

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4548 of 2010

B.Chokkalingam

.. Petitioner

Vs.

1. The Director (Personnel),
Neyveli Lignite Corporation,
Neyveli Township, Neyveli - 607 803.

2. The Chief General Manager (Mine-I, IA),
Neyveli Lignite Corporation,
Neyveli Township, Neyveli - 607 803.

3. The Chief Manager (Civil) SMD/Mine-I,
(Appellate Authority)
Neyveli Lignite Corporation,
Neyveli Township, Neyveli - 607 803.

4. The Chief Manager SMD/Mine-I,
(Disciplinary Authority)
Neyveli Lignite Corporation,
Neyveli Township, Neyveli - 607 803.

5. S.Meganathan,
Enquiry Officer, ACM,
Chemical, Mine-I,
Neyveli Lignite Corporation,
Neyveli Township, Neyveli - 607 803.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in letter Proc.No.<1/P&A/DAC/278-183-2008 dated 08.09.2009 and 4th respondent in Proc.No.M1/P&A/DAC/278-183/2008 dated 20.07.2009 and quash the same as violative of the principle of natural justice and illegal and consequently direct the 4th respondent to reinstate the petitioner in his earlier post and to grant him the back wages, promotional, monetary benefit and all other benefit.

For Petitioner : Mr.Silambanan, Sr.Counsel
for M/s.Profexs Associates
For Respondent : Mr.Nithianandam (for R1 to R5)

O R D E R

The petitioner joined the Neyveli Lignite Corporation (herein after NLC) on 06.01.1989 as a Diploma Engineer Trainee. Thereafter he was promoted to Additional Engineer, Mine-I, NLC. The petitioner states that the respondent Corporation issued circular No.Lr.No.Corp/P&A/0637/08 sanctioning Extra Ordinary Leave (herein after referred in as EOL) to the employees for taking employment. The petitioner submitted his application for sanction of EOL for a period from 01.09.2008 to 31.08.2010, to the Director, Personnel, NLC. This application was recommended by the 3rd and 4th respondents and was forwarded to the Chief General Manager.

2. The petitioner states that the concerned authority did not place the application before the competent authority. Meanwhile, the petitioner sought another EOL for 3 months in his application dated 05.08.2008 from 04.09.2008 to 03.12.2008. The same was also forwarded by his superior officers to the competent authority. The competent authority did not pass any orders on the application. It is stated that the petitioner on the advice of the other higher officers, he informed the authorities that he will not pursue any work during the period of EOL. By a letter dated 29.09.2008, the 2nd respondent communicated that the application for EOL was rejected by the competent authority. The petitioner after receiving the said communication, sent a letter dated 10.10.2008 seeking the intervention of the first respondent. The second respondent in a letter dated 10.11.2008 informed that the request sought by the petitioner was rejected. On receipt of the said letter the petitioner sent a letter dated 18.11.2008 stating his reasons for his travel to Libya.

3. The petitioner sent another letter dated 02.12.2008 seeking for extension of EOL from 03.12.2008 to 02.12.2009 on medical grounds. Consequently, the 2nd respondent in a letter dated 24.02.2019 called upon the petitioner to join the office immediately. The petitioner made various representations citing his inability to join the post. Meanwhile, the enquiry officer concluded the enquiry.

4. The petitioner reported to join duty on 01.04.2009. The disciplinary authority on 20.07.2009, passed an order against the petitioner imposing a punishment of removal from the service of the corporation without notice of pay/wage in lieu of the notice.

5. The petitioner preferred an appeal against the punishment before the appellate authority / The Chief Manager (Civil) SMD/Mine-I, which was also rejected by an order dated 08.09.2009. The petitioner has approached this Court challenging the order of removal from service, passed by the respondents.

