

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4395 OF 2021

Swati Bhalchandra Nilegaonkar

.....Petitioner

V/s.

Union of India and Ors.

....Respondents

Mr. Ajeet Manwani and Mr. Faisal Vora i/by. A & A Legal,
Advocate for the petitioner.

Ms. Smita Thakur, Advocate for the respondent.

**CORAM : S.V. GANGAPURWALA, ACTING C.J.
SANDEEP V. MARNE, J.**

DATE : 29th MARCH, 2023.

JUDGMENT (Per : Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith and with consent of the parties, Petition is taken out for final hearing.

2. Petitioner assails judgment and order dated 13.03.2019 passed by the Central Administrative Tribunal (**Tribunal**) in Original Application (**O.A.**) No. 172/2017. In her O.A., Petitioner had challenged order dated 6.02.2013 imposing the penalty of removal from service, as well as the order of the Appellate Authority dated 24.07.2015 rejecting the Appeal. By the judgment and order impugned in the present petition, the Tribunal has proceeded to dismiss the O.A.

3. Petitioner was working with Dr. Babasaheb Ambedkar Central Railway Hospital, Byculla on the post of Assistant Nursing Officer and had put in around 26 years of service. Petitioner decided to contest the Assembly Elections and accordingly tendered application dated 16.09.2009 for voluntary retirement. However, within a week of submission of application for voluntary retirement, she filed nomination form for contesting the Assembly elections on 24.09.2009. She went ahead and contested the Assembly Elections from Khed Alandi constituency held on 13.10.2009 without waiting for outcome of the result of her application for voluntary retirement. No decision was taken on her application for voluntary retirement and by letter dated 12.11.2009, she was informed that her request was under consideration and that she would have to attend duties till sanction of the same by the Competent Authority. Petitioner lost the elections and joined duties.

4. After conducting preliminary enquiry, Memorandum of Chargesheet dated 31.08.2010 was issued to Petitioner under the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 alleging three articles of charge. In the first charge, it was alleged that, she contested Assembly elections on 13.10.2009 without intimation to the railway administration. In the second charge, it was alleged that she did not intimate purchase of immovable property worth Rs.25,00,000/- which she disclosed in the nomination form filed with the Returning Officer. In the third charge, it was alleged that she submitted private Medical Certificate justifying absence from 4.08.2009 to

8.09.2009 and that she remained absent for long period during August, 2009 to October, 2009 without sanctioned leave.

5. After holding departmental proceedings, the Enquiry Officer submitted report dated 30.2.2011 holding that Charge-I and II were fully proved and Charge-III was partially proved. The Disciplinary Authority did not agree with the findings of the Enquiry Officer to the extent of Article of Charge No. III not being fully proved and issued a show cause notice for disagreement. After Petitioner submitted representation, the Disciplinary Authority passed order dated 6.2.2013 imposing the penalty of removal from service. Petitioner preferred Appeal before the Railway Board. After consulting Union Public Service Commission, the President of India rejected petitioner's Appeal by order dated 24.07.2015. Petitioner approached the Tribunal by filing Original Application No. 172/2017. By judgment and order under challenge, the Tribunal proceeded to dismiss the O.A.

6. Mr. Manwani, the learned counsel appearing for petitioner presses sole ground of penalty being disproportionate to the misconduct proved. He does not dispute the findings recorded by the enquiry officer and disciplinary authority with regard to proof of charges. He further urges that the penalty imposed is harsh. He would submit that the petitioner has put in 26 years of qualifying service and that she has not received any pensionary benefits on account of harsh penalty of removal from service.

7. *Per contra*, Ms. Smita Thakur the learned counsel appearing for respondent no.1- Railway Administration, would oppose the petition and support the order passed by the Tribunal. She would submit that petitioner committed serious misconduct of contesting Assembly elections without intimation to the department. That she did not even bother to wait for the outcome of her application for voluntary retirement and filed nomination form on 24.09.2009. That she acquired immovable property without giving any intimation to the department and this fact came to light only after perusal of the nomination form submitted by her to the Returning Officer. That penalty of removal of service in such circumstances is adequate. She would pray for dismissal of the petition.

8. After having heard the learned counsels for the parties, the short issue that arises for our consideration is whether the penalty of removal imposed on Petitioner is shockingly disproportionate. We need not go into the issue of correctness of finding of guilt recorded by the Enquiry Officer, Disciplinary Authority and the Appellate Authority. Though the order of removal was challenged before the Tribunal on merits and the present petition also raises pleadings with regard to the merits of the charges, Mr. Manwani has fairly not pressed the said points before us. The only point that Mr. Manwani has argued is about of the proportionality of penalty.

