

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.19531 of 2003

P.Karunakaran

... Petitioner

Versus

1. The Bharat Electronics Limited
Rep. by its Chairman-cum-Managing Director,
No.116/2, Race Course Road,
Bangalore - 500 001.
 2. The Director (other units)
The Bharat Electronics Limited,
No.116/2, Race Course Road,
Bangalore - 500 001.
 3. The General Manager (Personnel)
Personnel and Industrial Relations Dept.,
No.116/2, Race Course Road,
Bangalore - 500 001.
 4. The Deputy General Manager (S & A/MS)
The Bharat Electronics Limited,
Nandambakkam, Chennai - 89.
- ... Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of punishment passed by the fourth respondent in Ref.No.MD 0060/P&A / CHN/03, dated 15.03.2003 as confirmed by the third respondent in Ref.No.17556/IR/HOA, dated 26.05.2003, quash the same and consequently forebear the respondents from in any manner reducing the salary of the petitioner on the basis of the impugned order of punishment.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.V.Karthic,
Senior Counsel for
Mr.S.Venkataraman

O R D E R

The prayer sought for herein is for a writ of certiorafied mandamus, calling for the records pertaining to the impugned order of punishment passed by the fourth respondent in Ref.No.MD 0060/P&A / CHN/03, dated 15.03.2003 as confirmed by the third respondent in Ref.No.17556/IR/HOA, dated 26.05.2003, quash the same and consequently forebear the respondents from in any manner reducing the salary of the petitioner on the basis of the impugned order of punishment.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows :

(i) The petitioner was appointed and trained as Assistant Supervisor (Civil) in Wage Group-VIII in Bharat Electronics Limited (BEL), Bangalore and later employed at BEL, Hyderabad. Thereafter, the petitioner was promoted as Senior Assistant Supervisor (Civil) in Wage Group-IX. On 31.07.2000, the petitioner was promoted to the Executive cadre as an Executive Assistant-II in the Technical cadre-II. The respondent company, i.e., BEL, introduced a Modified Career Plan Scheme notifying the privileges / facilities extended to TC grade employees on 04.08.2000.

(ii) Since the petitioner had been given promotion as Executive Assistant II in the Technical cadre II, of course, which is prior to the modified career plan scheme circular issued in this regard on 04.08.2000, the respondent, BEL had given advisories to the petitioner, directing him to desist from union activities, since he has been promoted to Executive cadre. Such instructions and directives were issued by the company to the petitioner in September 2000 and August 2001.

(iii) Even though such instructions and directives were issued by the company to the petitioner, the petitioner, as an office bearer of the trade union of worker, had issued a notice, dated 16.08.2001 for the Annual General Body meeting of the trade union to be held on 30.08.2001. Also the petitioner participated in the agitation between 10.00 a.m and 11.00 a.m and 1.45 to 2.00 p.m, on 16.08.2001 and between 10.35 a.m and 11.00 a.m and 1.45 p.m to 2.00 p.m on 17.08.2001. Also the petitioner, in order to participate in the said agitation had abruptly left the discussions he had with his superior, namely the Deputy Manager (P&S) stating that he was the General Secretary of the trade union and therefore, he wanted to take part in the agitation programme organised by the union. Also the petitioner had raised Industrial Dispute between the Assistant Commissioner of Labour, Conciliation-I, Govt. of Tamil Nadu on 11.10.2001 in his capacity as General Secretary of the union and

also the petitioner appeared in person as General Secretary of the union during the conciliation proceedings held on 31.10.2001 and 20.11.2001.

