will not earn the increment of his pay. However, the reduction will not have the effect of postponing his future increments of pay.

25. Similarly in respect of other three employees, though similar set of charges had been framed, the following lenient view had been taken. In order, dated 05.09.1997, in respect of one Thirunavukarasu, Head Carpenter, the following order has been passed by the appellate authority :

Keeping in view the nature of misconduct on part of Shri.L.Thirunavukarasu, the penalty imposed upon him is too harsh and needs reduction. Ends of justice will, therefore, be met if the penalty of "Reduction to the Lower post of Carpenter" imposed upon Shri.L.Thirunavukarasu is reduced to the penalty of "Reduction of his pay by 2 stages for a period of 2 years in the time scale of pay of Rs.950-20-1150-EB-25-1400. Now, therefore the undersigned in exercise of the powers conferred by Rule 27(2) of CCS (CA) Rules, 1965 hereby reduces the penalty of "Reduction to the lower post of carpenter" imposed upon Shri.L.Thirunavukarasu, Head Carpenter, BCG Vaccine Lab.Chennai to the penalty of "Reduction of his pay by 2 stages for a period of 2 years in the time scale of pay of Rs.950-20-1150-EB-25-1400 with specific directions that on the expiry of the period of 2 years the penalty will not have the effect of postponing of his future increments of pay.

(Dr.S.P.Agarwal)

Director General of Health Services."

26. By order, dated 17.10.1997, in respect of one V.Ramachandran, Lower Division Clerk, the appellate authority has passed the following order :

"On careful consideration of the contentions put forth by the appellant and the facts and circumstances of the case, the undersigned is of the view that there is procedural lacuna in this case is as much as that charges found proved against the appellant are not that grave which would attract imposition of the penalty of "Removal from Service". Thus the penalty imposed upon Sh.V.Ramachandran needs reduction. Now, therefore, the undersigned in exercised of powers conferred by Rule 27(2) of CCS (CCA) Rules, 1965 hereby reduced the penalty of Removal from service imposed upon Sh.V.Ramachandran, Lower Division Clerk, BCG Vaccine Laboratory, Chennai to the penalty of Withholding of 3 increments of pay of Sh.V.Ramachandran for a period of 3 years without cumulative effect.

(DR.S.P.AGARWAL)

Director General of Health Services"

27. Like that, by order, dated 23.02.1998, in respect of one Pandian, Lab Attendant, the appellate authority has taken the following view while modifying the order of punishment given by the disciplinary authority :

"In view of the above, the undersigned is of the view that the Ends of justice will be met if the penalty of compulsory retirement imposed upon Sh.S.Pandian, Lab. Attendant, B.C.G.Vaccine Lab, Chennai is reduced to the penalty of reduction of the pay of Sh.S.Pandian by 3 stages in the time scale of pay of Rs.800-15-1010-EB-20-1150 for a period of 3 years without cumulative effect.

Now, therefore the undersigned in exercise of powers conferred by Rule 27(2) of CCS (CC&A) Rules, 1965 hereby reduces the penalty of compulsory retirement imposed upon Sh.S.Pandian, Lab. Attendant, B.C.G.Vaccine Lab, Chennai to the penalty of Reduction of the pay of Sh.S.Pandian by 3 stages in the time scale of pay of Rs.800-15-1010-EB-20-1150 for a period of 3 years without cumulative effect.

(DR.S.P.AGARWAL)

Director General of Health Services."

28. On a perusal of these orders passed by the appellate

authority, one thing become clear that, in all these cases, even though charges framed against each of the delinquent were proved and the punishment of either compulsory retirement or removal of service had been inflicted against those employees, when they preferred appeal before the appellate authority, the said appellate authority had shown its indulgence by giving the reason that with regard to the proportionality of the punishment comparing with the charges, even though had been proved, considered to be harsh and therefore, a lenient view had been taken and with the result there had been a modified punishment of reduction of pay for 2 years without cumulative effect or reduction of pay for 3 years without cumulative effect.

29. When such an indulgence has been shown in so far as other employees are concerned, against whom also similar set of charges have been framed by the respondent and also it was the conclusion of the enquiry officer that the majority of charges framed against each of the employees were proved, why such a lenient view was not taken in respect of the petitioner is concerned, is the moot question. However, the answer from the respondent is that, the case of the petitioner cannot be compared with other employees, as the petitioner played the lead role in indulging in such misconduct and misdeeds.

