

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

WRIT PETITION NO. 4268 OF 2018.

Mohammad Shafique Rafiq Ahmed

.. Petitioner

vs.

Chairman, Mumbai Port Trust

.. Respondent

...

Mr. Abhijit Kulkarni, with Krushna Jaybhay, for the Petitioner.

Mr. R. Singh, with Heena Shaikh, i/b. M.V. Kini & Co, for the Respondent.

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CORAM: SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2023.

P. C.:

1. By this Petition, the Petitioner challenges judgment and order dated 9th November 2016 passed by the Central Government Industrial Tribunal rejecting reference No. CGIT-2/13 of 2010. In his reference, the Petitioner had challenged order dated 29th August 2005 by which the Respondent had imposed penalty of removal from service on him after being found guilty in the disciplinary proceedings.

2. It appears that the Petitioner was appointed in the Mumbai Port Trust in the year 1986. He remained unauthorizedly

absent for 6, 4 & 6 days during year 2000, 2001 and 2002 respectively. Thereafter, in the year 2003 he remained absent from 17th June 2003 till the Memorandum of Chargesheet dated 11th February 2005 was issued. The Petitioner thus faced Disciplinary Enquiry for remaining unauthorizedly absent for a period of 646 days. The charge is held to be proved and the present Petitioner is awarded penalty of removal from service. The departmental Appeal/Revision/Review has also met with rejection. The Petitioner thereafter raised dispute with regard to correctness of the removal order dated 29th August 2005 which came to be referred to the Central Government Industrial Tribunal. In Part-I award dated 1st December 2014, the Tribunal held that the enquiry held was fair and proper. In Part-II award the Tribunal came to the conclusion that the penalty of removal from service imposed on the Petitioner was commensurate with the misconduct alleged and rejected the reference by its judgment and order dated 9th November 2016.

3. Mr. Kulkarni, learned counsel appearing for the Petitioner would not seriously dispute the finding of proof of charge of absenteeism. He would however urge that since the Petitioner rendered unblemished service during 1986 to 2002, he deserves to be granted retiral benefits and for that purpose the penalty of reward for service deserves to be reduced to that of compulsory retirement.

4. Mr. Singh, learned counsel appearing for the Respondent-Port Trust, on the other hand, would oppose the Petition and support the orders passed by the Tribunal. He would submit that the Petitioner was unauthorisedly absent for inordinate time and therefore penalty imposed on him is commensurate with the misconduct proved.

5. After having heard the submissions canvassed by the learned counsels for the parties, no fault can be found with regard to the findings of proof of charges against Petitioner. The fact that Petitioner remained unauthorizedly absent from duties for 646 days, is not really disputed. The only contention that is raised by the Petitioner is about proportionality of penalty. It is well settled law that Courts/Tribunals cannot direct reduction of penalty unless they arrive at a conclusion that the penalty imposed is shockingly disproportionate. In the present case, since Petitioner remained unauthorisedly absent for about two years, it cannot be said the penalty is shockingly disproportionate. Therefore, there is no question of reduction of penalty to that of compulsory retirement.

6. However, it appears that under the provisions of Rule 35(1) of the Mumbai Port Trust Pensions Regulations 2001 there is a provision under which the authority which passes order of

removal from service is empowered to sanction compassionate allowance depending on facts and circumstances of each case. Petitioner can therefore make a request in that regard. In my view therefore, the present Petition can be disposed of by directing the authority which imposed the penalty of removal from service to consider the Petitioner's case for grant of compassionate allowance. In that view of the matter, liberty is granted to the Petitioner to make a representation for grant of compassionate allowance under Pension Regulations. If such a representation is made within a period of four weeks from today, the concerned authority shall consider the same sympathetically by taking into account the fact that the misconduct proved against Petitioner relates only to absenteeism and also the fact that the Petitioner rendered long service during 1986 to 2002/2003. The authority is directed to take a decision on the representation so made within a period of eight weeks from the date of receipt of the representation. The order passed by the Industrial Tribunal accordingly stands modified.

7. The Writ Petition is disposed of.

SANDEEP V. MARNE, J.