(iv) Weighing this actions on the part of the petitioner were in violation of the service rules called BEL Conduct, Discipline and Appeal (CDA) Rules, dated 10.04.2001, (herein after referred to as "the CDA Rules"), the respondent company had issued a charge against the petitioner on 03.12.2001 interalia framing the following charges against the petitioner :

"i) that you continue to be the General Secretary of Chennai Bharat Electronics Employees Union and in furtherance thereof you have issued a notice dated 16.08.2001 for the Annual General Meeting to be held on 30.08.2001.

ii) you have participated in agitation between 10.00 a.m and 11.00 a.m and 1.45 p.m and 2.00 p.m on 16.08.2001 and between 10.35 a.m and 11.00 a.m and 1.45 p.m and 2.00 p.m on 17.08.2001. You had abruptly left the discussions you were having with your superior Dy.Manager (P&S) stating that you are General Secretary of the Chennai Bharat Electronics Employees Union and wanted to take part in agitation programme organised by unionised category employees.

iii) you have raised an Industrial Dispute under the Industrial Disputes Act before the Asst. Commissioner of Labour, Conciliation -I, Govt. of Tamil Nadu on 11.10.2001 in your capacity as General Secretary, Chennai Bharat Electronics Employees Union on Management's Circular on the issue of Medical Identity card for employees' dependents under the Company's Medical Scheme.

iv) you have appeared in person as General Secretary, Chennai Bharat Electronics Employees Union during the Conciliation Proceedings held on 31.10.2001 and on 20.11.2001, you gave the rejoinder on the above issue."

(v) The said charges were framed because the petitioner since had been promoted as a Technical cadre personnel, the CDA Rule, which came to be issued on 10.04.2001 could be made applicable against the petitioner and therefore, the said charges were framed for the alleged violation of the CDA Rules.

(vi) Thereafter, a domestic enquiry was conducted, for which the enquiry officer was appointed. The petitioner under protest had submitted himself for the said enquiry. After enquiry, the enquiry officer had given an enquiry report, found that the charges framed against the petitioner were proved and after accepting the enquiry officer's report, the respondent company inflicted one of the major punishment on the petitioner for reduction in rank, i.e., from Executive Assistant II, i.e., Technical Cadre II to workman, by order, dated 15.03.2003.

(vii) The said order of punishment passed by the fourth respondent was confirmed by the third respondent, by order, dated 26.05.2003. Therefore, having aggrieved over the said orders passed by the respondent company, demoting the petitioner from Technical cadre to workman cadre, this writ petition has been filed with aforesaid prayer.

3. Mr.V.Ajoy Khose, learned counsel appearing for the petitioner has broadly made two fold submissions. Firstly the learned counsel submitted that, even though the petitioner had been promoted as Technical cadre II in the category of Executive Assistant II, this can be treated only as a career advancement promotion as per the modified career plan scheme circular notified by the respondent company on 04.08.2000 and by virtue of such promotion, certain privileges even though had been extended to the petitioner, it cannot be construed that it was a functional promotion, thereby the position of the petitioner was not functionally elevated to Executive cadre and therefore by virtue of such promotion, the petitioner cannot loose the category of workman and therefore, he can very well participate in the agitation organised by the trade union.

4. The learned counsel appearing for the petitioner would further submit that, if the cadre of the petitioner is construed as a workman, certainly the CDA Rules under which the disciplinary proceedings were conducted against the petitioner cannot be made applicable against the petitioner and therefore, the entire proceedings is vitiated.

5. The learned counsel for the petitioner would further submit that, by virtue of Section 18 of the trade union Act, the petitioner has got the immunity being the office bearer of the trade union and therefore there could not be civil or criminal consequences be effected against the petitioner because of the lawful agitation of the trade union, where he participated. Therefore the learned counsel appearing for the petitioner would submit that, if at all disciplinary proceedings can be initiated against the petitioner under the CDA Rules, the same can be made only in respect of Charge No.(ii) and not in respect of Charge Nos.(i), (iii) and (iv). Hence the learned counsel would submit

that, if the disciplinary proceedings is to be considered excluding charge Nos.(i), (iii) and (iv), the only question to be decided is as to whether the punishment awarded against the petitioner by accepting the enquiry officer's report, in so far as the second charge is concerned, is sustainable or not.

