

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10338 OF 2013

Popat B. Bhalerao

Adult, Indian Inhabitant,
presently having address at
Ahmednagar, Maharashtra

.. Petitioner

Versus

Union of India through

The Controller of Quality Assurance (Vehicle)
under Ministry of Defence D-FY-2
having its office at Ahmednagar,
Maharashtra State

.. Respondent

.....

- Mr. Ashok Kotangle a/w Ms. Rasashri Karande, Mr. Mayur Sarode and Mr. Anil Sable for Petitioner
- Mr. Yogeshwar Bhate a/w D.R. Shah for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 3, 2023

JUDGMENT:

1. Heard Mr. Kotangle, learned Advocate for Petitioner and Mr. Bhate, learned Advocate for Respondent.

2. This Petition is filed under the provisions of Article 226 and 227 of the Constitution of India challenging the Notification dated 21.03.2012 issued by Government of India and Award dated 01.02.2012 passed by Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai (for short “**CGIT-1**”) in Reference No. CGIT-1/1 of 2003.

3. Petition is filed by workman. Reference is made by Central

Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (for short “**the said Act**”). The terms of reference given in the schedule are as follows:-

“Whether the action of the management of Controller of Quality Assurance (Vehicle) in terminating the services of Sh. Popat B. Bhalerao by way of compulsory retirement w.e.f. 20.8.96 on the alleged charges misconduct vide chargesheet No. ADM/AEDICS/8220/IV-48 dt. 14.12.1995 is legal and justified / if not, to what relief the concerned employee is entitled to?”

4. Facts leading to filing of the present Petition are outlined herein under:-

4.1. Petitioner workman was appointed as Chowkidar by the Controller of Quality Assurance (Vehicle) Ahmednagar on 04.05.1981 on permanent basis. Since then, he was in continuous, unblemished service without any break and / or complaint until termination of his services on 30.08.1996.

4.2. While Petitioner was working as Chowkidar in the year 1995, Mr. R.N. Gulati was the Controller of Quality Assurance (Vehicle), Ahmednagar and his wife had committed suicide in the beginning of 1995. Since there was no other person in the house of Mr. R.N. Gulati, he wanted Petitioner’s wife to work for him in his residential bungalow. At that time, Petitioner along with his wife was staying in a residential quarter attached to the bungalow of Mr. Venu

Gopal, Lt. Colonel posted in Ahmednagar. Due to the demise of Mr. Gulati's wife by suicide, Petitioner's wife was afraid and therefore refused to work in the house. Mr. Gulati maintained constant pressure on the Petitioner to send his wife to work in his house. According to Petitioner, since he did not send his wife to work in Mr. Gulati's house, Mr. Gulati was furious and started harassing him at work. Due to this, Petitioner became upset and fell sick from 11.04.1995 to 27.09.1995. On 28.09.1995 when Petitioner reported for work, he was not allowed to join duty / work. On the instructions of Mr. Gulati given to chowkidars and Mr. Nathulal, Subedar, Petitioner was not allowed to enter the office. Petitioner reported daily for work but was denied entry to the office.

4.3. Petitioner was called by Respondent No. 1 during Diwali time in 1995 and was paid bonus on the instructions of Colonel Dixit, the Chief Security Officer. Immediately thereafter Petitioner was taken on work and allowed to work for a period of 10 days. Thereafter, the Subedar on duty instructed the Petitioner not to continue on duty on the oral order received from Mr. Gulati as Mr. Gulati had not sanctioned his leave. Thereafter on 01.08.1996 Respondent was specifically asked to resume duty. He worked from 01.08.1996 to 30.08.1996. He was compulsorily retired from service by order dated 30.08.1996 which was handed over to him on that day.

4.4. According to Petitioner, his termination from 30.08.1996 was without serving him any chargesheet or without holding any inquiry for the alleged misconduct of the Petitioner. Petitioner pleaded that before compulsorily retiring him from service, he was not issued any show-cause-notice nor issued chargesheet for any alleged misconduct. He was not supplied with copies of the alleged day to day inquiry proceedings held against him. Petitioner specifically averred that copy of the Enquiry Report was not served on him. Petitioner therefore questioned the legality and validity of the alleged inquiry held against him being against the principles of natural justice and therefore vitiated.

4.5. According to Petitioner, the entire inquiry held against him was an exparte inquiry and he was not given opportunity to defend himself nor lead evidence. Petitioner would submit that by order dated 30.08.1996, he was retrenched from service but was not given one month's notice or one month's wages in lieu of the said notice and therefore his alleged retrenchment was illegal, invalid and not justified. Petitioner belongs to SC category.

