

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.9681 of 2014

ORDER: (*per Hon'ble Sri Justice Suresh Kumar Kait*)

Vide the present Writ Petition, the petitioner has assailed order, dated 20.12.2013, passed in O.A.No.694 of 2010 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, whereby the said O.A. filed by respondent No.1 has been allowed.

Brief facts of the case are that respondent No.1 was appointed as Ticket Collector on compassionate grounds, vide order, dated 04.02.2005, and was posted at Kacheguda. Thereafter, she was allotted Railway Quarter No.488/2 at Chilkaalguda, vide order, dated 07.10.2005. While working as such, she had sublet her Railway Quarter to another railway employee by name Fathima, TC/KCG and thereby, contravened the Railway Services (Conduct) Rules, 1966, as a result of the same, she was served with major penalty charge memo with the following articles of charge:

“Article-1: That the said Smt Sumitra, Ticket Collector/Kacheguda while working as such during the years 2006-07 had committed serious misconduct/misbehaviour in that she had sublet her

allotted Railway Quarter No.488/2 (Type-II), CKL/SC to another railway servant-Smt Fathima, Ticket Collector/Kacheguda for monetary gains and that she failed to maintain absolute integrity and thereby, acted in a manner unbecoming of a railway servant. Thus, the said Smt P.sumitra, TC/KCG had contravened Rule No.15-A(1) of Railway Services (Conduct) Rules, 1966 and violated sub-rule (i) & (iii) of Rule-3(1) of Railway Services (Conduct) Rules, 1966.

Article-2: That the said Smt Sumitra, Ticket Collector/Kacheguda while working as such during the years 2006-07 had committed serious misconduct/misbehaviour in that she had co-operated with the vigilance Department by not declaring the facts and also misguided the Vigilance Department by declaring false statements during investigation and thus, she failed to maintain absolute integrity and thereby, acted in a manner unbecoming of a railway servant. Thus, the said Smt Sumitra, TC/KCG had violated Sub-rule (i) & (iii) of Rule-3(1) of Railway Services (Conduct) Rules, 1966."

Learned counsel appearing on behalf of the petitioners submits that pursuant to the charge memo, enquiry was conducted and the charges were proved. Based on the enquiry report, petitioner No.3-disciplinary authority passed an order, dated 12.6.2009, dismissing respondent No.1 from service. On an appeal preferred by respondent No.1, petitioner No.2-appellate authority, vide order, dated 12.8.2009, confirmed the disciplinary authority's order, but in the Revision Petition, the

Revising authority, vide order, dated 24.11.2009, reduced the penalty of dismissal to that of removal. The Divisional Commercial Manager, Hyderabad, who is the disciplinary authority, was holding independent charge on the division exercising the powers of Junior Administrative Grade Officer, *i.e.*, Senior Divisional Commercial Manager, Hyderabad. The actual appointment letter was issued under the signature of Assistant Personal Officer/Traffic (APO/T) for Divisional Railway Manager/Personnel/Hyderabad Division.

After considering the respective submissions of the learned counsel for the parties, the learned Tribunal allowed the O.A. filed by respondent No.1 and the present Writ Petition is filed on the ground that the learned Tribunal failed to observe the well ingrained principle of law that it is the disciplinary authority or the appellate authority in appeal, which has to decide the nature of punishment to be given to the delinquent employee keeping in view the seriousness of misconduct committed by such employee. The Courts cannot assume and usurp the function of the disciplinary authority.

The learned Tribunal in the impugned order directed the petitioners to reinstate respondent No.1 within a period of two months from the date of receipt of a copy of the order and after reinstatement, the petitioners would be at liberty to award

penalty commensurate with the proven charges and taking into consideration the penalties awarded in similar cases, which were cited by respondent No.1.

To strengthen her arguments, learned counsel for the petitioners has relied upon the judgment of the Supreme Court in *State of Meghalaya and Ors Vs. Mecken Singh N.Marak*¹ wherein it is held as under:

“Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article-226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.”

