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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 609/2018 & CM APPL.44538/2018**

CEMENT CORPORATION OF INDIA LTD

..... Appellant

Through: Mr.Arun Birbal with Mr.Ajay Birbal,
Advocates.

versus

PRAMOD

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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30.10.2018

Dr.S.Muralidhar, J.:

1. Cement Corporation of India Ltd. (CCI) in this appeal challenges a judgment dated 10th July 2018 passed by the learned Single Judge disposing of WP(C) 2598 of 2003 filed by the Respondent setting aside the order removing the Respondent from service and remanding the proceedings to the Inquiry Officer (IO), who would have to be appointed afresh. The learned Single Judge has by the impugned order further directed that in view of the law laid down in *Managing Director ECIL vs. B Karunakar 1993 (4) SCC 727*, the Respondent shall be treated as on suspension from the date of the impugned order of removal i.e. 29th July 1997 and consequently, would be entitled to subsistence allowance including arrears thereof, in accordance with law as per the abovementioned judgment.

2. The Respondent who was working as a Private Secretary / Steno in CCI was on earned leave from 24th July to 3rd August 1996 on account of his brother's hospitalization. On 14th August 1996, he applied for extension of his leave till 31st August 1996 on account of an accident, which purportedly incapacitated him from joining duty on 3rd August 1996. The medical certificate produced by him confirmed that he was receiving treatment for accidental injury on his right leg and for "irritable bowel syndrome" (IBS) from 1st August 1996. The medical certificate confirmed that he had been advised complete bed rest from 3rd August till 31st August 1996.

3. CCI, however, rejected the Respondent's application. By a telegram dated 16th August 1996 the Respondent was informed that he was being marked absent from duty. A further telegram dated 28th August 1996 directed him to report for duty, again reiterating that he was being marked absent for the days he did not report.

4. The Respondent again applied for extension of leave on 2nd September 1996. He sought extension first for a period till 1st September 1996 and, thereafter, till 15th September 1996. He enclosed two more medical certificates along with the said application. CCI by a letter dated 28th September 1996 returned the copies of the medical certificates enclosed by the Respondent and directed him to report for duty immediately failing which action as per the conduct rules was threatened against him.

5. By a letter dated 1st October 1996, the Respondent again applied for extension of leave till 15th October 1996. This time he enclosed another

medical certificate which stated that he was undergoing treatment for Lumbago (AC) due to IBS and was advised complete bed rest for his recovery. This too was rejected by the CCI by letter dated 15th October 1996 and he was asked to report for duty immediately, failing which disciplinary action would be initiated against him.

6. Since the Respondent had remained absent from duty for 90 days, the CCI, in terms of Rule VII (4) of the Leave Rules constituted a three member medical board which, after examining the Respondent opined as under:

“In the circumstances, the board is of the opinion that Mr. Pramod is fit for duty presently. If he has any back pain it can be effectively treated with medicines while on duty. He has been advised to undertake an X-ray of his spine so as to further evaluate his backache. He has been asked to submit this to Dr. Soni latest by 8.11.1996. Existence of irritable bowel syndrome and backache cannot be denied. These diseases are known to cause significant disability amounting to absence from duty. In the present case no effort has been done to control these diseases. There has been no consultation with any specialist during the period of three months. No X-ray or other pathological tests are done to confirm the diagnosis. All these points towards non-seriousness of these symptoms.”

7. A charge-sheet was issued to the Respondent on 26th November 1996 proposing an inquiry under Rule 30 of the CCI Conduct Disciplinary and Appeal Rules (CCI CDA Rules) referring to the report of the medical board and alleging ‘wilful insubordination of lawful and reasonable orders of higher authorities’ by not reporting for duty despite the directions issued to him.

8. The name of the IO was intimated to the Respondent by a letter dated 17th February 1997. In the same letter, he was informed that he could engage a defence assistant (DA) who could be 'any other employee of the corporation or government servant working or retired' who was not a legal practitioner. The Respondent was to intimate the name of the DA with relevant particulars. In response thereto, the Respondent on 12th March 1997 proposed one Mr. Surya Prakash, a former SE(C), SG to defend his case. This was declined by the IO by the order dated 14th March 1997 on the ground that the said DA was not from the headquarter station of the Respondent. By a subsequent communication dated 5th April 1997, the IO permitted the Respondent to avail the services of the named DA but rejected his request for release of TA/DA to him for the said purpose, despite the fact that another order sanctioning TA/DA in the case of another employee, for his DA to attend the enquiry, was passed by the IO. By letters dated 17th March 1997 and 3rd April 1997, the Respondent was again asked by the IO to engage a DA from Mumbai rather than Delhi.

