

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.6833 OF 2006

ORDER

This Writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the order dated 31.12.2003 passed by the disciplinary authority and the order dated 23.4.2004 passed by the appellate authority and to quash or set aside the same by holding it as arbitrary and illegal.

Heard Sri M.Pitchaiah, learned counsel appearing for the petitioner, and G.VidyaSagar, learned Senior Counsel appearing for the respondents.

It is the case of the petitioner that he was appointed as a Sub-overseer on 7.11.1988. Thereafter, the post was re-designated as Sub-Engineer in the year 1993. Subsequently, he was promoted as Additional Assistant Engineer in the month of October, 1997, and since then he was working as such. While so, he had indulged in certain irregularities and an allegation of illegal gratification was also leveled against him. This incident was construed as misconduct. Initially, the respondents have placed him

under suspension and thereafter, issued a show cause notice on 23.09.2003. Pursuant thereto, the petitioner submitted his explanation on 21.10.2003. Being not satisfied with the same, the disciplinary authority has ordered for regular enquiry. After conducting a detailed enquiry, the Enquiry Officer held that the charges leveled against the petitioner were proved. Upon furnishing a copy of the enquiry report, the petitioner submitted his objections to the same.

The grievance of the petitioner is that all the witnesses, who were examined in the enquiry, turned hostile and they have not supported the version of the Enquiry Officer, though the Enquiry Officer held that the charges were proved. The disciplinary authority neither considered the said aspect nor any of the objections raised by the petitioner and it has mechanically passed the order dated 31.12.2003, imposing the punishment of postponement of two increments with cumulative effect, besides treating the period of suspension as 'dies-non'. Aggrieved by the same, the petitioner preferred an appeal before the appellate authority. The appellate authority had also not appreciated any of the contentions raised by the

petitioner and mechanically dismissed the same on 23.04.2004. Thereafter, the petitioner had preferred a Mercy Petition and the same was also rejected by the respondents on 01.03.2006. Challenging the same, the petitioner filed the present writ petition.

Learned counsel appearing for the petitioner submits that the disciplinary authority has passed the punishment order in a very cryptic manner and it is not a speaking order; that the appellate authority has also not passed any speaking order except extracting the charges; that the contribution of disciplinary authority is only limited to one line except stating that 'not being satisfied with the explanation, has straightaway imposed the punishment' and that the disciplinary authority must assign reasons for arriving at the quantum of punishment and pass appropriate orders. He further submits that in the instant case, the contribution of the disciplinary authority is minimal.

Learned Standing Counsel appearing for the respondents submits that every opportunity was given to the petitioner; that after issuing show cause notice, the petitioner had submitted explanation, then only, the

disciplinary authority once again reiterated the entire history of the petitioner and imposed the punishment and that the appellate authority as well as the reviewing authority also rightly rejected the appeal and review petition and hence, no interference is called for by this Court.

Admittedly, the disciplinary authority as well as the appellate authority have not passed any speaking orders. While imposing the punishment, the disciplinary authority ought to have applied the proportionality theory. The appellate authority as well as the reviewing authority had mechanically rejected the appeal and review petition. Therefore, ends of justice would be met if the matter is remanded to the appellate authority for re-considering the case of the petitioner afresh after giving opportunity to the petitioner.

Accordingly, the Writ Petition is allowed and the matter is remanded to the appellate authority to re-consider the case of the petitioner afresh, if necessary, afford an opportunity of personal hearing to the petitioner, and pass appropriate orders within a period of two months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

5th October, 2018

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