

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.10.2020

Delivered On : 24.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.14949 of 2020

and

WMP.No.18585 of 2020

B.Marghabandhu, Ex-LDC,
H-7, EPF Quarters,
LDC Road, Chokkikulam,
Madurai - 2.

...Petitioner

vs.

1. Union of India,
Sri PU Kulkarni,
The Additional Central P.F. Commissioner (TN & KR),
Zonal Office, Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.
2. The Additional Central P.F. Commissioner (TN & KR),
Zonal Office, Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.
3. The Regional Provident Fund Commissioner - I,
Employees Provident Fund Organization,
Regional Office, Lady Doak Road,
Madurai.
4. Shri Rabindra Samal,
The Regional P.F. Commissioner - I,
EPFO, Bhavishya Nidhi Bhavan,
Lady Doak College Road,
Madurai - 625 002.
5. The Permanent Inquiry Officer (South Zone),
EPFO, 37, Royapettah High Road,
Chennai - 600 014.

6. Shri Raman Dhanasekar,
Permanent Inquiry Officer (South Zone),
EPFO, 37, Royapettah High Road,
Chennai - 600 014.
7. The Registrar,
Central Administrative Tribunal,
Madras Bench, City Civil Court Complex,
Chennai - 600 104.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order dated 11.02.2020 made in OA/310/00858/2016, of the 7th respondent herein namely the Registrar, Central Administrative Tribunal, Madras Bench, City Civil Court Complex, Chennai - 600 104, quash the same as non-est in the eye of law and consequently allow the OA/310/00858/2016.

For Petitioner : Mr.K.S.Govinda Prasad
For Respondents : Mr.M.Elumalai,
Additional Government Pleader,
for R2, R3 and R5

O R D E R

(Order of the Court was made by R.HEMALATHA, J.)

This writ petition has been filed challenging the orders dated 11.02.2020 passed by the Central Administrative Tribunal, Madras Bench in OA/310/00858/2016. In short, the facts of the case revolve around the punishment of compulsory retirement imposed on the petitioner by the Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office, Madurai in a Regular Departmental Action initiated against him. The petitioner who was working as Lower Division Clerk in the Organization (EPFO) was reportedly also the General Secretary of Employees Provident Fund (SC/ST) Staff Uplift Union from April 2009 to March 2012 espousing the cause of the employees belonging to the Scheduled Caste and Scheduled Tribe when he was working in the Regional Provident Fund Office at Tambaram. He had also reportedly exposed the alleged wrong doings of his superior, the Regional Provident Fund Commissioner, Tambaram, due to which, he was transferred from the Tambaram Office to the Regional Office at Madurai on 17.02.2011. This transfer order was challenged by him in WP.No.4601 of 2011 and he was allowed to sign the Attendance Register in the Tambaram Office till the disposal of the writ petition by way of an interim stay of the transfer order. However, subsequently, the writ petition was dismissed on

22.03.2011. Thereafter, the petitioner approached the Central Administrative Tribunal, Madras Bench in OA.No.461 of 2011 against the transfer order which was dismissed on 04.05.2011. Subsequently, another WP.No.12968 of 2011 was filed challenging the transfer order as well as the order of the Central Administrative Tribunal which was also dismissed by a Division Bench of this Court on 15.06.2011. Aggrieved by this order, the petitioner approached the Supreme Court in SLP (C) No.37405 of 2012 which was dismissed on 15.12.2012. Having failed in all his attempts to get the transfer order reversed, the petitioner applied for medical leave from 17.02.2011 to 12.08.2013. However, his doctor had declared him fit to rejoin on 09.08.2013 though the petitioner reported for duty only on 12.08.2013 at the new place of posting Employees Provident Fund Organization, Madurai.

2. The third respondent / employer issued a show cause notice dated 30.01.2012 immediately after the dismissal of the SLP by the Supreme Court and followed it up with a charge sheet dated 25.10.2013 for his unauthorised absence. Other than the impugned memorandum of charge dated 25.10.2013, there were two other memos which were served upon him and all of these were challenged by him in OA.Nos.1389 of 2013, 1390 of 2013 and 1808 of 2013 in the Central Administrative Tribunal, Madras Bench. The aforesaid Original Applications were dismissed vide common order dated 26.08.2014. The petitioner was not paid salary from March 2011 and Bonus for the year 2010-2011 which again was challenged by him in OA.No.1554 of 2013 before the Central Administrative Tribunal and vide order dated 26.09.2013, the request of the petitioner was considered and a sum of Rs.10,000/- was paid to him though he was eligible for Rs.21,741/- for which the petitioner filed a Contempt Petition in 216 of 2013. The petitioner had also filed OA.Nos.462 of 2011 and 1430 of 2013 before the Central Administrative Tribunal, Madras Bench challenging the order of recovery of vehicle advance sanctioned to him in which the Central Administrative Tribunal had directed the respondents to recover the advance amount in ten equal monthly instalments.