6. In this regard, the learned counsel for the petitioner would submit that, no doubt the petitioner did participate in the agitation as mentioned in Charge No.(ii). However, the said participation itself would not amount to any misconduct and therefore the punishment inflicted against the petitioner ought not have to be made. He would also submit that, in so far as the second part of the second charge that the petitioner abruptly left the discussions, he had with the superior for participating in the agitation, absolutely there is no proof before the enquiry officer to substantiate the said charge and therefore for the second part of the second charge, which is admittedly not proved, as there had been no evidence either document wise or orally, the punishment given stating that the second part of the second charge also had been proved against the petitioner is wholly unjustifiable. Therefore the impugned punishment of reduction in rank has to be set aside.

7. Per contra, Mr.V.Karthic, learned Senior counsel appearing for the respondents company would submit that, the petitioner on the one hand has taken a stand that he is a workman and this consistent, stand wherever possible, he has taken and in fact, he filed the claim statement by raising an Industrial Dispute, which was taken on file as I.D.No.334 of 2003 before the I Additional Labour Court, Chennai, where the prayer sought for by the trade union, where the petitioner claim to be the office bearer, was for an award in favour of the petitioner, declaring that the Technical cadre employees working in the respondent company are workman within the meaning defined under Section 2(s) of the Industrial Dispute Act, 1947. Though the said Industrial Dispute was dismissed for default and thereafter, it was not restored, the filing of the said Industrial Dispute itself would go to show the conduct of the petitioner that, from the beginning, his stand before various forum was that he is workman and therefore, his grievance should be addressed by the appropriate forum, namely the Labour Court / Industrial Tribunal established under the I.D.Act.

8. In this context, the learned Senior counsel for the respondents would submit that, if the stand of the petitioner that he is a workman is taken into account and if it is accepted, certainly the remedy available for the petitioner to agitate the present issue challenging the punishment inflicted on him rests only at the appropriate forum under the I.D.Act and not before this Court, that too by way of writ petition under

Article 226 of the Constitution of India.

9. The learned Senior counsel would further submit that, modified career plan scheme was introduced later, i.e., on 04.08.2000. However, prior to the modified career plan scheme, he was given promotion as Executive cadre on 31.07.2000 itself. Therefore the said promotion has to be treated only as a regular independent promotion and cannot have any linkage with modified plan scheme. He would further submit that, pursuant to the promotion to the post of Technical cadre-II, the petitioner had been enjoying all the privileges and perquisites available to the Technical cadre-II at the respondent company and once the petitioner has chosen to receive the perquisites and privileges for the Executive Cadre, he would be seized to be in the category of workman and therefore he cannot claim he is only a workman, even though was promoted as Executive in Technical Cadre.

10. Therefore the learned Senior counsel would submit that, the CDA Rules, which came into effect from 10.04.2001 of the respondent company would certainly cover the petitioner, as the very applicability of the rule, as has been mentioned in the preamble itself would clearly envisages that CDA Rules will be applicable to Executive / Employees in Technical Cadre.

11. If the said rule is made applicable to the petitioner also and in that case what are all the violations or misconduct on the part of the petitioner in violation of the specific rules of the CDA Rules, then the respondent company for those violations would be at liberty to take disciplinary action against him. Therefore all the four charges framed against the petitioner were only in consonance with the said CDA Rules and the charges framed against him, since had been proved as per the Enquiry officer's report, the disciplinary authority having accepted the report and after having independently applied his mind, has inflicted the punishment of only the reduction in rank.

12. He would further submit that, even though removal of service is one of the major punishment, it could also be imposed against the petitioner, the disciplinary authority has not chosen to impose such a punishment and has only imposed only reduction in rank.

13. The learned Senior counsel appearing for the respondent company would also submit that, since the said punishment of reduction in rank was imposed against the petitioner, ofcourse 5 years from the date of punishment, i.e., from 15.03.2003, he would not be entitled to get any promotional benefits and therefore after the block period of five years, the respondent company offered him for a promotion again to the Executive

Assistant Cadre II in Technical Cadre II on 01.04.2008. However, the petitioner did not come forward to accept such promotion, as he had made condition for accepting the same, which was not agreed upon by the respondent company.

