



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) No.9868 of 2012

and

M.P. (MD) No.1 of 2012

WEB COPY

Aron K. Thiraviaraj

.. Petitioner

Vs.

Bharat Heavy Electricals Limited,
Rep. by its Manager (TP-BPN),
Tiruchirappalli - 14.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the original impugned order passed by the respondent in No.BP:P2:2205238, dated 06.06.2012 and quash the same.

For Petitioner

: Mr.S.Anwar Sameem

For Respondent

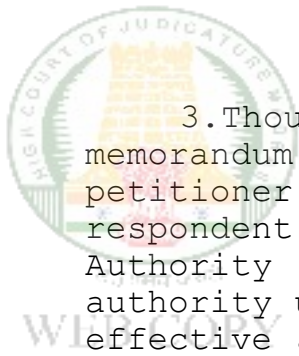
: Mr.K.Saravanan

O R D E R

This Writ Petition is filed challenging the order of punishment imposed on the petitioner by the respondent.

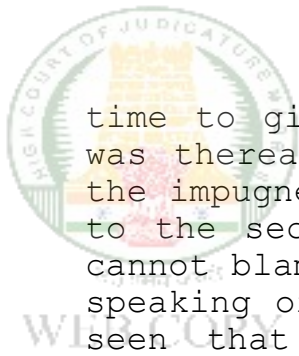
2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

2.1.The petitioner was originally joined the respondent organisation in the year 1993 as Mechanical Attendant Grade-II. While the petitioner was working as Crane Operator Grade-II, a charge memo dated 02.12.2011 was issued to him by the respondent. The charge against the petitioner was that he had committed misconduct by refusing to receive an official communication issued by the Executive (HR - PBN and Engineering) dated 21.10.2011 in response to the petitioner's query under Right to Information Act. Denying the charges, the petitioner sent a representation. Thereafter, the Management appointed an Enquiry Officer and obtained a report from the Enquiry Officer. Based on the report of the Enquiry Officer, after issuing the second show cause notice, the petitioner was imposed with a punishment of reduction of pay by two stages for a period of one year with cumulative effect by the impugned order dated 06.06.2012. Challenging the same, the above Writ Petition is filed.



3. Though the petitioner raised several grounds in the memorandum of grounds challenging the order on merits, the petitioner admitted the position that as against the order of respondent imposing punishment, an appeal lies before the Appellate Authority and a further review is also maintainable before another authority under the Standing Orders. In view of the availability of effective alternative remedy, the learned Counsel appearing for the respondent submitted that this Writ Petition may be dismissed giving liberty to the petitioner to approach the appellate authority challenging the impugned order. The petitioner states that this is a case where the order impugned is passed by an incompetent authority. Since the competency and jurisdiction of the authority to pass the order is also under challenge, it is stated that Writ Petition is maintainable. The learned Counsel further submitted that one of the contentions raised by the petitioner all along is that the charge memo was issued in English whereas the petitioner is not well-versed in English. The petitioner though raised an objection and requested the respondent to furnish the translated version of the charge memo and enquiry report, it is stated that the respondent had not considered. Since the irregularity also is one in relation to violation of principles of natural justice, the learned Counsel appearing for the petitioner would say that the alternative remedy is not a bar to maintain the Writ Petition.

4. Regarding competency, the authorities competent to inflict punishment can be notified by the Management and in the counter affidavit it is stated that the Executives from E1 cadre are competent to impose the punishment. From the records, it is seen that the petitioner though raised an objection, demanding the respondent to furnish the translated version of the charge memo and enquiry report, later, he submitted the explanation. It is also seen that the petitioner himself has given the reply to the show cause notice in English. Hence, the petitioner can very well get translation of the charge memo and the enquiry report by his own source as he was accustomed to such practice when preparing reply. The petitioner participated in the enquiry knowing the charge. The learned Counsel appearing for the petitioner then submitted that the impugned order is cryptic and there is no discussion on facts. It is stated that the independent application of mind is not there in the impugned order. In this case, it is admitted that the petitioner after requesting for furnishing translation of the charge memo and the findings of the Enquiry Officer, prepared to face subsequent proceedings without the translated copies of the charge memo and the enquiry report. He wanted 15 days time in April, 2012. It is not in dispute that the respondent has issued a second show cause notice on 21.04.2012 seeking the petitioner's comments in writing on the findings of the Enquiry Officer. The petitioner though originally wanted 15 days time to submit his explanation to the show cause notice, the request of the petitioner was declined by communication dated 26.04.2012. Thereafter, by a further communication dated 24.07.2012, the petitioner sought for 15 days



time to give his explanation to the second show cause notice. It was thereafter the respondent after allowing almost 40 days passed the impugned order dated 06.06.2012. Since there was no explanation to the second show cause notice by the petitioner, the petitioner cannot blame the respondent stating that the impugned order is not a speaking order. Further, from the reading of impugned order, it is seen that the respondent has applied his mind and passed the impugned order based on the findings of the Enquiry Officer and it is stated that he was convinced that the findings of the Enquiry Officer are well founded.

5.It was canvassed by the learned Counsel appearing for the petitioner that the punishment imposed on the petitioner is disproportionate to the charges against him. Since reduction of pay by two stages with cumulative effect will have spiralling effect on the monetary benefits and retirement benefits and the petitioner will be greatly affected, it is stated that the punishment has to be modified. This Court is able to appreciate the said contention having regard to the peculiar facts here. The charge against the petitioner is that the petitioner had refused to receive an official communication issued by the Executive (HR-PBN and Engineering), dated 21.10.2011. The communication was in response to an information sought for by petitioner under Right to Information Act. From the facts, the charge memo and the explanation offered by the petitioner earlier, this Court is of the view that the charge attracts no major punishment and it is only because of the embarrassment to the officials of the respondent organization the charge memo was issued. The petitioner denied the charges and the findings of the Enquiry Officer is otherwise. The conduct of petitioner to refuse to receive the letter may not be a serious misconduct in the context. In such circumstances, this Court is of the view that the punishment imposed on the petitioner is excessive and disproportionate. Hence, this Court modify the punishment from "reduction of pay by two stages for a period of one year with cumulative effect" to **"reduction of pay by two stages for a period of one year without cumulative effect"**.

6.With the above conclusion, this Writ Petition is partly allowed modifying the punishment in the manner indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

SRM

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Manager (TP-BPN),
Bharat Heavy Electricals Limited,
Tiruchirappalli - 14.

+1 CC to M/s.K.JAYARAMAN, Advocate SR-89324.

**ORDER MADE IN
W.P. (MD) .No.9868 of 2012
24.09.2019**

CS (24.10.2019) 4P 3C