

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.21729 OF 2001

ORDER:

Petitioner, who worked as a clerk (Trains) in the first respondent-Visakhapatnam Port Trust, filed this Writ Petition being aggrieved by the orders passed by the second respondent vide Proceedings No.B/Traffic/Appeal/VNR/2001 dated 27.06.2001 confirming the order passed by the third respondent in proceedings No.TRE/PC/CMJP/VNR dated 29.07.1999 wherein the petitioner was imposed a punishment of 'reversion to the next lower post of clerk (Trains) from yard foreman for a period of two (2) years with cumulative effect' as being illegal, arbitrary and discriminatory and contrary to Visakhapatnam Port Trust Employees Conduct (Regulations) 1964 (for short 'Regulations 1964) and the Visakhapatnam Employees (Classification, Control and Appeal) Regulations, 1968 (for short 'Regulations 1968).

Brief facts of the case are that in the year 1980, the petitioner was appointed in the first respondent-Port Trust. While he was working as Yard Foreman, the Traffic Manager, Visakhapatnam Port Trust (Disciplinary Authority), Visakhapatnam, the third respondent issued a charge sheet in Memorandum No.TRE/PC/CMJP/VNR dated 04.05.1998 framing the following Articles of Charge:

"That the said Sri V.N.Reddy, yard Foreman has been working in Railway operating section in Traffic Department.

That the said Sri V.N.Reddy, Yard Foreman has got habituated for applying sick leave for a long periods duly submitting a private Medical Practitioner causing much dislocation in day to day railway operational work. It is observed from the muster roll for the last 6 months (i.e.) from October, 1977 to March, 1998 Sri V.N.Reddy, yard

Foreman was under sick from 01.10.997 to 15.01.1998 and from 09.03.1998 to 31.03.1998. Further, it is observed during the review of his attendance for the last 6 months, the percentage of attendance of Sri V.N.Reddy, Yard Foreman is found to be very poor (i.e.) 22.4% only. The employee has attended duty for 35 days only as against 156 days. This clearly shows that he is careless and negligent in attending to his duties and thereby committed serious misconduct by violating Regulation 3 (i) of VPE (Conduct) Regulations, 1964.

He is, therefore, charged for his carelessness and negligence in attending to his duties properly and for violation of Regulation 3 (i) of VPE (Conduct) Regulations, 1964”.

Petitioner submitted his explanation on 11.05.1998 and having not satisfied with the same, the respondent-Port Trust authorities appointed the Assistant Traffic Manager (Commercial) as Enquiry Officer. The Enquiry Officer had conducted enquiry and submitted Enquiry Report dated 01.04.1999 stating that the charges are proved. The third respondent vide proceedings dated 05.04.1999 directed the petitioner to make a representation on the Enquiry Report while enclosing a copy of the Enquiry Report. The third respondent after considering the representation of the petitioner and Enquiry Report, passed orders in Proceedings No.TRE/PC/CMJP/VNR dated 29.07.1999 imposing punishment of ‘reversion to the next lower post of Clerk (Trains) for a period of 2 (two) years with cumulative effect’. The petitioner preferred the appeal on 13.08.1999 against the punishment order dated 29.07.1999 under Regulation 20 of Regulations, 1968, to the second respondent. The second respondent passed orders in proceedings No.B/Traffic/ Appeal/VRN/2001 dated 27.06.2001 confirming the order of punishment passed by the third

respondent on 29.07.1999. Being aggrieved by the same, the petitioner filed the present writ petition.

Though this Court admitted the Writ Petition on 17.10.2001, no interim order was granted.

Sri P.Durga Prasad, learned counsel for the petitioner, would contend that while the petitioner was working as Yard Foreman, he was issued with a charge sheet dated 04.05.1998 alleging that the petitioner was careless and negligent in attending the duties and thereby violated Regulation 3 (i) of Regulations, 1964, which reads that "Every Employee shall, at all times, maintain absolute integrity and devotion to duty". Petitioner submitted his explanation to the same. Having not satisfied with such explanation, an Enquiry Officer was appointed. The Enquiry Officer conducted enquiry and submitted enquiry report stating that the charges are proved concluding as follows:

- "(a) The charged officer submitted sick certificate from Dr.D.Babu Rao, M.D., DTCD, Professor & Head, Department of T.B. & Chest Diseases, Andhra Medical College, also chest Physician in Govt. Hospital for chest and communicable Diseases, Visakhapatnam, but not by the Govt. Hospital;
- (b) The charged officer submitted the sick certificate in time;
- (c) No absent mark was figured in Must Roll i.e. state exhibit-I;
- (d) The charged officer was recalled for II Medical opinion;
- (e) The charged officer has improved his attendance as per SE-I;
- (f) The charged Officer was not referred by the CMO/VPT to any Govt. Hospital/Private Hospital regarding his health.