14. He would further submit that, however after one year, on 01.04.2009, the petitioner had come forward to accept the order of promotion issued to him by the respondent company to the Executive Cadre as an Executive Assistant II in the Technical Cadre II unconditionally. Thereafter, the petitioner was promoted from Executive Cadre II to Executive Cadre III on 01.04.2013 and the petitioner retired from service, on his superannuation on 30.09.2017.

15. The learned Senior counsel would further contend that, if the petitioner still insist upon the stand he has taken that, he is workman only, the remedy sought for herein cannot be granted by this Court, as there is an alternative efficacious statutory forum available, before which only, he can agitate the said issue. He would further submit that, if at all, the petitioner accepts that he is only an Executive Cadre employee at the time of disciplinary action initiated against him, certainly the CDA Rules would clearly applicable on the petitioner and based on the said rule, since the disciplinary proceedings was concluded, punishment was imposed on him, the same cannot be found fault with and therefore, the impugned order of punishment can very well be sustainable.

16. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Senior counsel for the respondent company.

17. The learned counsel for the petitioner has mainly raised an issue that, even though he was given promotion as Technical Cadre II in the Executive Cadre, such promotion cannot be construed as an Executive cadre, as there was no functional promotion given to him, as the said promotion was only pursuant to the modified career plan scheme. Therefore he argued that the petitioner was continued to be in the workman category and therefore in that capacity as a workman, he can very well participate in the agitation organised by the trade union, as the petitioner was the office bearer of the trade union.

18. In order to meet out this contention, it is the submission of the learned Senior counsel for the respondent company that, the promotion was given before the modified career plan scheme was introduced and based on the promotion to the cadre of Technical Cadre II, the petitioner started getting all perquisites and started enjoying the privileges. Moreover, it is the case of the respondent that, after he gets promotion, the

petitioner was given directives and instructions in the year 2000 and 2001 to desist from union activities. However, unmindful of such instruction given by the company, the petitioner continued to be in the union activities and also participated in the agitation.

19. In this context, it is to be noted that, under Clause 22 of Rule 21 under the heading 'misconduct', it has been specifically mentioned that, participation in strikes, gheraos and other agitational activities or abetting, inciting, instigating or acting in furtherance thereof would be one of the misconduct, for which employee of the respondent company can be proceeded by way of disciplinary action.

20. Even though it was argued by the learned counsel for the petitioner that, he is only a workman and therefore the CDA Rules of the respondent company will not be made applicable against the petitioner, such argument cannot be accepted for the reason that, the petitioner had been given promotion to the Technical Cadre II, which is an Executive Cadre II of the company and the perquisites and privileges are different for the executive cadre, which was offered to the petitioner and he had accepted the same. Pursuant to the promotion, it seems that the responsibility of the petitioner also has been different as an Executive cadre employee.

21. More over, the petitioner after the initiation of the disciplinary proceedings, invoking the provisions of CDA Rules, himself had accepted to the said disciplinary proceedings by participating in the enquiry conducted by the enquiry officer. Even though it was argued by the learned counsel for the petitioner that, the petitioner participated in the enquiry only under protest, the fact remains that the enquiry was conducted only under the Rules, that too under the charges framed against the petitioner for the alleged violation of the code of conduct and based on which, report of the enquiry officer also was given and accepting the same, punishment was awarded as contemplated under the CDA Rules.

22. All these factors would go to show that, the petitioner after getting promotion as Technical Cadre II had been acting as Executive, by receiving all perquisites and privileges and he had also participated in the disciplinary proceedings initiated under the Rule and ultimately suffered with the punishment awarded against him under the Rule.

23. However, even though the petitioner has become an Executive and he has been dealt with under the CDA Rules, his becoming or being of the office bearer of the trade union has not been prohibited by virtue of his being one of the Executive

cadre employee of the respondent company.

24. In this context, the submission of the learned counsel for the petitioner was that, once the petitioner's right of being office bearer of the trade union is not prohibited and he being an office bearer of the trade union acted upon in issuing notice and also raised conciliation proceedings and appeared before the conciliation officer on behalf of the trade union, those activities cannot be construed as a violation of code of conduct because such kind of activities of a trade union office bearer is fully protected and in fact office bearer is immune from any civil proceedings, as has been contemplated under Section 18 of the Trade Union Act.