5. Statement of claim filed by Petitioner was resisted by Respondent by filing written statement, *inter alia*, submitting that Petitioner was a civilian government servant governed by CCS (Conduct Rules), 1965 and was awarded penalty of compulsory

retirement by the Disciplinary Authority after following the procedure laid down under the said Rules. It was contended that Petitioner's Appeal was rejected by the Appellate Authority after considering the same under the provisions of Rules 22 and 28 of the said rules and despite availability of alternate remedy to file Revision / Review Petition to the appropriate Authority under Rule 29 and 29A, Petitioner did not avail the same.

5.1. It was Respondent's case that Petitioner remained absent without intimation from 11.04.1995 to 27.09.1995 and letters sent to him at his last known residential address were not received / accepted by him and were returned back undelivered. According to Respondent, Petitioner reported for duty on the night on 28.09.2005 and submitted the Application stating that he was sick from 01.03.1995 to 10.04.1995 and that due to domestic reasons, he was unable to attend his duty from 11.04.1995 to 27.09.1995 and prayed for grant of extraordinary sick leave on medical grounds and for personal reasons.

5.2. According to Respondent, Petitioner was issued show-cause-notice dated 17.10.1995. It was served on him to explain his conduct and give reasons as to why disciplinary action should not be taken against him under the said Rules. According to Respondent, Petitioner did not respond to the show-cause-notice and once again, remained

absent from duty from 14.11.1995 onwards.

5.3. According to Respondent, Petitioner was thereafter issued a chargesheet on 14.12.1995 intimating him of the proposed inquiry against him under the said rules. Petitioner continued to remain absent and avoided receiving the chargesheet. Respondent made several attempts to serve the Petitioner at this residence but the said intimation could not be served since his whereabouts were not known.

5.4. According to Respondent, inquiry was instituted under order dated 09.02.1996 and intimation was sent to Petitioner through post but it could not be served at his last known address. The inquiry was fixed on 27.06.1996 and notice of hearing was sent to the last known address but there was no response from Petitioner. Exparte order was passed on 27.06.1996 and the Enquiry Officer filed his Report on 04.07.1996. According to Respondent, the Enquiry Report was served on the Petitioner by letter dated 26.07.1996 asking him to make representation to the Disciplinary Authority within 15 days. The said letter was received by Petitioner on 10.08.1996. On 24.08.1996, Petitioner submitted Application to the Disciplinary Authority admitting his absence and sought a further chance. The Disciplinary Authority considered the Application filed by Petitioner and imposed penalty of compulsory retirement by order dated 30.08.1996.

5.5. In response to Petitioner's Statement of claim, it was

Respondent's case that Petitioner was in fact allowed to join duty on the night of 28.09.1995. In response, Petitioner claimed that he was paid bonus during Diwali of 1995, it is Respondent's case that Petitioner was in fact paid productivity linked bonus (PLB) for the year 1994-1995 and arrears of PLB for the year 1993-1994 due to change in rates on 18.10.1995. Respondent has admitted that the above demand was made after Petitioner had rejoined his duties on 28.09.1995 and before 14.11.1995 after which once again Petitioner started absenting himself from duty. In respect of Petitioner's claim of linking his case with the personal affairs and tragedy of Mr. R.N. Gulati, the then Controller, it was merely denied as baseless and incorrect. It was alleged that the aforesaid claim of Petitioner of linking his case with the personal affairs and tragedy of Mr. R.N Gulati was made first time in Appeal filed on 06.12.2000 under the said Rules. According to Respondent, a fair and appropriate inquiry was conducted after giving a reasonable opportunity to the Petitioner and therefore the penalty awarded to the Petitioner deserved to be upheld.

6. In rejoinder to the written statement, Petitioner has categorically stated that he became sick due to harassment meted out by Mr. R.N. Gulati and in that regard, he submitted medical certificate to Mr. Nathulal, Subedar on duty on 28.09.1995. Thereafter Petitioner was directed by the Office of Respondent to the Civil Surgeon for

obtaining the Medical fitness certificate which he duly submitted on 14.11.1995. However, Petitioner was not allowed to resume duty on the instructions of Mr. R.N. Gulati. Petitioner has averred that on the instructions of Mr. R.N. Gulati, Petitioner was prevented from entering into his residential quarters attached to the bungalow of Mr. Venu Gopal, Lt. Colonel. According to Petitioner, he was allowed to resume duty in the month of August 1996 and he worked upto 29.08.1996 and without his knowledge on the next day i.e. 30.08.1996, he was served with the order dated 30.08.1996 compulsorily retiring him from service.