9. The law with regard to proportionality of penalty is well settled. In **B.C. Chaturvedi Vs. Union of India**, 1995 6 SCC 749, the Apex Court has held that the Court cannot normally substitute their own conclusion about adequacy of penalty but, however if the penalty imposed by the Authority shocks the conscience of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the delinquent employee to act in a certain manner though he/she had not intended to do so.

10. In **V. Ramanna vs. AP. SRTC**, (2005) 7 SCC 338, the Apex Court has considered the scope of judicial review in deciding quantum of punishment and it is held that judicial review is permissible only if it is found that penalty is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the penalty shocks conscience of the court. It further held that, in a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed.

11. In **State of Meghalaya & Ors. v. Mecken Singh N. Marak**, (2008) 7 SCC 580 the Apex Court in para-28 has held as under :

“28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

12. We now proceed to examine whether the penalty of removal imposed upon Petitioner is proportionate and whether it shocks our conscience. For such examination, we may have to take into consideration, not only the gravity of misconduct but also the circumstances under which Petitioner committed the same. No doubt, contesting election by a Government Servant while in service is a grave misconduct. However, in the instant case Petitioner did not intend to suppress her desire of contesting the elections. She realised that she cannot contest elections while in railway service. She therefore first tendered a notice for voluntary retirement, before filing the nomination form. The notice for voluntary retirement was submitted on 16.09.2019. True it is that she ought to have waited either for three months period to come to an end or for a decision of the Competent Authority on her application. Within about 8 days from the date of tendering the notice for voluntary retirement, she submitted the nomination form for contesting Assembly

elections on 24.09.2009. She contested the elections held on 13.10.2009 and later received communication from the respondents on 12.11.2009 calling her upon to resume duties till decision on notice for voluntary retirement. In pursuance of the direction dated 12.11.2009, she did report for duty on 16.11.2009. She apparently continued performing her duties till the order of removal from service was issued on 6.2.2013. This is one of the mitigating circumstances in favour of petitioner.

13. This is not a case where Petitioner contested the elections while continuing to remain in service. On the contrary she desired to leave service and accordingly issued notice for voluntary retirement on 16.09.2009. This is yet another mitigating circumstance in her favour.

14. After taking into consideration the circumstances under which Petitioner committed misconduct of contesting election without intimation to the Department, we are of the considered view that the Railway Administration is justified in putting an end to her services. However whether the misconduct would warrant loss all the retiral benefits arising out of her 26 years of service is the issue to be considered.

15. Another misconduct alleged against petitioner is about the failure to give intimation of acquisition of immovable property, which was disclosed by her in her nomination form. There is no allegation of acquisition of immovable property by unauthorised means. Similarly, there no allegation of possession of assets

disproportionate to the known sources of income. In the light of these circumstances, failure to give intimation of acquisition of immovable property would not be a serious misconduct entailing penalty of removal from service.

16. The third charge of remaining absent from duty for couple of months again, is not a serious misconduct. This charge was only partly proved by the enquiry officer, though his finding was later disagreed by the disciplinary authority.

17. Petitioner has put in around 26 years of qualifying service. On account of imposition of penalty of removal from service, she has been deprived of all the pensionary benefits. If she was to give sufficient notice in advance (90 days before filing nomination form), she would have retired voluntarily and be entitled to all the pensionary benefits. Decision to contest the election appears to be taken on a spur of a moment considering very short gap of about 8 days between the notice for voluntary retirement and filling up of the nomination form. Though she has misconducted, the gravity of misconduct and the circumstances in which the same is committed needs to be taken into consideration.

18. Considering the overall conspectus of the matter, we are of the view that considering the gravity of misconduct and the circumstances in which it was committed, the penalty of removal from service after rendering 26 years of service would shock our conscience. However, considering the law repeatedly laid down by the

Apex Court mandating remittance of the matter for reconsideration of the penalty, we deem it appropriate to remit the matter to the Disciplinary Authority for reducing the penalty.

19. We accordingly proceed to pass the following order:

- i) Judgment and Order dated 13.03.2019 passed by the Tribunal in Original Application No. 172/2017 is set aside;
- ii) Order dated 06.02.2013 of the disciplinary authority and order dated 24.07.2015 of the appellate authority are also set aside;
- iii) Findings with regard to proof of charges levelled against Petitioner are maintained and the disciplinary proceedings are remitted to the disciplinary authority for the limited purpose of reduction of penalty;
- iv) The disciplinary authority shall consider the findings recorded above and impose appropriate penalty except that of removal or dismissal from service on Petitioner within a period of 4 weeks from today;
- v) The reduced penalty so imposed shall take effect from 06-02-2013 and Petitioner shall be entitled to be paid all consequential benefits flowing therefrom;
- vi) Writ Petition is accordingly partly allowed.
- vii) Rule is made partly absolute in above terms. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)