



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.13055 of 2009

WEB COPY

M.Ramadoss

... Petitioner

Vs.

1.The General Manager,
Southern Railway,
Chennai-600 003.

2.The Central Government Industrial
Tribunal cum Labour Court,
Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of CERTIORARIFIED MANDAMUS calling for the records of the second Respondent in I.D.No.115/2003, dated 25-04-2005 and quash the same consequently directing the second Respondent herein to restore I.D.No.115/2003 on the file and pass order on merits after providing opportunity to the petitioner.

For Petitioner : Mr.D.Srinivasaragavan

For Respondents : Mr.S.Manohar
Standing Counsel for R.1

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ORDER

This Writ Petition is filed seeking for issuance of a writ of certiorarified mandamus to call for the records of the second Respondent in I.D.No.115/2003, dated 25-04-2005 and quash the same consequently directing the second Respondent herein to restore I.D.No.115/2003 on the file and pass order on merits after providing opportunity to the petitioner.

2. The case of the petitioner is that the petitioner joined the service of Railway on 05.12.1984 as Traffic Porter. From the date of his inception into service, he was sincere, meritorious and discharged his duties utmost to the satisfaction of the employer.



While so, he was placed under suspension on 20.04.1999, when he was working in Rameswaram. Thereafter, a charge sheet was issued on 13.05.1999 containing four charges. The sum and substance of the charge is that the petitioner was unauthorisedly absented for duty from 20.04.1999; he has deserted the post on 20.04.1999; he has torn off the pages in the register of exchange of P.N.; and he has committed the irregularities in the P.N. Exchange Register. After receipt of the said charges, the petitioner submitted his explanation on 14.07.1999 and thereafter, the Enquiry Officer was appointed to conduct domestic enquiry. The petitioner appeared in the enquiry and brought to the notice of the enquiry officer about the contradictions of the evidence available before the Enquiry Officer. However, the Enquiry Officer has drawn the proven minute against the petitioner, on 05.09.2000. The proven minute was accepted by the disciplinary authority and removed from service of the railway administration with effect from 13.03.2001. Challenging the said order of removal, the petitioner preferred an appeal before the Appellate Authority viz., the Divisional Railway Manager on 18.04.2001. The Appellate Authority also in a cryptic order confirmed the order of punishment. Against the said order, the petitioner also filed a revision before the Chief Passenger Traffic Manager, Madras on 14.07.2001. The said revision was also rejected on 05.08.2002.

3. Thereafter, on receiving representation from the petitioner, the Central Government through Ministry of Labour has referred the above dispute to the second respondent for adjudication on 04.07.2003. After reference, the second respondent converted the same as I.D.No.115 of 2003. After receiving notice from the second respondent, the petitioner filed a claim statement before the second respondent and in the claim statement, the petitioner reiterated his defence, which was put forth before the Enquiry Officer. The first respondent filed their counter statement substantiating their acts. Earlier, the petitioner engaged a counsel before the second respondent, however the counsel withdrew his appearance and subsequently, the petitioner himself personally appeared before the second respondent and sought for some more time for enquiry. However, without informing the petitioner, the second respondent proceeded the matter and dismissed the industrial dispute raised by the petitioner. Challenging the same, the present writ petition is filed.

4. Learned Counsel appearing for the petitioner would submit that though the charges against the petitioner is not serious in nature, the first charge relates to unauthorised absent and the second charge is, as if the petitioner tore off the pages in the register of exchange of P.N., and in respect of the first charge, the petitioner was not well and therefore, he did not attend the duty from 20.04.1999 and there is no question of desertion, since the petitioner was absent only for one month. Further, there was no



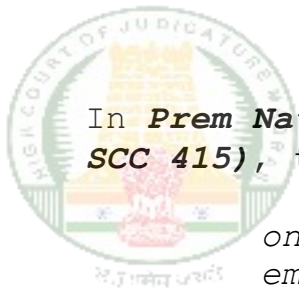
register of exchange of P.N. Without examining any evidence, imposing the major punishment against the petitioner is unsustainable one. Further, the petitioner entered into service in the year 1984 and the major punishment was imposed in the year 2001. Without considering the past services rendered by the petitioner, the major punishment was imposed against the petitioner. Hence, the learned Counsel appearing for the petitioner would pray for appropriate orders.