9. On none of the dates of inquiry was the Respondent or his DA present. No written brief was also submitted on his behalf. The IO by his report dated 6th June 1997 held the charges proved and forwarded the same to the disciplinary authority. On 29th July 1997, the disciplinary authority concurred with the report of the IO and held that the Respondent deserved to be removed from service.

10. The appeal of the Respondent was rejected by the Director (Marketing) by an order dated 4/5th February 1997. The further appeal was rejected by

the Chairman-cum-Managing Director of CCI by a communication dated 24th January 2000.

11. The learned Single Judge in the first place found the report of medical board to not be expressing any clear cut opinion. In fact, the said report acknowledged that the Respondent did have IBS and back ache and that these “were known to cause significant disability, amounting to absence from duty.” The learned Single Judge held that the ambivalence of the report of the medical board should enure to the benefit of the Respondent. It was further noted that the CCI did not at any stage question the genuineness or validity of the medical certificates submitted by the Respondent in support of his leave applications. The learned Single Judge concluded that it could not be said that the Respondent was “wilfully or unjustifiably absenting himself from duty.”

12. On the aspect of the denial to the Respondent of a DA of his choice, the learned Single Judge was of the view that Respondent was “undoubtedly, unfairly handicapped and effectively not being permitted the assistance of Surya Prakash as his defence assistant in inquiry proceedings.” However, in view of the further directions issued by the learned Single Judge, it was opined that “this aspect of the matter may not be of much significance.” The learned Single Judge clarified that the question of absence of the Respondent for the period after 26th November 1996 was not the subject matter of the disciplinary proceedings and, therefore, that was not being examined in the writ petition. On the aspect of the punishment, the learned Single Judge opined that while the Respondent (the Petitioner in the writ petition)

“undisputedly, remained absent from duty, without sanction of leave, such absence being actually attributed to the medical condition from which the petitioner was suffering - which, even as per the report of the Medical Board was disabling in nature - the default, on the part of the petitioner, cannot be regarded as one that justified removing him from service altogether.”

13. The punishment of removal of his service was held to be “ex-facia disproportionate to the misconduct, if any, that could have been said to have been committed by the petitioner” (the Respondent herein), as a result of which the aforementioned, consequential directions were issued by the learned Single Judge.

14. Mr. Arun Birbal, learned counsel for the CCI, first submitted that the interpretation placed by the learned Single Judge on the report of the medical board was erroneous. According to him, the expression “existence of irritable bowel syndrome cannot be denied” used by the medical board was only to emphasize that there could be no objective or negative test to show that a person complaining of such problems is not having those problems. According to him the submission on this issue “was not a etymological but epistemological.”

15. The Court is unable to agree with Mr. Birbal on the above submission. The opinion of the medical board does bear out a clear acknowledgment by it that the Respondent did suffer from IBS and back ache. How the medical board formed an opinion that “no effort has been done to control these diseases” is not indicated except by saying that there was “no consultation with any specialist during the period of 3 months. No x-ray or other

pathological tests were conducted to confirm the diagnosis.” These could have easily been done by the medical board itself. It is indeed significant that none of the medical certificates produced by the Respondent, which were available with the CCI, were held by the medical board not to be genuine. If, as acknowledged by the medical board, the ailments that the Respondent suffered from were “debilitating”, the conclusion of the learned Single Judge that it could not be said that Respondent was wilfully or unjustifiably absenting himself from duty was not an incorrect conclusion to reach.

16. Mr. Birbal then submitted that one member of medical board had examined the Respondent at his residence on 6th November 1996 at 3.30 pm and had advised him to undertake an X-ray of his spine and submit the same to the said member for further evaluation of back ache latest by 8th November 1996 and that the Respondent had failed to comply with that direction. The Court finds that in the rejoinder filed by the Respondent in the writ petition, he averred that he had not been given any medical prescription by the medical board which required him to take an X-ray and also that he was unable to undergo a MRI scan for want of medical allowance. In any event, CCI could have easily arranged for these tests if it wanted to confirm whether the Respondent was indeed suffering from any back problem.

17. Mr. Birbal then tried to defend the disciplinary authority taking note of the conduct of the Respondent even after the date taken note of in the charge-sheet. Here the Court concurs with the learned Single Judge that this was not within the scope of the inquiry and, therefore, beyond the

jurisdiction of the disciplinary authority.

18. Finally, Mr. Birbal submitted that a time period should be specified for completion of the inquiry. The Court leaves it to the new IO who will be appointed in terms of the impugned order to set out a time bound schedule for conclusion of the inquiry considering that the subject matter pertains to events that took place more than two decades ago.

19. No interference is called for with the judgment of the learned Single Judge. The appeal is accordingly dismissed. Pending application also stands disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 30, 2018

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