7. In view of the above facts, the learned CGIT framed the following issues for determination:-

Sr.No.	Issues
1	Whether the Controller of Quality Assurance (Vehicle) is not covered by the Industrial Disputes Act, 1947 and consequently this Tribunal has no jurisdiction?
2	Whether the termination of the services of the workman was by way of punishment without following the principle of natural justice and holding an enquiry?
3	Whether findings recorded against the workman are perverse?
4	What relief if any is workman entitled to?

7.1. Considering the evidence on record Award was passed after considering the pleadings and holding that the charge against the workman was proved by his own admission and he was not entitled to any relief.

8. Mr. Kotangale, learned Advocate for Petitioner would submit that bare perusal of the written statement filed by Respondent would show that the inquiry held against the Petitioner is completely vitiated and the Respondent as well as the Enquiry Officer has not followed the principles of natural justice. He would submit that it is Respondent's own case that all processes namely show-cause-notice, letters / notices, inquiry report, intimation etc. were issued by the office of the Respondent on the last known address of Petitioner. However, it is an admitted position by the Respondent in evidence that these processes were never served on the Petitioner. Next he would submit that Petitioner was appointed in 1981 and served the Respondent organization for almost 15 years with an unblemished service record. He would submit that Petitioner remained absent during the period from 01.03.1995 to 27.09.1995 for two specific reasons viz; that he was sick from 01.03.1995 to 10.04.1995 and thereafter he had domestic reasons which prevented him from attending his duty. He would submit that an appropriate application was made by the Petitioner thereafter seeking grant of extraordinary leave on medical ground and for personal reasons. He would submit that Petitioner was allowed to join duty and referred to the Civil Surgeon for obtaining Medical fitness certificate which he duly complied with but despite that Petitioner was denied entry to the office and prevented from joining duty on the instructions of Mr. R.N.

Gulati, the then Controller of Quality Assurance (Vehicle) in Ahmednagar. He would submit that Petitioner was not only prevented from attending duty in office but also prevented from having access to his residential quarter on the instructions of Mr. R.N. Gulati. He would submit that the charge made by Petitioner of linking his case with the personal affairs and tragedy of Mr. R.N. Gulati was being merely denied as baseless and incorrect without giving any reasons. He would submit that in that view of the matter, the punishment meted out to the Petitioner is wholly not commensurate with the misconduct of Petitioner. This is more so because Petitioner was completely unaware about the proceedings carried out against him entirely behind his back without any intimation to him. Lastly he would submit that when the Petitioner was allowed to resume his duty, during that period, Petitioner was not intimated or served with any process whatsoever and therefore had no reason whatsoever to believe that any proceedings were indeed initiated against him. He would therefore submit that the impugned Award upholding compulsory retirement of the Petitioner is completely unjustified and untenable in the eyes of law and deserves to be quashed and set aside.

9. *PER CONTRA*, Mr. Bhate, learned Advocate for Respondent has justified passing of the impugned Award against the Petitioner for remaining continuously absent from duty from 11.04.1995 to

27.09.1995 without intimation or proper sanction of leave. He would submit that Respondent complied with the entire procedure prescribed under the said Rules by issuing show-cause-notice, conducting the inquiry proceedings, issuing the inquiry report and thereafter terminating the Petitioner and therefore cannot be faulted with. However, he would fairly submit that issuance of all processes was effected only on the last known address of the Petitioner but there was no response from the Petitioner and in that view of the matter, exparte order came to be passed on 24.06.1996 by the Enquiry Officer. According to him, a fair and proper inquiry was conducted under the said rules and all reasonable opportunities were given to the Petitioner. He therefore prayed for upholding of the impugned Award.

10. I have heard Mr. Kotangle, learned Advocate for Petitioner and Mr. Bhate, learned Advocate for Respondent and with their able assistance perused the record and pleadings of the present case. Submissions made by them have received due consideration of the Court.