Learned counsel submits that the said conclusions are not supported by any legal evidence. The Enquiry Officer finds that the petitioner is guilty of the charges as he approached a Government Doctor and obtained a sick leave and submitted the said certificate without being referred by the Chief Medical Officer of the Visakhapatnam Port Trust. The counsel further contends

that the petitioner being a class-III employee in the respondent-Organization and as per leave Rules of Visakhapatnam Port Trust Employees, the reference by the Medical Officer of the Port Trust is not necessary and certificate issued by a Registered Doctor is sufficient. Accordingly, the petitioner produced medical certificate issued by the Government Doctor. He further contended that as per the Regulations, a regular employee, for the purpose of medical leave, can avail the leave up to 18 months with regard to certain diseases viz., (1) T.B. (2) Leprosy (3) Cancer and (4) Mental illness can produce the Medical certificate from a Registered Doctor. The petitioner's case falls under serial No.1 i.e. T.B. and thus the conclusion of the enquiry officer that the petitioner approached the Government Doctor and submitted a sick certificate without being referred by the Chief Medical Officer of Visakhapatnam Port Trust is illegal. The finding of the Enquiry Officer that petitioner's sick leave caused dislocation of work in the Organization is incorrect for the reason that the respondent-Organization has introduced 'Excessive Staff Voluntary Retirement Scheme', pursuant to the same as many as 2000 employees in the Organization have taken voluntary retirement and only in the Traffic Section where the petitioner was working nearly 10 people have taken voluntary retirement. In view of the same, the alleged dislocation of work was happened and as such the said finding of the Enquiry Officer does not stand merit consideration. *In spite* of the representation of the petitioner, the third respondent without properly considering the petitioner's representation and leave Regulations of the Organization and without independent application of mind to the Enquiry Officer's report and the evidence available on record, without examining the evidence held the petitioner has violated

Regulation 3 (i) of Regulations 1968 and came to an erroneous conclusion. Learned counsel also submits that based on the Enquiry Officer's report stating that the charges are proved, the third respondent mechanically passed the order of punishment dated 29.07.1999 inflicting the punishment of 'reversion to the next lower post of Clerk (Trains) for a period of 2 (two) years with cumulative effect', which is a major punishment and disproportionate to the proved misconduct. Even the second respondent-appellate authority, being a quasi judicial authority, without considering the grounds of appeal in its proper perspective decided the appeal without assigning any reasons for dismissing the appeal. The second respondent, being a quasi judicial authority, has to pass a reasoned order to know whether the order passed is based on any evidence or Regulation for consideration of this Court under Article 226 of the Constitution of India. Learned counsel for the petitioner relied on ***Siemens Engineering & Manufacturing Co. of India Limited vs. Union of India***¹ in support of his contention that the appellate authority being a quasi judicial authority ought not have rejected the appeal without giving any reasons and as such the impugned orders are liable to be set aside.

Sri P.Sri Raghu Ram, learned counsel for the respondents, would contend that the petitioner, who was holding the post of Yard Foreman, was not regular in attending his duties. Petitioner is habituated in applying sick leave for a longer period and thereby caused serious dislocation of work for which he was issued with a Memorandum of Charge dated 04.05.1998 and having not satisfied with the explanation dated 11.05.1998 submitted by the petitioner,