5. Learned Counsel appearing for the first respondent would further submit that the Enquiry Officer has drawn the proven minute by examining the evidences of the respondent management. Further, based on the proven minute, the Disciplinary Authority passed the order, which was also confirmed by the Appellate Authority as well as the Revisional Authority. Further, the Tribunal also dismissed the Industrial Dispute in the year 2005. However, the petitioner filed the present writ petition after four years and he has not given any sufficient explanation for the delay. Hence, the learned Counsel would pray for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the first respondent and perused the materials placed on record.

7. Admittedly, the petitioner joined the service of Railway on 05.12.1984 as Traffic Porter. While he was in service, he was placed under suspension on 20.04.1999, when he was working in Rameswaram. Thereafter, a charge sheet was issued on 13.05.1999 containing four charges. The sum and substance of the charge is that the petitioner was unauthorisedly absented for duty from 20.04.1999; he has deserted the post on 20.04.1999; he has torn off the pages in the register of exchange of P.N.; and he has committed the irregularities in the P.N. Exchange Register.. After receipt of the said charges, the petitioner submitted his explanation on 14.07.1999 and thereafter, the Enquiry Officer was appointed to conduct domestic enquiry. The petitioner appeared in the enquiry and brought to the notice of the enquiry officer about the contradictions of the evidence available before the Enquiry Officer. However, the Enquiry Officer has drawn the proven minute against the petitioner, on 05.09.2000. The proven minute was accepted by the disciplinary authority and removed from service of the railway administration with effect from 13.03.2001.

8. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, it has been the consistent view of the Courts that, it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in



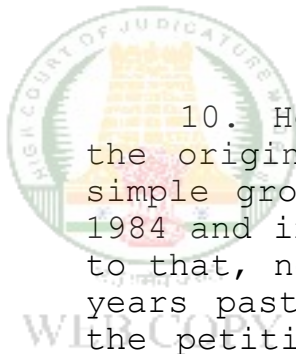
In **Prem Nath Bali - Vs - High Court of Delhi** reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has held as under :

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

9. In the case on hand, a careful perusal of the entire records relating to the enquiry as also the order passed by the disciplinary authority, as confirmed by the other authorities, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of termination and on appeal and on revision, the appellate authority as well as the revisional authority has appreciated the materials independently and concurred with the view of the disciplinary authority. On an overall consideration of the materials, this Court is in consensus with the order passed by the disciplinary authority as confirmed by the appellate and revisional authorities and the punishment imposed on the petitioner is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act.



10. However, considering the quantum of punishment imposed by the original authority, it deserves to be interfered with on the simple ground that the petitioner entered into service in the year 1984 and in the year 1999, the said charge memo was issued and prior to that, no allegation was made against the petitioner. Further, 15 years past service cannot go into waste on the simple reason that the petitioner committed misdeeds as detailed in the charge memo. Further the charge against the petitioner is not the one of misappropriation or corruption and for the unauthorised absent, the punishment imposed by the original authority is highly disproportionate and it is shocking the conscience of this Court. Hence, this Court, in the fitness of things, is of the considered opinion that the punishment imposed on the petitioner requires a slight modification keeping in mind the facts and circumstances of the case. In the fitness of things, this Court is of the considered view that the punishment imposed on the petitioner should be modified to one of compulsory retirement.

11. In view of the above, the Writ Petition is dismissed, but the punishment imposed on the petitioner is modified from one of dismissal from service to one of compulsory retirement. The first respondent is directed to calculate the monetary benefits payable to the petitioner as a result of the modification of the punishment and pay the same to the petitioner as early as possible. However, the petitioner would not be entitled for any back wages. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The General Manager,
Southern Railway,
Chennai-600 003.



2.The Central Government Industrial
Tribunal cum Labour Court,
Chennai.

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-13408[F] dated
24/03/2021)

+1 CC to M/s.S.MANOHAR, Advocate (SR-13484[F] dated 25/03/2021)

W.P (MD) No.13055 of 2009

24.03.2021

GS (30.04.2021) 6P 5C