11. It is seen that Respondent had filed written arguments before CGIT in the Reference proceedings. Though it was pleaded by Respondent that a fair and reasonable opportunity was given to the Petitioner and a proper and fair inquiry was conducted under the said rules, it was Respondent's own case that if the Tribunal came to the

conclusion that there was a lacuna in the departmental inquiry conducted against the Petitioner, then Respondent had called upon the Tribunal to conduct the said inquiry and give an opportunity to the Petitioner. Such specific submission is made in paragraph No. 9 of the written arguments dated 16.03.2006 which I find at page No. 59 of the Writ Petition. Further in so far as the linking Petitioner's case with the personal affairs and tragedy of Mr. R.N. Gulati is concerned, in the written arguments it is stated that Petitioner had raised the said allegation for the first time in his Appeal dated 06.12.2000 filed before the Director General of Quality Assurance who was the Appellate Authority under the said Rules. However Respondent has fairly admitted that Petitioner had made a reference to the earlier Appeal dated 02.09.1997 which was filed by him in his Appeal dated 06.12.2000. However according to the Respondent, the earlier Appeal was not received in the office of the Respondent. Perusal of record indicates that Petitioner was absent from 11.04.1995 to 27.09.1995 i.e. for a period of 5 months and 16 days without intimation and proper sanction of leave and this was the charge of misconduct levelled against him. According to Petitioner, he had valid reasons i.e. of his sickness and domestic personal reasons for remaining absent and he therefore prayed for grant of extraordinary medical leave on medical ground to which he was entitled to. However show-cause-notice dated 17.10.1995 was issued to Petitioner to which he did not

respond. Admittedly there is nothing on record to show that the show-cause-notice was served on the Petitioner in the first place. It was not the case that the Petitioner was absconding or had abandoned his work. Petitioner was very much present but was denied and prevented and precluded from entering the office on the instructions of Mr. R.N. Gulati, the then Controller. To this charge of Petitioner, there is not a whisper in the written statement filed by the Respondent before the Tribunal or even in reply to the present Writ Petition. In fact, Respondent in its affidavit-in-reply in paragraph No. 8 has categorically admitted that all letters sent to the Petitioner on his last known address were returned back by postal authorities with the remark "not accepted / address not known". It is also stated in paragraph No. 8 of the reply that therefore an exparte order was passed against the Petitioner on 27.06.1996 and the Enquiry officer submitted his report on 04.07.1996. In the affidavit-in-reply filed by the Respondent though it is repeatedly averred that the processes were served and received by Petitioner, there is no supporting documentary evidence whatsoever justifying and proving the said averments that are made. All that the affidavit-in-reply would state is that the inquiry was fair and proper and all processes were served on the Petitioner. However, this stand is contradicted by the Respondent's own witness in his cross-examination.

12. It is also an admitted position which is borne out from record that on resumption of duty by Petitioner, he was directed to obtain Medical fitness certificate from the Civil Surgeon to declare him fit for work. The Civil Surgeon's certificate was given to him in a sealed envelope. Medical certificate given by the Civil Surgeon in the sealed envelope was submitted by him to Mr. Nathulal, Subedar but only because of the instructions given by Mr. R.N. Gulati, the then Controller, he was prevented from joining duty / work. There is one more reason which needs to be stated and gone into viz; that in the affidavit filed by the Petitioner before the CGIT for leading evidence, he stated that his signatures were obtained on two letters dated 24.08.1996 purported to be written by him, one in English and the other in Hindi by informing him that those letters were required for regularization of his leave application and believing the Respondent, Petitioner appended his signatures on the said letters.

13. In the above background, if Petitioner had indeed derelicted in his duties, there was no reason for the Management of Respondent to allow him to join work on 01.08.1996 and permit him to work until 31.08.1996 and handover his termination order compulsorily retiring him from services on that date. The action of the Respondent clearly smacks of malafides. The intention of the Respondent right from inception is malicious. Petitioner was allowed to work for one month

only to serve the order of compulsory retirement on him. The action of the Respondent clearly Another significant piece of evidence which cannot be lost sight of is the leave application and medical certificate submitted by the Petitioner for his absence during 11.04.1995 to 27.09.1995 which was exhibited at Serial No. 13 of the Respondent's list of documents dated 12.09.2003. This is the most important material piece of evidence which gives reasons on behalf of Petitioner for his absence. What is important to be noted is that the Petitioner was never given an opportunity to defend his case either at the notice stage or at the inquiry stage. This was despite the fact that Petitioner was residing in a government accommodation i.e. the servant quarter attached to the bungalow of Lt. Colonel Mr. Venu Gopal and this fact was admittedly known to the Respondent.

