

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NOs.24843 OF 1999 & 25328 of 2000

COMMON ORDER:

1. These two writ petitions are being disposed of by this common order as the petitioner and the respondents are one and the same in both the cases.
2. W.P.No.24843 of 1999 is filed seeking to issue a writ of certiorari calling for the records relating to and connected with the impugned orders dated 12.8.1998, which was confirmed by the appellate authority on 11.11.1999 and to set aside the same by holding them as arbitrary and illegal, and also to declare the proceedings dated 27.1.2000 insofar it provides for fixation of the petitioner's pay as General Manager only upto 11.8.1998 and thereafter as Deputy General Manager, as illegal and arbitrary, and consequently, to direct the respondents to give the petitioner the benefit of the revised pay scales as General Manager till 8.12.1999 and pay arrears forthwith.
3. W.P.No.25328 of 2000 is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the punishment order dated 28.7.2000 and also the order of the appellate authority dated 14.9.2000 confirming the said punishment order and to quash the same by holding them as illegal and arbitrary.
4. Heard Sri Vijay, advocate representing Sri M. Krishna Mohan Rao, learned Counsel for the petitioner, and Sri S. Dwarakanath, learned Counsel for the respondents.

5. The learned Counsel for the petitioner submits that while the petitioner was discharging his duties as General Manager, MMTC, Regional Office at Bombay, he entered into memorandum of understanding with MPCL on 1.6.1994, and subsequently, he entered into Addendum on 19.9.1994 as a General Manager with MPCL, and after discharging his duties in Bombay, without any complaint he was transferred to the Regional Office at Visakhapatnam on 10.11.1994. He further submits that after transfer of the petitioner from the Regional Office at Bombay, one Adarsh Goyal succeeded to the said post and he did not take effective steps in pursuing with the memorandum of understanding with MPCL and thereby, certain lapses occurred for which the petitioner is no way responsible, and be that as it may, the respondents construed the action of the petitioner in entering into MOC with MPCL as misconduct and issued charge sheet on 13.2.1996, wherein five articles of charges were framed against the petitioner and that the petitioner submitted a detailed explanation denying the charges and stating that when he had exercised his powers in discharge of his duties, at best it should be treated as an error of judgment and at any rate, it cannot be construed as misconduct, and not being satisfied with his explanation, the disciplinary authority appointed an enquiry officer to enquire into the articles of charges leveled against the petitioner and in the enquiry, the petitioner demonstrated that the allegations made against him are not at all charges and the same cannot be treated as misconduct and moreover, charge No.1 itself is defective as it was not mentioned in item No.1 of Schedule 'A' of Delegation of Powers of MMTC to conclude, purchase and sale contracts upon limited tenders or by negotiations within the policy accepted by the Board in respect of imports, exports and internal procurement, and now, under item No.6, the General Manager is empowered to enter into contracts and every allied

issues upto One Crore in each case and now item No.9 deals with financial assistance to the suppliers/handling agents etc., where the power of General Manager is upto Rs.25 lakhs in each case and that the first charge deals with the inaction, and that the issues pertaining to item No.1 of Schedule A are not quoted in the charge, and that item No.9 is quoted which has no relevancy and therefore, charge No.1 itself is defective. He further submits that the enquiry officer split the first charge into three separate issues and held that two limbs of the 1st charge were not proved, but a portion of the first article of charge was proved, and that charge Nos.2 and 5 were held not proved. It is further submitted that the only issue is in respect of Articles of charges Nos.3 and 4, and that the enquiry officer submitted a report on 29.5.1997, holding that charge Nos.3 and 4 were proved, and that the disciplinary authority disagreed with the findings of the enquiry officer on 21.7.1998, however, strangely the disciplinary authority quoted in the note charge Nos.3 and 4 which were held as proved by the enquiry officer, and it is not known as to why the disciplinary authority quoted charge Nos.3 and 4 in the dissent note and to what extent the disciplinary authority disagreed with the findings of enquiry officer, was not disclosed in respect of which charges, such dissent was given, and at best the disciplinary authority ought to have disagreed with the findings of the enquiry officer in respect of charge Nos.2 and 5 and two limbs of the 1st charge, and ought to have given a categorical finding that the disciplinary authority disagreed with the findings of the enquiry officer to the extent that the enquiry officer held that the charges are not proved. But the same could not be culled out from the disagreement note issued by the disciplinary authority.