6. Respondent states that the petitioner had submitted an application dated 26.07.2008, stating that he had attended an interview with one M/s.D.S.Construction Limited, Libya and got an offer of employment in Libya and thus sought for EOL for a period of two years. The petitioner had earlier been granted EOL for two years from June 1996 to May 1998. The counsel for the respondent therefore contends that merely because a scheme existed for grant of EOL, it does not mean that the employees are entitled to be granted the same. Since the petitioner took leave without any permission, the counsel contends that the was rightly dismissed from service.

7. Heard the counsel for the parties and perused the material on record.

8. The enquiry officer after considering all the documents found as under and came to the conclusion:-

"11) It is found from the Management documents MD-9/1 to MD-9/5 that the Presenting Officer produced a copy of 02.12.2008 dated medical certificate of Shri.B.Chokkalingam on 20.02.2009 enquiry sitting, which had been obtained from a Government Doctor of Libya, Dr.A.Y.Baroardy in it, the Doctor stated that the patient Shri.B.Chokkalingam, CPF MO. 33594 complained from Tunabosacoal spin P.M.Y by spondylotisthesis and disc Bulging at level of L 4 L5 SVI and so they need treatment for 3 months (from 02.12.2008 to 01.03.2009) and MRI for further investigation. Shri.B.Chokkalingam sent a web mail addressed to CGM/Mine-I&IA on 26.12.2008 and prayed for 3 more month's extension of EOL on medical ground. The Management (CGM/Mine-I&IA) has replied through a letter dated 19.02.2009 to Shri.B.Chokkalingam and stated in it that "the EOL has not been sanctioned to him and he had unauthorisedly left the country which was already informed to him vide this office letter dated 29.09.2008 Hence the extension of EOL on medical grounds does not arise. In this connection it is informed that Disciplinary Action had already been initiated against him". Copy of the ab letters had been sent on 19.02.2009 to live local & permanent addresses of Shri.B.Chokkalingam through RPAD. Both the local & permanent addressed RPAD letters returned back to this office with the remarks of 'Left India' on (Ref.Page Nos., 98 to 106 of Enquiry case file).

12) It is found from the Management documents MD-10/1 to MD-10/3 that the Disciplinary Authority also sent a reply dated 24.02.2009 to Shri.B.Chokkalingam to his local & permanent

addresses through RPAD and also to his e-mail ID - Chokkalingam 65 @yahoo.co.in. In the reply the Disciplinary Authority stated to Shri.B.Chokkalingam as that the Extension of EOL as sought by you vide e-mail dated 26.12.2008 is not approved. Since the above request is not considered you are directed to report for duly immediately and submit yourself for Medical examination before the Industrial Medical Officer/General Hospital/N.L.C to examine your illness as reported, without prejudice to the disciplinary proceedings already initiated against you. The Enquiry proceedings has been already sent to your local and native address. The Postal Communications are returned without any response. Therefore you are directed to report to duty immediately. It is also intimated that I am affording last and final chance to you to appear before the enquiry officer as scheduled on 02.03.2009 at 11.00 AM at the chamber of the Enquiry Officer, Administrative Building Mine-I to give last reasonable opportunity to you. The RPAD letters of the above matter sent to his local & native address returned back to his office on 28.02.2009 and 02.03.2009 respectively with the remarks of 'Left India' (Ref.Page Nos., 108 to 112 of Enquiry case file).

(13) It is found from the Management documents MD-11/1 to MD-11/7 that Shri.B.Chokkalingam was unauthorisedly absented himself from duty for 190 days w.e.from 04.09.2008 to till date (12.03.2009) (Ref.Page Nos., 114 to 126 of Enquiry case file).

CONCLUSION: -

According to the principles of natural justice the charge-sheeted employee

Srm.B.Chokkalingam, CPF.NO.33594 Additional Engineer/Civil, SMD, Mine-I was given five opportunities to participate in the enquiry but he has not turned up to the enquiry and it is decided to conclude the enquiry as EX-PARTE.