14. I have also perused the examination in chief and cross-examination of the Petitioner conducted by the Respondent before the CGIT. The cross-examination clearly bears out what has been observed by me and alluded to herein above. It has come in cross-examination clearly that after Mr. R.N. Gulati's wife committed suicide, he desired that Petitioner's wife attend to his services in his house for doing the housework and in that very regard, he had made a complaint about the conduct of Mr. R.N. Gulati. The most clinching piece of evidence is the deposition of Ms. Rani Thimmaraj, witness

who was working at the then time as Lower Division Clerk. She has served the Respondent Organisation for 24 years and in 2004 deposed that after the death of Mrs. Gulati, wife of Petitioner was asked to work in the house of Mr. Gulati but she had refused to work there. Next she has deposed that for the period of absence between 11.04.1995 and 27.09.1995, Petitioner had submitted his medical leave application in the office of the Respondent but he was not granted leave and instead Respondent asked the Civil Surgeon to examine the Petitioner and give a Medical fitness certificate. Ms. Thimmaraj has in her cross examination confirmed that Petitioner's wife had specifically confided in her that Mr. R. N. Gulati had himself desired and asked her to work in his house after his wife's demise. She has further stated that since she was working in the Establishment Department of the Respondent, she was personally aware that Petitioner had filed his Application for leave, that she had seen the Application and was aware that he was told to obtain Medical fitness certificate from the Civil Surgeon. She has also deposed that Petitioner brought the Medical fitness certificate from the Civil Surgeon and she has herself seen the said Medical certificate given by the Civil Surgeon. The evidence of Petitioner is duly supported and corroborated by the evidence of Ms. Rani Thimmaraj which cannot be disbelieved. It is seen that Ms. Rani Thimmaraj is not an interested witness at all, rather she has given her evidence in the most neutral

manner about the facts which were known to her personal knowledge as she was working in the Establishment Section of the Respondent for 24 long years and therefore the evidence given by her deserves to be accepted. It is further seen that the evidence led on behalf of the Respondent before the CGIT in fact supports the Petitioner. During cross-examination, the Deputy Controller of Quality Assurance (Vehicle), Ahmednagar who was the Respondent's witness, has categorically admitted that there was an exparte departmental inquiry in the case of the Petitioner. He has checked the records on being called upon to do so and thereafter resumed his cross-examination and confirmed the same. He has categorically deposed that the chargesheet was dispatched by registered post to the last known residential address of the Petitioner but there was no record relating to the receipt of the chargesheet by him available with the Respondent. The Deputy Controller has categorically admitted the fact that Petitioner had indeed submitted a doctor's Medical certificate for his absence for four months at the time of joining his duty and he was therefore allowed to join duty and was referred to the Civil Surgeon.

15. After considering the totality of the above evidence, I find that the impugned Award is wholly unsustainable. The punishment of compulsory retirement awarded to the Petitioner is excessive and unjustified in the facts and circumstances of the present case. The

charges framed against Petitioner if juxtaposed with the evidence on record cannot justify the punishment meted out to him. It is wholly disproportionate in the facts of the present case. The finding in the impugned Award that there is no proof of the fact that he submitted any Medical certificate is defied by the witness of Respondent itself i.e. the Deputy Controller who in his own cross-examination has admitted that Petitioner had submitted the Medical certificate for his absence during the four months at the time of re-joining his duty. In that view of the matter, the impugned Award needs to be interfered with.

16. In the facts and circumstances of the present case which have been discussed herein above, this is a fit case for grant of full back wages to the Petitioner for the entire length of service from the date of his termination till the date of his superannuation. The impugned Award dated 01.02.2012 is therefore quashed and set aside. Considering that Petitioner has passed his retirement age, he shall be entitled to all benefits of continuity in service for the purpose of retirement benefits with full back wages until the date of his retrenchment. Petitioner shall be entitled to all such incremental benefits in salary as applicable according to the revised Pay Commission reports, with continuity of service. Petitioner shall compute and calculate the entire arrears of full back wages payable to him and inform the Respondent within a period of 2 weeks from the

date of uploading of this judgment. Petitioner shall also be entitled to interest @ 12% p.a. simple interest on the entire amount of full back wages and all other dues payable to him from the date of his compulsory retirement till it is actually paid to him. On being informed by the Petitioner, the Respondent is directed to pay the entire claim of full back wages and interest alongwith continuity of service to the Petitioner within a period of four weeks thereafter.

17. In view of the above, the impugned notification dated 21.03.2012 and the Award dated 01.02.2012 are quashed and set aside.

18. With the above directions, Writ Petition stands allowed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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AMBERKAR
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