3. A Regular Departmental Enquiry was conducted against the petitioner and the Disciplinary Authority accepting the finding of the Inquiry Officer inflicted the penalty of "compulsory retirement" on 01.04.2016 for the misconduct made out due to his prolonged unauthorised absence. The petitioner without filing an appeal before the Appellate Authority approached the Central Administrative Tribunal, Madras Bench in OA.No.656 of 2016 which was disposed of for the reason that the petitioner had not exhausted all the available remedies before approaching the Central Administrative Tribunal. However, Central Administrative Tribunal while disposing the Original Application

made an observation to the effect that the petitioner can file a petition seeking for stay of operation of the order of the Disciplinary Authority and therefore the Appellate Authority was directed to consider his petition for stay of the Disciplinary Authority's order, on merits. Thereafter, the petitioner preferred an appeal with the Appellate Authority and also sought interim stay of the order of the Disciplinary Authority imposing the punishment of 'compulsory retirement'. The Appellate Authority by his order dated 26.04.2016 rejected the plea for interim stay of the order of the Disciplinary Authority for which the applicant filed a Contempt Petition in 29 of 2016 in OA.No.656 of 2016 before Central Administrative Tribunal, Madras Bench.

4. In the Contempt Petition, the Central Administrative Tribunal, Madras Bench again reiterated the need for expeditious disposal of the appeal filed by the petitioner and accordingly granted time till 06.06.2016 for the same. The Appellate Authority passed his final order on 02.06.2016 confirming the order of Disciplinary Authority and this was again challenged by the petitioner in Original Application No.858 of 2016 before the Central Administrative Tribunal, Madras Bench. The Central Administrative Tribunal dismissed the Original Application concluding that the Original Application is devoid of merits. Hence, the present writ petition challenging the said order.

5. Mr.K.S.Govinda Prasad, learned counsel appearing for the petitioner contended that there was a delay of more than three years between the date of the show cause notice and issuance of charge memo and that there is lack of jurisdiction on the part of the Regional Provident Fund Commissioner, Madurai as the Disciplinary Authority. The learned counsel for the petitioner also highlighted the lack of application of mind by Central Administrative Tribunal in allowing the Disciplinary Authority to consider even the period from 17.02.2011 to 22.03.2011 as unauthorised absence though this Court had allowed the petitioner to sign the Attendance Register in Tambaram Office till the disposal of the WP.No.4601 of 2011. Further, it was contended that the transfer order of the petitioner was purely a result of the vengeful attitude of the respondents and had nothing to do with the administrative reasons as the Management did not like the petitioner representing the problems of his union members in the capacity of General Secretary of the said union.

6. On the part of the respondents, the contents of the various orders of Central Administrative Tribunal and Disciplinary Authority and Appellate Authority give a clarity of the version of the respondents. In fact, even this Court in its order dated 15.06.2011 in WP.No.12968 of 2011 held that "as held

by the Tribunal, it is purely for the administrative reason without causing any stigma upon the petitioner though the petitioner has made an allegation that the order of transfer is issued based on malafide reasons, he has not made out a case that the order is passed based on the malafide reasons". This decision was upheld by the Supreme Court in SLP (C) No.37405 of 2012. The orders of the Central Administrative Tribunal in OA.No.461 of 2011 list out the incidents of misbehaviour of the petitioner with his superiors. There were written complaints of his arrogant behaviour in the office. These were not countered by the petitioner in any manner thereby vindicating the stance of the respondents.

7. On perusal of the Inquiry Report submitted by the Inquiry Officer, it can be seen that out of the seventeen hearings, the petitioner attended only five hearings and also that in the last seventeenth hearing he had admitted that full opportunity in the Inquiry was afforded to him and he had no grievance on that ground.

8. As regards the jurisdiction, it is found that the petitioner had already joined the Madurai Office on 12.08.2013 subsequent to which the charge memo was issued and therefore this plea fails.