¹ AIR 1976 SC 1785

the respondent-Organization appointed the Assistant Traffic Manager (Commercial) as Enquiry Officer. The Enquiry Officer conducted enquiry as per the Regulations of the first respondent-Organization wherein the petitioner was given full opportunity and the enquiry was conducted in strict adherence to the principles of natural justice. The Enquiry Officer submitted Enquiry Report, a copy of which was given to the petitioner seeking objections and explanation. On considering the representation of the petitioner to the Enquiry Report, the third respondent-disciplinary authority and after carefully examining the Enquiry Officer's report came to the conclusion that the charges are proved against the petitioner and vide proceedings dated 29.07.1999 imposed the punishment of 'reversion to the next lower post of Clerk (Trains) for a period of two (2) years with cumulative effect', as per the Regulations of the Organization. On petitioner's appeal, the appellate authority considered the appeal and rejected the same confirming the order of the third respondent-disciplinary authority. The said order is passed as per the Regulations of the respondent-Organization. He would further contend that the petitioner has not produced the medical certificate issued by the Registered Doctor. Petitioner is habituated to apply for sick leave frequently as mentioned in the charge sheet. Hence, the said charge is proved in the enquiry. Petitioner's absence and sick leave caused dislocation of work of the first respondent-Organization. Based on the proved misconduct, he was imposed punishment of 'reversion to the next lower post of Clerk (Trains) for a period of two (2) years with cumulative effect', which commensurate with the proved misconduct. Hence, there is no illegality or irregularity in the impugned orders.

In the facts and circumstances of the case and in considered view of this Court, the petitioner while working as Yard Foreman in the first respondent-Organization was issued with a charge memo dated 04.05.1998 on the ground that the petitioner was habituated to take sick leave for longer periods, frequently, causing dislocation to the operations of the Port Trust by producing private medical certificates. The Enquiry Officer after concluding the enquiry held that the charges are proved for the reasons that the petitioner submitted sick certificate from one Dr.D.Babu Rao, M.D., DTCD, Professor & Head, Department of T.B. & Chest Diseases, Andhra Medical College and also Chest Physician in Govt. Hospital for Chest and Communicable Diseases, Visakhapatnam, but not by the Government Hospital; but, the petitioner has submitted sick leave in time; No absent mark was figured in the Muster Roll; The petitioner was sent for second medical opinion; Thereafter, petitioner improved his attendance as per SC-I; and the petitioner was not referred by the Chief Medical Officer to any Government Hospital/Private Hospital regarding his sickness. However, as per the leave Regulations of the Port Trust, the petitioner being a Class-III employee in the Organization, as per the leave Rules of the Visakhapatnam Port Trust Employees, the reference by Medical Officer of the Port Trust is not necessary and the certificate issued by the Medical Practitioner is sufficient. In the instant case, the Sick Certificate was issued by a Government Doctor, which is relevant for consideration of his sick leave application. The petitioner, because of sickness, had applied for sick leave and availed the same as per Regulations. It is not the case of the respondents that the petitioner was unauthorizedly absent from duties causing dislocation of the work. The petitioner has availed

sick leave frequently due to his sickness and the same is not disputed by the first respondent authorities. The third respondent-disciplinary authority had not properly considered the representation of the petitioner in proper perspective. Even, the punishment of 'reversion to the next lower post of clerk (Trains) for a period of two (2) years with cumulative effect' is a major punishment and disproportionate to the proved misconduct. As seen from the Memorandum of Charge dated 04.05.1998, petitioner was charge sheeted for violation Regulation 3 (i) of VPE (Conduct) Regulations, 1964, which state that 'every employee, shall, at all times, maintain absolute integrity and devotion to duty'. But, the charge framed against the petitioner is only with regard to habitual application for sick leave only. That be so, it cannot be stated that by applying sick leave the petitioner has not maintained integrity and devotion to duty, which arise only when the petitioner shows any carelessness in discharging his duties, but that is not the case of the respondent to come to the conclusion that the charges are proved against the petitioner. The finding of the Enquiry Officer that the charges are proved is not supported by any legal evidence and reasonable conclusions. However, disciplinary authority as well as the appellate authority had not given any reasons for imposing the major punishment on the petitioner. The appellate authority being a quasi judicial authority cannot reject the appeal without passing a reasoned order. Hence, on this ground and the other reasons stated supra, the order of the disciplinary authority and the order of the appellate authority are liable to be set aside.

For the reasons stated above, the order of disciplinary authority dated 29.07.1999 and order of the appellate authority

dated 27.06.2001 are set aside and the matter is remanded back to the disciplinary authority-third respondent to consider imposition of lesser punishment to the petitioner than that of the reversion and proportionate to the proved misconduct.

Accordingly, the writ petition is allowed and remanded back to the disciplinary authority, for imposing a lesser punishment.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

20.07.2018
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