

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.7118 OF 2007

ORDER

This Writ Petition is filed for the following relief:

.....to issue an order, direction or writ of Mandamus declaring the action of the 2nd respondent in issuing the proceedings dated 27.05.2005 by imposing the punishment of deferment of annual increments for a period of two years with cumulative effect besides treating the suspension period as not on duty is illegal, arbitrary and unjust and consequently set aside the proceedings issued by the 2nd respondent dated 27.05.2005 and the proceedings of the 1st respondent dated 04.11.2006 by direct the respondents to treat the petitioner's services as continuous granting all increments and to treat the suspension period as on duty and pass such further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

Heard Sri G.Ravi Mohan, learned counsel appearing for the petitioner and Sri P.Vinayaka Swamy, learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that he was appointed as Conductor in the respondent-Corporation and while working as such, alleging that he was found in a drunken state, the respondent-Corporation issued charge sheet to him on 06.12.2004. The conduct of the petitioner was construed as a misconduct by the respondent-Corporation and after conducting regular departmental enquiry, the respondent-Corporation had issued the impugned proceedings dated

27.05.2005 proposing to impose the punishment of deferment of annual grade increments for a period of two years with cumulative effect. Challenging the said proceedings, the petitioner preferred an appeal before the appellate authority and the same was rejected on 22.12.2005. Thereafter, the petitioner filed a review petition and the same was also rejected *vide* proceedings dated 04.11.2006. Hence, the present writ petition.

Learned counsel appearing for the petitioner contends that no medical examination was conducted to demonstrate that the petitioner was in a drunken state. He further submits that the petitioner had taken a defence that he had consumed cough syrup, which resulted in positive indication in the breath analyzer and that the petitioner is not guilty of the offence alleged against him.

Learned counsel appearing for the respondent-Corporation contends that after following the principles of natural justice, the Enquiry Officer came to a conclusion that the petitioner was in a drunken state and that the disciplinary authority has taken a lenient view and imposed punishment of deferment of annual grade increment for a period of two years with cumulative effect and therefore, no interference is called for by this Court.

A perusal of the impugned order indicates that the petitioner was called upon to show cause as to why he should not be imposed the proposed punishment of deferment of annual grade increments for a period of two years with cumulative effect, no such punishment was imposed and it is only a show cause notice.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that ends of justice would be met if the matter is remanded to the disciplinary authority.

Accordingly, the Writ Petition is allowed and the matter is remanded to the disciplinary authority for passing orders afresh, if necessary, by taking into consideration the representation, which is likely to be submitted by the petitioner within a period of one week from the date of receipt of a copy of this order. Upon receipt of such representation, the disciplinary authority shall consider the same and pass appropriate orders within a period of four weeks thereafter.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

14th August, 2018
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