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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.365 OF 2016

Shri Tulshidas Shirodkar
Assistant Engineer,
Public Works Department,
Sub-division IV, Division II
(Roads), of major age,
Indian National, having office at
PWD, Patto, Panaji-Goa,
resident of House No.25A,
C-Type Government Quarter,
Patto, Panaji-Goa.

... Petitioner

Versus

1. The Chief Secretary,
State of Goa, having Office at
Secretariat, Porvorim,
Bardez-Goa.

2. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez-Goa.

... Respondents

Mr Parikshit Sawant, Advocate *for the Petitioner.*

Mr Vishwadh Sardessai, Additional Government Advocate *for the Respondents – State.*

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

**Reserved on : 25th APRIL 2023
Pronounced on : 2nd MAY 2023**

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard Mr Pariskshit Sawant for the Petitioner and Mr Vishwadh Sardessai, learned Additional Government Advocate for respondents nos.1 & 2.

2. The Rule was issued in this petition on 31.01.2017, and the matter was directed to be placed for a final hearing in the first week of April 2017. However, the matter could only be taken up for final hearing on 25.04.2023.

3. The Petitioner, who retired from service as an Assistant Engineer in PWD on 31.10.2016, challenges Charge Memorandum dated 26.02.2016 based upon disciplinary proceedings which were sought to be initiated against the Petitioner. The Charge Memorandum alleges that the Petitioner visited a foreign country between 12.09.2010 and 18.09.2010 without the Government's prior approval.

4. Mr Sawant learned Counsel for the Petitioner submitted that specific authorization was granted to the Petitioner to travel abroad and attend a training program which had nexus with the discharge of his duties at the Sewage Treatment Plant, Tonca, where he was posted.

5. Mr Sawant submitted that for the incident of 2010, the

impugned Charge Memorandum was issued in 2016, a few months before the Petitioner was to retire on attaining the age of superannuation. Mr Sawant submits that the delayed issue of the Charge Memorandum can, in given circumstances, amount to a breach of principles of natural justice and fair play.

6. Mr Sawant submitted that in the present case, the delayed issue of the Charge Memorandum amounts to a violation of principles of natural justice and fair play because, on the eve of retirement, it would be impossible for the Petitioner to avail of any reasonable opportunity of defence regards the incident of 2010.

7. Mr Sawant submits that the Petitioner travelled abroad between 13.09.2010 to 21.09.2010 for a training program which the Minister of PWD specifically approved, and the Executive Engineer countersigned such approval. He, therefore, submits that the charge in the impugned Charge Memorandum was entirely frivolous. Based upon such a frivolous charge, an attempt was made to deprive the Petitioner of his hard-earned retiral benefits after discharging full service of 30 years.

8. Mr Sawant submits that the Charge Memorandum has not been issued by the Disciplinary Authority but by the Vigilance Department. He offers that the Petitioner is a group 'C' employee and that respondent no.1 is not the Petitioner's Disciplinary Authority.

Therefore, the Charge Memorandum is ex-facie without jurisdiction and deserves to be quashed and set aside.

9. The Petitioner relied upon the decisions in *Seema Ganpat More V/s. President/Secretary, Shishu Vikas Mandir, Daund & Ors.*¹ and *Vidya Vikas Mandal & anr. V/s. Education Officer and Anr.*² to submit that the delayed issue of the Charge Memorandum may violate principles of natural justice and fair play.

10. Mr Vishwadh Sardesai, the learned Additional Government Advocate, submitted that the Charge Memorandum was issued by the Chief Secretary, who has the powers of Disciplinary Authority. Mr Sardesai submitted that the material on record *prima facie* shows that the Petitioner failed to obtain prior permission before going abroad. Therefore, the impugned Charge Memorandum cannot be without jurisdiction.

11. Mr Sardesai submitted that the Petitioner applied for earned leave after his visit abroad without clarifying that he had visited abroad. Mr Sardesai presents that the Charge Memorandum was issued under Rule 16 of the CCS (CCA) Rules 1965, and, as such, it was proposed to impose only a minor penalty upon the Petitioner.

1 2015 (4) Mh.L.J. 71

2 (2007) 11 SCC 352

12. Mr Vishwadh Sardessai also referred to the Notification dated 18.12.2003 (Annexure D) and submitted that Chief Secretary was indeed the Disciplinary Authority for imposing a minor penalty upon group 'A' and group 'B' employees. Mr Sardessai, therefore, submitted that this petition may be dismissed.

13. The rival contentions now fall for determination.

14. The Petitioner retired on attaining the age of superannuation as Assistant Engineer in PWD effective from 31.10.2016 after serving the Government of Goa for almost 30 years.