25. The said argument advanced by the learned counsel appearing for the petitioner would have some force because, Section 18 of the Trade Union Act is a legislative protection. Therefore the same cannot be overridden by any executive rules much less the service rules of the respondent company. No doubt the executive cadre persons are governed under the CDA Rules for their service disputes and for service matters. However the privilege enjoyed by an office bearer of the trade union and the immunity enjoyed by him as protected and provided under Section 18 of the Trade Union Act cannot be taken away or eclipsed by the provisions of service rule of the respondent company. Therefore the argument advanced by the learned counsel for the petitioner that if at all disciplinary proceedings is to be initiated against the petitioner for the four charges, only in respect of charge No. (ii), such a proceeding could have been taken under CDA Rules and in respect of other charges, i.e., Charge Nos.(i), (iii) and (iv), the same could not have been made against the petitioner, since those charges related to the officer of the trade union activities and is protected under Section 18 of the Trade Union Act. Therefore the disciplinary proceedings initiated against the petitioner for Charge Nos.(i), (iii) and (iv) by the respondent company cannot be approved, is accepted by this Court. सत्यमेव जयते

26. In that case, if Charge Nos. (i), (iii) and (iv) go, the only charge remaining is Charge No.(ii), which consists of two parts. In so far as the first part of the second charge is concerned, it is the candid admission on the part of the petitioner that he has participated in the agitation. In so far as the second part of the second charge is concerned, that he abruptly left the discussions, he had with the superior to participate in the agitation, it is the strong case of the petitioner that there is absolutely no evidence to prove the said charge. On the side of the respondents also, they have not produced any record to show that there are evidences to substantiate the second part of the second charge and therefore

in view of the said factual matrix, as there is no proof to substantiate the second part of the second charge, i.e., participating in the agitation. The second part of the second charge cannot be said to be proved. Therefore, if at all punishment is to be given to the petitioner for the said proven charge, i.e., the first part of the second charge, that punishment can be incommensurate with the said charge and not beyond that.

27. In this regard, the CDA Rules prescribe certain minor penalties and major penalties also. Here in this case in hand, the disciplinary authority has treated the proven charge, which attracts one of the major punishment. According to the said Rule, the following are the major penalties.

"(1) Reduction to the next lower grade or any other lower grade or post including the lowest one or to any lower or lowest scale of pay.

(2) Suspension without pay for a period not exceeding a month.

(3) Withholding of increment(s) without cumulative effect.

(4) Discharge or removal from service or compulsory retirement.

(5) Dismissal without notice or payment of compensation in lieu of notice.

(6) Total or partial forfeiture of Gratuity in accordance with the company's Gratuity scheme."

28. Out of these major penalties, the disciplinary authority had chosen to impose the punishment of reduction in rank to the petitioner through the impugned order. In fact under the heading disciplinary / appellate authorities of the CDA Rules, certain major punishments have been put under one compartment such as suspension without pay, withholding increment with cumulative effect, reduction of pay and reduction to lower post or grade. Some other punishment are put under another compartment, such as any other higher punishment including discharge or removal from service and dismissal. Therefore, four major punishments have been put under same compartment, which includes suspension, withholding increment, reduction of pay and reduction of cadre. All these four punishments are treated as major punishments under one compartment. Therefore, if at all one of these punishment is given to a delinquent for a proven charge, which attracts a major punishment of any one of these four, then that can be considered to be a proper punishment incommensurate with the violation or misconduct.

29. Here in the case on hand, the punishment of reduction in rank has been imposed against the petitioner for all the four

proven charges. In so far as Charge Nos.(i), (iii) and (iv) are concerned, as discussed above, for those charges punishment could not have been imposed against the petitioner, in view of the provisions under Section 18 of the Trade Union Act.