On the side of the Management evidences have been filed in support of the charges that the charge sheeted employee Shri.B.Chokkalingam, CPF.NO. 33594, Additional Engineer/Civil, SMD, Mine-i was unauthorisedly absented himself from duty for 190 days w.e.from 04.09.2008 to till date (12.03.2009) Moreover he had left at Head Quarters and India without sanction of leave and. not reported back to duty in response to The Chief General Manager/Mine-I&IA's letters dated.29.09.2008, 10.10.2008,

19.02.2009 & 24.02.2009. Hence he has committed the following misconducts falling under sub-clause (i), (vii), (viii) and (x) of Rule-26 and also read with Rule-3 of NLC Employees' (conduct) Rules, punishable under NLC Employee's (Control and Appeal) Rules". Accordingly I as Enquiry Officer here concluded that the charges framed against Shri.B.Chokkalingam, CPF.NO. 33594, Additional Engineer/Civil, SMD, Mine-I vide the charge memo No. MUP&A/DAC/278-183/2008, DT.24.11.2008 is "PROVED beyond doubt."

9. A perusal of the enquiry report show that the enquiry officer has meticulously gone in to all the documents and has come to a conclusion that the petitioner had unauthorizedly absented himself from duty and had not reported back for duty despite been asked to do so. The Disciplinary Authority after going through the enquiry report and the explanation given by the petitioner agreed with the findings of the enquiry officer that the petitioner had absent himself from duty without permission or approval from the Competent Authority. He did not attend the enquiry proceedings despite being given ample chances. The Disciplinary Authority has come to a conclusion that there was no infirmity in the enquiry and therefore the punishment of removal from service is not shockingly disproportionate. The Appellate Authority also considered the appeal filed by the petitioner and has not differed with the findings of the Disciplinary Authority.

10. The learned counsel for the petitioner has not been able to point out any lapse in the decision making process. This Court is also not impressed with the medical certificate dated 02.12.2008, produced by the petitioner which is the reason for not coming back to join the service. In the absence of any procedural infirmity the question which arises for consideration is that whether the petitioner's dismissal from service is correct or is it shockingly disproportionate to the misconduct. A Writ Court should not allowed to interfere with the decision of the disciplinary authority unless it is perverse. The Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. Union of India, (1995) 6 SCC 749, observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a

competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

11. However, a Writ Court can interfere with the decision of the disciplinary authority if it shocks the conscience of the Court. The Hon'ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank & Others, Vs. P.C.Kakkar, (2003) 4 SCC 364, held as under:-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

12. In the present case, the order issued by the 4th respondent dated 20.07.2009, was passed after conducting the enquiry in accordance with the law. The learned counsel for the petitioner states that the penalty imposed on the petitioner is shockingly disproportionate to the alleged misconduct. The petitioner as a responsible officer in Neyveli Lignite Corporation. The petitioner cannot be permitted to abstain from duty without valid reason. Despite being informed that his leave has not been sanctioned, the petitioner did not choose to come back and report for duty. He has also not chosen to examine himself by the Medical Board to establish that he was facing such acute problem that he was unable to come to India to report for duty. A responsible officer cannot be permitted to behave in a manner which will have the effect of bringing indiscipline in the organization. Once the enquiry officer has found that the petitioner has committed a misconduct, the Disciplinary Authority has accepted the findings and given a punishment of removal from service which has been affirmed by the Appellate Authority, this Court while exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its conclusion to the one arrived by the Authorities just because another conclusion is also possible.

13. Therefore in view of the judgment Chairman and Managing Director, United Commercial Bank & Others, Vs. P.C.Kakkar, quoted supra, this Court does not find that the punishment is shockingly disproportionate to the misconduct.

14. The Writ Petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pkn.

To

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Neyveli Lignite Corporation,
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+1cc to Mr.Nithianandam , Advocate SR.No. 89241

+1cc to M/s.Profexs Associates , Advocate SR.No. 88994

W.P.No.4548 of 2010

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A.SK(26/11/2019)

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