15. The Petitioner's case is that in 2010, he was assigned to look after the Sewerage Treatment Plant at Tonca. This duty was assigned to the Petitioner because even otherwise, he was involved with implementing sewerage schemes at Taleigao, Dona Paula, Caranzalem, Curca, Bambolim, Talaulim and Chorao.

16. The Petitioner has pleaded that since the sewage treatment plant to be set up at Tonca was the first of its kind, the Government had appointed an agency named M/s. SFC Environmental Technologies Pvt. Ltd. which was incidentally a Technology Provider for 15-MLD Sewage Treatment Plant at Tonca, Panaji, Goa.

17. The Petitioner had pleaded that M/s. SFC Environmental

Technologies Pvt. Ltd. had organized a training programme on the operation and maintenance of a Sewage Treatment Plant from 13.09.2010 to 18.09.2010 in Germany, and about 50 participants from all over the country were scheduled to participate in this training programme.

18. Accordingly, M/s. SFC Environmental Technologies Private Limited, by their communication dated 25.08.2010 addressed to the Minister of PWD, Government of Goa, requested to depute the Petitioner to attend the training programme. The Minister for PWD, Government of Goa, approved this proposal, and the Executive Engineer, PWD, also countersigned the same. Therefore, the Petitioner has produced the communication dated 25.08.2010 with the Minister's approval, the Executive Engineer's counter signature, along with his affidavit dated 25.10.2016 (page 91 of the paper book).

19. In the pleadings filed on behalf of the State Government, no disputes are raised about either the authenticity of the communication dated 25.08.2010 or the approval thereon by the Minister, PWD. No dispute is also raised about the endorsement of the Executive Engineer. No dispute is raised about the stamps in this communication, including those indicating entry no.4222 dated 07.09.2010.

20. Mr Vishwadh Sardesai's only contention is that although the Minister of PWD could be construed as the Government, the

proposal was not moved through the proper channel. Therefore, the approval should not be interpreted as a valid approval. However, neither did he dispute that the Minister of PWD was the appropriate authority to issue approvals, nor did he dispute that the Minister of PWD endorsed such approval on the communication dated 25.08.2010. Even the endorsement of the Executive Engineer was not disputed.

21. Therefore, it is difficult to hold that the Petitioner unauthorizedly visited abroad and should now suffer a disciplinary inquiry almost 5 to 6 years after this incident and a few months before he was to retire on attaining the age of superannuation after discharging service of nearly 30 years.

22. Only because the proposal for sanction to visit abroad may not have been moved through the usual channels, there is no reason to hold that the approval granted by the Minister of PWD and endorsed by the Executive Engineer was not some valid approval. In any case, it is not for the Petitioner to know about the channels in which such proposals are moved, and approvals are granted. As long as the approval of the Minister concerned is not disputed, the Petitioner was entitled to proceed based on the premise that the Government indeed approved his visit abroad for a training program connected with his duties. In such circumstances, no malafide or misconduct can be inferred.

23. The record also reveals that the impugned chargesheet was based on the complaint of Sairaj Bhaje. Additionally, there is some record of this Sairaj Bhaje filing earlier complaints against the Petitioner, which were not found to have much merit. The Petitioner has pleaded that Sairaj had an axe to grind against the Petitioner.

24. The Petitioner has pleaded that he was a group 'C' employee. In support, the Petitioner has produced the Schedule under Goa State Government Employment Group Insurance Scheme 1996, in which the Petitioner is indicated as a group 'C' employee. In the report filed on behalf of the Government, there is no definite stand about the Petitioner not being a group 'C' employee. In one of the notings, there is a reference to the Petitioner being a group 'B' gazetted employee.

25. The Charge Memorandum, in this case, has been issued by the Chief Secretary, who is the Disciplinary Authority when it comes to imposing minor penalties on group 'B' employees. However, there is no definite response to the Petitioner's claim of being a group 'C' employee. Therefore, if the Petitioner is a group 'C' employee, then, at least *prima facie*, the Charge Memorandum has not been issued by his Disciplinary Authority. Perhaps the Charge Memorandum is issued by the appellate authority. This might involve a breach of principles of natural justice.

26. In any case, the Charge Memorandum is not interfered with on the ground that the same was issued by an authority, not the Petitioner's Disciplinary Authority. Even if it is assumed that the Charge Memorandum was issued by the Disciplinary Authority, in the peculiar facts of the present case, it is apparent that there was no basis for issuing the Charge Memorandum against the Petitioner, who had travelled abroad after obtaining approval from the Government.

27. This approval is reflected in the communication dated 25.08.2010, which bears the signature of the Minister of PWD and an endorsement of the Executive Engineer. As noted earlier, the authenticity of this document is not an issue. The fact that the Minister, PWD, was the appropriate authority to grant such approval is also not an issue. Similarly, because the approval may not be in the proper form or the approval for the grant of such a proposal may not be through regular channels, it is not a ground to hold that there was no approval at all or that the Petitioner's visit was ex-facie unauthorized.