¹ (2009) 7 SCC 500

It is not in dispute that the enquiry officer held that the charges of subletting of the allotted Railway Quarter by respondent No.1 to another railway servant for monetary gains and her non-co-operation with the vigilance Department has been held proved after examination of the witnesses, their oral depositions and the documents that have been produced both by the delinquent employee and the Department. The procedure laid down in the Railway Services (Conduct) Rules, 1966 has been followed. On the ground of competency and jurisdiction also, there does not appear to be any lapse on the part of the petitioners. Therefore, the only question that remained before the Tribunal to be considered was as to whether the penalty imposed by the petitioners on respondent No.1 is disproportionate and also discriminatory when compared to the penalty imposed on others for similar charges.

It is pertinent to mention here that respondent No.1 cited two specific cases in which same charge of subletting of Railway quarters was enquired into and minor penalty was imposed on the charged employees. Apart from making the generalised statement that the facts and circumstances in the other cases cited by respondent No.1 are different and are not applicable to the present case, the petitioners have not brought out as to how the case of respondent No.1 differs from other cited cases.

Unless, the petitioners establish that the facts and circumstances of the present case are entirely different or that the considerations to be borne in mind are not identical, it is only reasonable and just that respondent No.1 is also be treated on par with similarly placed employees for the charges that have been held proved against her.

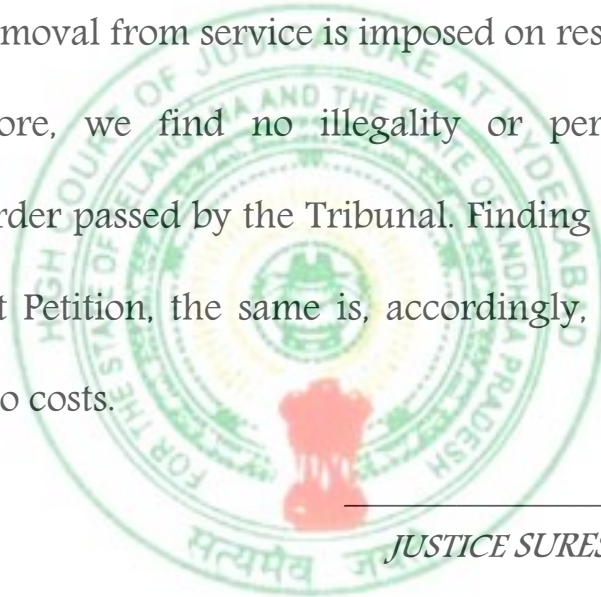
It is further pertinent to mention here that the appellate authority has observed that the extent of penalty imposed on the charged employee should be commensurate with the gravity of the charges proved. In the case on hand, penalty of dismissal from service, which is generally imposed on delinquent employees involved in serious accidents, major fraud, etc appears to be disproportionately harsh.

It is not in dispute that the proved charges of subletting the Railway quarter for monetary gain and non-co-operation with the enquiry officer are not serious enough to impose the extreme punishment of removal from service. Although the revisional authority has recognised this aspect, he has imposed the punishment of removal from service which is not substantially different from the penalty imposed by the disciplinary authority, as both removal and dismissal from service has the net effect of loss of employment and livelihood for respondent No.1.

It is not in dispute that similarly placed persons were let off with by imposing minor penalty, whereas major punishment of removal from service was imposed on respondent No1..

In view of the above facts and circumstances of the present case, the case cited by the learned counsel for the petitioner is not relevant. Apart from that, the learned Tribunal has come to the conclusion that on a similar charge, the other officers were let off by imposing minor penalty, whereas major penalty of removal from service is imposed on respondent No.1.

Therefore, we find no illegality or perversity in the impugned order passed by the Tribunal. Finding no merit in the present Writ Petition, the same is, accordingly, dismissed with no order as to costs.



JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

07th February, 2018

DR