

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

M.C.A. (RESTORATION) NO. 672/2021 IN W.P. NO. 6521/2006 (D)

(DAULAT HARISHCHANDRA RAMTEKE **VERSUS** CENTRAL WATER WORKS COMMISSION, NAGPUR)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.R. Fule, counsel for the applicant.

Shri S.A. Chaudhari, counsel for the non-applicant.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JULY 21, 2022.

Considering the reasons mentioned in the application, the order dated 20.02.2020 is recalled and the writ petition is restored to file. The miscellaneous civil application is disposed of.

WRIT PETITION NO. 6521/2006.

The challenge raised in this writ petition is to the order passed by the Central Administrative Tribunal, Nagpur on 20.07.2006 thereby dismissing Original Application No.2115 of 2003 and upholding the order imposing penalty of compulsory retirement on the petitioner.

The petitioner was employed as Khalasi with the respondent in the year 1984. During the course of service it was found that the petitioner remained absent from duty without permission and was not obeying the orders of his superiors. The petitioner was therefore issued a charge-sheet on three counts after which a preliminary enquiry was held. The Enquiry Officer held that all the three charges were proved against the petitioner. The enquiry report was accepted by the Disciplinary Authority and on 31.01.2003 the petitioner was compulsorily retired from service with effect from 28.02.2003 with full retiral benefits as admissible under the Rules. Being aggrieved the petitioner sought review of that order which request was not accepted. The petitioner then approached the Central Administrative Tribunal and as it was found that the statutory remedy was available to the petitioner, the Tribunal on 02.06.2003 granted liberty to the petitioner to avail that remedy. The petitioner thereafter filed an appeal and the Appellate Authority agreed with the order passed by the Disciplinary Authority dismissing the appeal. The petitioner then

approached the Central Administrative Tribunal challenging the order of compulsory retirement. By the impugned order, the Tribunal has dismissed the original application filed by the petitioner.

The learned counsel for the petitioner submits that prior to the incident that led to holding of the departmental enquiry, there were certain disputes raised by the petitioner as well as the Association of which he was a member with the Management. The petitioner has been victimised by holding the departmental enquiry against him. The Enquiry Officer was not an independent person since he was holding the post of Assistant Engineer and was reporting to the Executive Engineer who had a grievance against the petitioner. The absence of the petitioner as alleged was not deliberate but it was for genuine reasons. Similarly, the charge of insubordination also did not carry any weight. Though the Tribunal had granted liberty to the petitioner to avail the statutory remedy the petitioner was not granted a hearing by the Appellate Authority. This aspect was not considered by the Tribunal while dismissing the original application. It was therefore submitted that the order of compulsory retirement was liable to be set aside and the petitioner was liable to be reinstated in service.

The learned counsel for the respondent supported the impugned order. According to him due opportunity was granted to the petitioner to substantiate his defence in the enquiry proceedings. The appeal preferred by the petitioner was decided by the Appellate Authority after considering all relevant material. There was no violation of the provisions of Rule 7 of the CCS (Conduct) Rules, 1964. The Tribunal re-examined the challenge as raised and did not find any infirmity therein. Since the charges levelled against the petitioner were duly proved and the same related to discharge of duty, no interference with the order of compulsory retirement was called for.

We have heard the learned counsel for the parties and we have perused the documents placed on record. Insofar as the conduct of the enquiry proceedings is concerned the same is after giving due opportunity to the petitioner. The petitioner was permitted to examine witnesses and place on record relevant material. After considering the entire material on record the Enquiry Officer recorded the finding that the charges as levelled had been proved. Of the charges levelled one of them is

with regard to absence without permission from April-2002 to June-2002. There is also a charge of insubordination by not following the instructions of the superiors and neglecting the work. The Appellate Authority while considering the appeal preferred by the petitioner has again gone through the enquiry proceedings and on being satisfied that no illegality was committed rejected that appeal. The Tribunal then re-examined the entire matter and also perused the original record of the disciplinary proceedings. It recorded a finding that the enquiry report was duly supplied to the petitioner against which he submitted his representation which was also considered. Though initially the punishment of removal was proposed, taking a lenient view an order of compulsory retirement with retirement benefits was passed.

We thus find that all relevant material has been taken into consideration initially by the Appellate Authority and thereafter by the Central Administrative Tribunal. The contention raised by the petitioner regarding independence of the Enquiry Officer has not been substantiated and only a ground in that regard has been raised. As regards grant of personal hearing to the petitioner by the Appellate Authority it is clear from Rule 7 that unless such personal hearing is demanded the Appellate Authority is not bound to grant such opportunity and the matter lies in its discretion. We therefore do not find any illegality committed while deciding the proceedings. The scope for interference in the enquiry report is limited. It is not a ground that the principles of natural justice were not followed. There is sufficient material on record to substantiate the imposition of penalty of compulsory retirement.

For aforesaid reasons, we do not find any merit in the writ petition. The same is accordingly dismissed. The respondent shall pay the retiral benefits within a period of three months from today. Rule is discharged. No costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

APTE

Signed By: Digitally signed
by ROHIT DATTATRAYA
APTE
Signing Date: 22.07.2022 16:48