9. It is also seen that the petitioner has repeatedly approached the Central Administrative Tribunal and this Court. He has elaborate submissions on the sequence of events without even attempting to prove his theory of malafide intentions on the part of the employer. It is well settled that an order of transfer is purely an administrative one save in cases where interalia malafide on the part of the authority is proved. It is also well settled that transferring an employee in public interest or exigency of administration to enforce decorum is the prerogative of the employer.

10. In the decision in Bank of India and others vs. T.Jogram reported in 2007 (5) SC 801, it is held that

"as long as the order passed is not in violation of rules/regulations/statutory provisions, the enquiry cannot be set aside in a casual manner. Judicial review under Article 226 of the Constitution of India is open only on grounds of malafide, arbitrariness and perversity. The administrative and disciplinary action of the respondent bank cannot be the subject matter of review, once they followed the due process of law. Court cannot sit in appeal over those findings and assume the role of the Appellate Authority."

11. In the decision in Allahabad Bank and others vs. Krishna Narayan Tewari reported in 2017 (2) SCC 308, it is held that

"Writ courts must be slow in interfering with findings of fact recorded by departmental authority on basis of evidence. However, if findings are unsupported by evidence or are such as no reasonable person would arrive at, then writ court justified if not duty-bound to examine matter. If enquiry itself vitiated for violation of principles of natural justice then writ court can interfere with disciplinary enquiry or resultant orders. Further, where authority (i) has not applied its mind; or (ii) has not assigned reasons for its conclusions then writ courts can interfere with order of punishment, as in present case."

12. In the decision in Life Insurance Corporation of India and others vs. S.Vasanthi reported in (2014) 9 SCC 315, it is held that

"10. The scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority is now well-settled. In Kendriya Vidyalaya Sangathan v. J. Hussain, the law on this subject, is recapitulated in the following manner:

7. When the charge is proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of the charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist.

8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. In exercise of power of judicial review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities."

13. In the instant case there appears to be no iota of doubt on the procedure adopted in the Regular Departmental Action or the fairness in the approach of the Disciplinary Authority or Appellate Authority. The petitioner has literally dragged the proceedings to such an extent by repeatedly filing Original Applications and Writ Petitions. His transfer to Madurai Office was purely on administrative grounds as evidenced by the transfer orders. Any grievance he had on his transfer could have been resolved amicably with his employer. Instead he took a wrong route. That he has been a defiant employee trying to take law into his own hands is clear in the manner he has continuously challenged the Management. By all his acts he has wasted the time and energy of not only his employer but also the judicial forums. Neither the punishment order nor the order of the Appellate Authority suffer from any infirmity. Both are with proper reasoning. The Central Administrative Tribunal, Madras Bench also has been categorical in its orders giving no leverage whatsoever for such baseless allegation made by the petitioner. The petitioner has also exhibited his stubborn attitude even in the Inquiry Proceedings by not being present in many of the hearings.

14. The punishment order has allowed the petitioner to draw his eligible pension and gratuity. His 'compulsory retirement' punishment does not smack of any bias or prejudice.

15. Therefore, we are not inclined to interfere in the matter. In the result, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(cs-iii)

//True Copy//

Sub Assistant Registrar

mbi

To

1. Union of India,
The Additional Central P.F. Commissioner (TN & KR),
Zonal Office, Employees Provident Fund Organization,
37, Royapettah High Road, Chennai - 600 014.
2. The Additional Central P.F. Commissioner (TN & KR),
Zonal Office, Employees Provident Fund Organization,
37, Royapettah High Road, Chennai - 600 014.
3. The Regional Provident Fund Commissioner - I,
Employees Provident Fund Organization,
Regional Office, Lady Doak Road, Madurai.
4. The Regional P.F. Commissioner - I,
EPFO, Bhavishya Nidhi Bhavan,
Lady Doak College Road, Madurai - 625 002.
5. The Permanent Inquiry Officer (South Zone),
EPFO, 37, Royapettah High Road, Chennai - 600 014.
6. The Registrar, Central Administrative Tribunal,
Madras Bench, City Civil Court Complex,
Chennai - 600 104.

+1cc to M/s.K.S.Govinda Prasad, Advocate, S.R.No.37654

Order in
WP.No.14949 of 2020

vsn ii(CO)
rv(27/01/2021)