6. Further, the learned Counsel for the petitioner submits that petitioner submitted his objections to the dissent note on 6.8.1998 and the disciplinary authority passed the punishment of reversion and recovery of Rs.2,500/- per month for a period of 12 months vide orders dated 12.8.1998 and aggrieved by the same, the petitioner preferred appeal before the appellate authority and the appellate authority rejected the appeal vide proceedings dated 11.11.1999. The learned Counsel for the petitioner submits that the findings recorded by the disciplinary authority are all perverse and contrary to the evidence which was led during the enquiry, and prays that the writ petition should be allowed by setting aside the orders of punishment imposed on the petitioner.

7. The learned Counsel for the petitioner further submits that subsequent to filing of W.P.No.24843 of 1999, on 1.5.2000 a show cause notice was issued to the petitioner alleging certain acts of omission and in that regard, the disciplinary authority imposed minor penalty of recovery of Rs.10,000/- for the financial loss caused to the company and that the said punishment was imposed without appreciating the evidence and without application of mind by the disciplinary authority and the appellate authority without giving any opportunity and without appreciating the evidence mechanically confirmed the orders of punishment imposed by the disciplinary authority and therefore, the impugned order of punishment of Rs.10,000/- imposed by the disciplinary authority and confirmed by the appellate authority should be set aside.

8. The learned Counsel for the respondents submits that the disciplinary authority as well as the appellate authority followed the procedure, and an adequate opportunity was given to the petitioner to defend his case and that the disciplinary authority has rightly imposed

punishment on the petitioner after considering the findings of enquiry officer, and in respect of the charges not proved in the enquiry, the disciplinary authority issued a dissent note, and after giving opportunity to the petitioner to make his objections, the disciplinary authority imposed punishment, and therefore, no interference is called for from this Court and that the disciplinary authority imposed the punishment after taking a lenient view, and that the question of punishment being shockingly disproportionate to the charges leveled against the petitioner did not arise, and viewed from any angle, the writ petitions are liable to be dismissed.

9. I have considered the rival submissions made by the parties. Insofar as W.P.No.24843 of 1999 is concerned, the disciplinary authority while imposing punishment passed a very cryptic order. The punishment order in W.P.No.24843 of 1999 discloses that the disciplinary authority did not pass any speaking orders except making a bald statement stating that “I reconfirm the findings as before, and in view of the above serious charges, the petitioner is reverted to the basic scale and basic pay of a rank below i.e., Deputy General Manager from the date of the order”. The disciplinary authority ought to have passed a speaking order taking into consideration the objections filed by the petitioner and also discussed the dissent note and explanation submitted by the petitioner. Even though there was dissent note on the findings of the enquiry officer, no discussion was made in the order on such dissent note and the objections filed by the petitioner while imposing punishment on the petitioner. So, it is difficult for any prudent person to make out as to whether the disciplinary authority had imposed the punishment based upon the original enquiry report or on the dissent note. The disciplinary authority must have passed a speaking order indicating the factors that led to impose punishment. Even the appellate

authority has not passed any speaking order except stating that no new points were raised in the appeal by the petitioner and on that ground alone, the appeal is said to have been rejected. In my considered view, the impugned order dated 12.8.1998 passed by the disciplinary authority and the order dated 11.11.1999 passed by the appellate authority are not sustainable in the eye of law as no reasons are given, indicating the factors that weighed while imposing punishment on the petitioner and accordingly, the said orders suffer from infirmities and accordingly, they are set aside and the matter is remitted back to the disciplinary authority to consider the case afresh and pass appropriate orders by way of speaking order, after giving an opportunity of personal hearing to the petitioner, if necessary, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, Writ Petition No.24843 of 1999 is allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

11. Insofar as W.P.No.25328 of 2000 is concerned, the punishment is of a recovery Rs.10,000/- from the salary of the petitioner. Since the petitioner has already paid the said amount, and the said punishment has already been worked out on its own with the afflux of time, no further orders are necessary in this writ petition. Accordingly, W.P.No.25328 of 2000 is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Abhinand Kumar Shavili

Dated: 5.01.2018

Nn.

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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5.1.2018

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