28. The inordinate and unexplained delay in issuing the Charge Memorandum is the other circumstance that warrants interference. The Petitioner visited the foreign country in September 2010. However, the impugned Charge Memorandum was issued only on 26.02.2016. The Petitioner was due to retire on 31.10.2016. There is

no explanation for the delay in issuing the Charge Memorandum and pressing a minor penalty upon the Petitioner at such a belated stage.

29. Accordingly, there is some substance in the Petitioner's contention that this Charge Memorandum was issued at the behest of Sairaj Bhaje, who had even made other complaints against the Petitioner, which complaints were found to be devoid of merit, requiring the Petitioner to face disciplinary proceedings just before his retirement for an incident which may not even constitute misconduct and which had taken place six years earlier, would amount to a violation of principles of natural justice and fair play. Moreover, at this point, it would be extremely difficult, if not impossible, for the Petitioner to collect material and face disciplinary proceedings.

30. In *Seema Ganpat More* (supra), learned Single Judge of this Court has held that though there may be no bar of limitation in the matter of the issuance of a chargesheet, nevertheless, issuance of a chargesheet at a highly belated stage may at times constitute a violation of principles of natural justice and fair play. This is because of the inordinate and unexplained delay; employees may find it challenging to defend themselves. Therefore, though not as a general proposition, in the facts of a case, the highly belated chargesheet can be quashed as violative of principles of natural justice and fair play.

31. The Petitioner has pleaded that one Mr K.R. Shrikanth had

gone for the same training programme in Germany along with him. However, no action whatsoever was taken by the Respondent against said Shri K.R. Shrikanth. Accordingly, the Petitioner has alleged that he was being discriminated against, and that legal malice was involved. This specific allegation/ground is raised in para 14(h) of the petition.

32. Shri Narayan Sawant, the Director and Ex-officio Additional Secretary, Government of Goa in the Directorate of Vigilance, has filed an affidavit in reply to the petition. In the context of the grounds in para 14(a) to (i), the deponent has stated the following in para 13, page 43.

"13. I say that as regards the Petitioner's contention in para 14 (a) to (i) are concerned, the grounds narrated by the Petitioner on which the present petition has been filed do not hold any validity as Petitioner has done gross misconduct in performance of his duty for which Disciplinary Authority has decided to initiate minor penalty proceedings against Petitioner, which is within the power and purview of Disciplinary Authority as per the CCS (CCA) Rules 1965 and CCS (Conduct) Rules, 1964, to hold such Disciplinary Proceeding so that erring officers are kept under control of Respondent. Hence in view of above, grounds narrated by the Petitioner in filing the present petition do not hold any validity and hence petition filed by the Petitioner should be considered as infructuous."

33. From the above, it is clear that there is no specific response to the particular allegation concerning Shri K.R. Shrikanth in paragraph 14(h) of the petition. Therefore, since there is no response,

the statement made by the Petitioner in the petition can be accepted. However, suppose Shri K.R. Shrikanth had also visited the same training programme abroad with the Petitioner. In that case, the Respondent should have explained how Shri K.R. Shrikanth's case differed from the Petitioner's. The Petitioner's ground about discrimination cannot be lightly brushed aside without any explanation from the Respondent.

34. To the Court's query as to whether any proceedings were undertaken in pursuance of the Charge Memorandum dated 26.02.2016, Mr Sardesai learned Additional Government Advocate accepted that no further proceedings were taken because of the pendency of the petition though this Court granted no interim relief. As noted earlier, this Charge Memorandum was issued almost six years after the incident and a few months before the Petitioner was to retire on superannuation with effect from 31.10.2016. It is nearly seven years since the Petitioner retired after attaining the age of superannuation. Almost 13 years have passed since the Petitioner's travel abroad for a few days for a training programme having direct nexus with the duties that he was assigned at the Sewerage Treatment Plant. There is a record of the Minister's approval and the Executive Engineer's endorsement. The material on record *prima facie* shows that one Shri K.R. Shrikanth had also gone for the same training programme in 2010, but no action was initiated against him. Considering all these factors cumulatively, a case is made out to

interfere with the impugned order, quash, and set aside the same.

35. Accordingly, the impugned Charge Memorandum dated 26.02.2016 (Annexure C) is quashed and set aside. The Rule is made absolute in terms of prayer clause A of the petition, which reads as follows:

"(A) This Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned Charge Memorandum dated 26.02.2016 (Annexure C to the petition)."

36. There shall be no order for costs.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

NITI K
HALDANKAR

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