30. In so far as the second charge is concerned, as discussed above, second part of the said charge has not been proved. Therefore, for the remaining, i.e., the first part of the second charge, if punishment is given, this Court is of the considered view that the punishment of reduction in rank could have been avoided, for which any other major punishment in the same compartment like suspension or withholding increment could have been inflicted. If such a punishment would be given, certainly it would be incommensurate with the first part of the second charge, which has been proved, as per the own admission of the petitioner and that would meet the ends of justice.

31. In such circumstances, taking into account the factual matrix and based on the discussions above, this Court is inclined to pass the following order :

(i) That the impugned order of punishment of reduction in rank inflicted on the petitioner is hereby modified to withholding of increment with cumulative effect for a period of one year.

(ii) In view of the modified punishment, even though the petitioner can claim the consequential benefits, he would not be entitled to claim any backwages in the cadre of Technical Cadre II in the Executive Assistant Cadre II from the date of punishment, i.e., 15.03.2003 till the date of promotion, i.e., on 01.04.2009, as during these periods, the petitioner has not admittedly worked in that cadre and moreover the promotion was subsequently offered on 01.04.2008, which the petitioner did not accept and had accepted only on 01.04.2009.

(iii) However, the petitioner shall be entitled to calculate the said service during the said period, i.e., from 15.03.2003 to 01.04.2009 as Technical Cadre II for all other service benefits including the terminal benefits, which shall be calculated and accordingly, the revised order can be passed by the respondent company conferring those benefits on the petitioner.

(iv) The aforesaid exercise shall be undertaken by the respondents company within a period of three months from the date of receipt of a copy

of this order.

With these direction, this writ petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

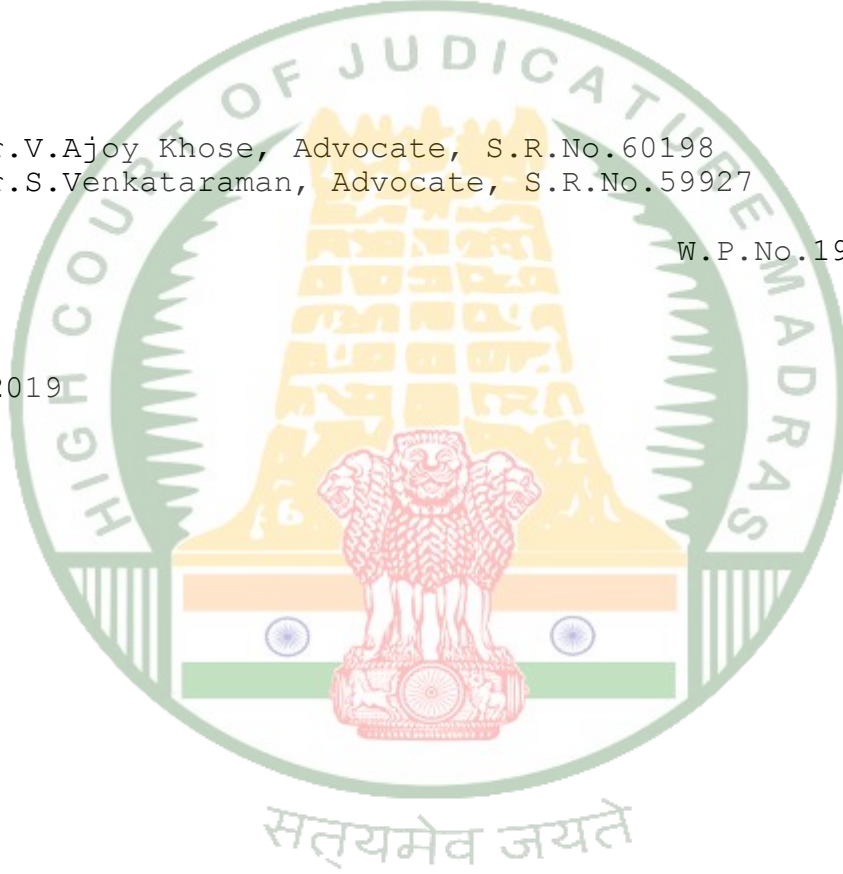
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To

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.60198
+1cc to Mr.S.Venkataraman, Advocate, S.R.No.59927

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