**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No. 3999 OF 2004**

**ORDER :**

This Writ Petition is filed seeking to issue a writ of mandamus declaring the proceedings dated 5.12.2003 passed by the respondent in imposing the penalty of reducing the basic pay by two incremental stages for a period of two years with cumulative effect besides treating the suspension period from 17.1.2003 to 24.4.2003 as 'not on duty' as arbitrary, illegal and contrary to regulations and violative of Articles 14 and 21 of the Constitution of India and sought a consequential direction to declare that the petitioner is entitled for all consequential benefits.

Heard Sri P.Sridhar Rao, the learned counsel for the petitioner and Sri P.Durga Prasad, the learned Standing Counsel for the respondents.

It has been contended by the petitioner that he was initially appointed as a Driver with the respondent corporation on 9.12.1988 and while he was discharging his duties during January, 2003, a Charge Memo was issued alleging that he has failed to remit an amount of Rs. 10,000/- at Depot Cash counter. The disciplinary authority had initiated disciplinary proceedings and, after conducting detailed enquiry, had imposed the punishment of reduction of his pay by two incremental stages for a period of two years with cumulative effect, besides treating the suspension period from 17.1.2003 to 24.4.2003 as 'not on duty'. Challenging the same, the present Writ Petition is filed.

The learned counsel for the petitioner submits that during the pendency of this Writ Petition, the petitioner had attained the age of superannuation and the disciplinary authority ought to have imposed punishment commensurate to the charge leveled against the petitioner and imposed a punishment of reduction of pay by two incremental stages for a period of 2 years without cumulative effect. As the disciplinary authority has already treated the period of suspension as not on duty, treating the suspension as not on duty is another punishment and reducing the pay by two incremental stages for a period of two years by two incremental stages with cumulative effect is also a major penalty and ends of justice would be met, if the punishment of reduction of pay by two incremental stages for a period of two years with cumulative effect is modified to that of without cumulative effect.

The learned Standing Counsel for the respondents contends that the charge of non remittance of Rs. 10,000/-, leveled against the petitioner is a serious charge and the said charge was also proved in the enquiry and contends that no interference is called for; there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions made by the parties, is of the considered view that the disciplinary authority has treated the period of suspension as 'not on duty' besides imposing a major penalty of reduction of pay by two stages for a period of two years with cumulative effect which is too harsh punishment and the disciplinary authority ought to have applied the proportionality theory by duly taking into account the fact that this is the first allegation leveled against the petitioner and ends of justice would have met had the disciplinary authority imposed the punishment of reduction of pay by two incremental stages for a period of two years without cumulative effect. But in the instant case, the disciplinary authority has imposed major punishment of reduction of pay by two incremental stages for a period of two years with cumulative effect besides treating the period of suspension as 'on on duty'. Therefore, this Court is of the considered view that the punishment imposed by the disciplinary authority is modified to that of reduction of pay by two incremental stages for a period of two years without cumulative effect by duly taking into account the fact that the petitioner has already retired from service. This modification, however, will be without any monetary benefits to the petitioner, but the same will be counted for the purpose of his terminal benefits only.

With this observation, the writ petition is disposed of.

Miscellaneous Petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

21st December, 2018
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