30. The said submissions made by the learned Central Government Standing Counsel appearing for the respondents is not appealing to this Court because, the charges are one and the same, when that being so, the punishment cannot be varied from employee to employee and that is the reason why the learned counsel appearing for the petitioner urged before this Court that why such a lenient view could not have been taken in respect of petitioner also. In this regard, the learned counsel appearing for the petitioner relied upon the decision reported in (2001) 10 SCC 530 in the matter of Tata Engineering & Locomotive Co., Ltd., v. Jitendra PD. Singh, where the learned counsel relied upon the following paragraphs of the Judgment, which reads thus :

"2. On an inquiry being held, the inquiry authority found that the allegation of misconduct is proved and the disciplinary authority on consideration of the report of the inquiry authority and the other relevant material dismissed the first respondent from service. Thereafter, a reference to the Labour Court at the instance of the first respondent was made. The Labour Court, though held on a preliminary question that the disciplinary inquiry conducted against the first respondent is valid, came to the conclusion after perusing the documentary and oral evidence on record that the dismissal was not justified and held

that he was entitled to reinstatement with full back-wages with continuity in service and other consequential benefits. A writ petition was filed in the High Court which was allowed but on the basis of certain offer made, the learned single Judge also directed that the appellant shall pay, to the first respondent, salary from the date of discharge till the date of the order in a lump sum of Rs. 50,000/-. Thereupon, both the management and the workman filed two appeals. In the appeals several questions were raised as to whether the act attributed to the first respondent would amount to misconduct at all which will entail a disciplinary inquiry at the instance of the management to end up with his dismissal; strong reliance was placed on Glaxo Laboratories (I) Ltd., v. Presiding Officer, Labour Court, Meerut [(1984) 1 SCC 1]. Ultimately, however, the two learned Judges agreed on the aspect of the matter that the question whether on misconduct, attributed to the workman there should have been causal connection between misconduct and employment of the workman may not be of much significance when such acts have taken place within premises of the factory should be decided in an appropriate case. What influenced the Court in deciding the matter is that:

Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.

3. As the judgment is rested upon this position, whatever other views may have been expressed in the course of the judgment may be of no significance. In that view of the matter, we think there is no need to interfere with the order made by the High Court, that too in a proceeding arising under Article 136 of the Constitution. Hence, we decline to interfere with the order made by the Highs Court. The

appeals are dismissed accordingly."
(Emphasis is mine)

31. Moreover, it is one of the settled proposition that, when similarly placed persons / employees facing similar set of charges and in respect of all the employees, the charges were proved by concluding the disciplinary proceedings, in so far as the proportionality of punishment is concerned, different view cannot be taken for each of the employees when they face the similar charges.

32. In that case it can also be construed as a discrimination, for which no plausible reason has been given in the case in hand by the respondent. Therefore, this Court feels that, there is substance in the said arguments advanced by the learned counsel appearing for the petitioner that the lenient view taken in respect of other employees, who have also been placed like that of the petitioner should have been extended to the petitioner also.

33. In that view of the matter, this Court has no hesitation to hold that, in respect of the proportionality of the punishment, since the petitioner has been singled out by inflicting the major punishment of compulsory retirement and the same though had been appealed by the petitioner, no such indulgence has been shown to the petitioner, as has been shown in respect of other employees, therefore, this Court on that basis, inclined to interfere with the quantum of punishment imposed against the petitioner. Resultantly, the following order is passed in this writ petition.

34. That the impugned punishment as confirmed by the impugned Award of the first respondent / Labour Court, made by the second respondent / disciplinary authority in punishment order, dated 22.12.1994 giving punishment of compulsory retirement to the petitioner, is hereby modified to the extent that, the petitioner shall be inflicted the punishment of reduction in pay for two years without cumulative effect.

35. Resultantly, the petitioner shall be entitled to get service benefits, for which his service on notional basis shall be taken into account for pensionary and other retiral benefits. Accordingly, the said exercise shall be undertaken by the respondents by inflicting the modified punishment as indicated above to the petitioner and calculate the service / monetary and retiral benefits of the petitioner, by taking into account that the petitioner would have been otherwise retired on superannuation and accordingly, pay the said benefits to the petitioner, within a period of Twelve (12) weeks from the date of receipt of a copy of this order. However, the petitioner is

entitled for only 50% salary for the period he was out of service.

With these orders, the writ petition is ordered accordingly.
No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai - 6.
2. The Director
B.C.G.Vaccine Laboratory,
Guindy, Chennai - 600 032.
3. The Director General of Health Services
Nirman Bhavan,
New Delhi - 110 001.

+1cc to Mr.S.Arockiam, Advocate, S.R.No.54238
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.54530

W.P.No.11259 of 2003

MP (CO)

rrs 28/09/2018

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