

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9566 OF 2014

Shri.SaikumarPrabhakar Pawaskar

...

Petitioner

Vs

Union of India And Others

...

Respondents.

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Mr. Vinayak Kumbhar i/b Mr. Narendra V.Bandiwadekar for the
Petitioner.

Ms. Neeta V. Masurkar a/w. Ms. Nieyaati Masurkar and D.S Shah
for Respondents.

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 7 December 2023.

P.C. :

By way of this Writ Petition the Petitioner challenges the
Judgment and Order passed by the Central Administrative Tribunal
Bench at Mumbai (Hereinafter referred to as "Tribunal") in Original
Application No.439/2010 whereby the original application filed by
the Petitioner has been dismissed.

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2 The Petitioner had filed the Original Application against the
Respondents to challenge the order passed by the Respondent No.2-
Employer of the Petitioner imposing minor penalty of 'Stoppage of

two increments without cumulative effect’.

3 The case of the Petitioner before the Tribunal was that he joined the Government service as a Lower Division Clerk in the year 1972 in the Respondent-Organization. Lastly, he was promoted to the post of Superintendent on 1 October 1993. In a tragic accident he lost his wife on 15 October 1993, while she was travelling in the local train at Mumbai. He was thereafter transferred to Nagpur in August 1995, and posted on temporary duty at Goa in October 1998. He was further transferred to Pune on 1 December 1998 and thereafter on 22 February 2001 to the Original passport office at Hyderabad.

4 On being relieved of his duties on 20 April 2001 he was directed to report on duty at Regional Passport office at Hyderabad, after availing his joining time. However he did not join the said posting, he claimed that he was suffering from severe Psychosis. He had claimed that because of his mental condition he has requested for cancellation of his transfer, which was rejected by the Respondent on 19 March 2004. He could join at Hyderabad in middle of October 2004 only after taking Medical advice.

5 The Petitioner was issued show cause notice as to why disciplinary proceedings should not be initiated for his failure to report on duty at Hyderabad, in spite of clear directions. He

responded to the Show Cause notice on 25 September 2004. On 14 October 2004, a chargesheet was issued against the Petitioner levelling the charges of misconduct. It was after issuance of the Show Cause Notice applicant joined the duty at Hyderabad, after obtaining Certificate from Private Doctor under whom he claimed to have been treated. Inquiry Proceedings were held. Inquiring Authority by his report dated 18 August 2006, held that none of the charges levelled against him were proved. However, disciplinary authority did not agree with the finding of the Inquiry officer, on the ground that period of absence has not been regularized. The applicant did not seek leave for the period of his absence, the Medical Certificate obtained was not from the Government Hospital or the Approved hospital. The disciplinary authority forwarded the Inquiry Officers report alongwith his disagreement note to the applicant. The Petitioner submitted his detailed reply to the same and upon receiving the representation, the disciplinary authority imposed penalty of stoppage of two increment without cumulative effect by order dated 10 May 2007. The Petitioner submitted an appeal to the President of India against the said penalty which was turned down.

6 The Petitioner challenged the said penalty imposed on him before Central Administrative Tribunal, on the ground that inquiry officer in his inquiry has found that the charges against him are not proved. Therefore, penalty imposed would not be tenable.

7 According to the Petitioner he was not able to join the posting at Hyderabad because of his illness. He has sent his leave application from time to time. According to him so far as Certificate produced by him from the private doctor is considered there was nothing inappropriate to seek treatment from Psychiatrist as his sickness was severe. If the Government was not convinced about severity of his sickness they could have directed the Petitioner to appear before the Medical Board. Therefore the disagreement of the Disciplinary Authority does not sound reasonable. The Petitioner had challenged above punishment imposed on him being grossly unfair.

8 The Respondents before the Tribunal have opposed the said prayer on the ground that as per the issuance of transfer order the applicant was relieved on 27 February 2001, but has failed to report for his duty at Hyderabad for more than three years. It is only after the Show Cause Notice which was issued to him on 14 September 2004, he indicated his difficulty in joining at Hyderabad. Not being satisfied with his reply regarding his unauthorised absence disciplinary proceedings for imposing major penalty were initiated against the Petitioner.

9 According to the Respondents transfer being incidence of service, the service conditions require that, Government employee to be transferred from one place to other. Generally the employee do not have a choice in the said matter. Whenever a Public servant is transferred he must comply with the order. Only in case of genuine

difficulty, it is open to make representation to the Competent Authority for modification or cancellation of the transfer. But in the case of the Petitioner he has chosen not to join at the transferred place. After enquiry though Inquiry officer held the charges as not proved, the disciplinary authority has recorded his finding in not agreeing with the inquiry officer. After giving opportunity to defend himself against the said punishment, the minor penalty of stoppage of two increment has been imposed on the Petitioner. The Petitioner address to the President of India, was disallowed. Therefore in view of the same the Respondent have prayed to reject the prayer of the Petitioner. The Inquiry officer has recorded that the charges levelled against applicants were not established on the ground that he had applied for leave on the Medical ground on various occasions from 2001 to 2004. He was in constant touch with the Ministry by way of the leave applications and telephonic calls. Therefore, the said absence of applicant cannot be considered as willful absence.

10 The disciplinary authority has recorded his disagreement relating to the remarks of the inquiry officer. The disciplinary authority has a right to differ from the observations and conclusions of the Inquiry officer. He has exercised his power and has therefore served on the applicant his dissent note. After considering the representation of the Petitioner a minor penalty has been imposed. The defence of the Petitioner was that on account of the death of his wife in the accident in 1993 he was disturbed and suffered from

depression. So far as transfer is concerned the said transfer order is issued much later point of time i.e. on 20 April 2001 and he has remained absent for prolonged period without sanction of the said leave.

11 The Tribunal having considered the rival submissions has come to the conclusion that, so far as period of absence is concerned, whether the said unauthorised and willful, the applicant has not produced any copy of the leave applications giving specific details in the original application. Referring to the unfortunate incident of the accident of his wife the Tribunal has been pleased to observe that no doubt the incident is unfortunate. However it is observed that his transfer to Nagpur in 1995, to Goa in October 1998 has been accepted by him and Pune in December 1998 has been also accepted by him. All these transfers which took place at earlier point of time close to the death of his wife were accepted by him. He also got remarried in 1999. Only when he got transferred to Hyderabad the medical problems seem to have surfaced. Therefore, taking into consideration the un-disputed position which emerges is that the Petitioner has remained absent for more than three years and has joined only after the Show Cause notice being issued to him. The absence of three years without permission or leave is a long period of time which amounts to gross misconduct. Therefore, imposition of minor penalty like stoppage of increment cannot be said to be disproportionate.

12 It is settled position of law that as far as disciplinary proceedings are concerned the said could be interfered by the Appellate Authority or Courts only on the ground, of non-adherence to the procedure during departmental proceedings, denial of principles of natural justice or punishment being disproportionate. In the present case none of these three are applicable, neither there are procedural lapses, nor the principles of natural justice have been violated. So far as proportionality of punishment is concerned the punishment of stoppage of two increments cannot be said to be so dis-proportionate that it would shake the conscious of a prudent man. Therefore, in our opinion there is no scope for interference in the orders passed by the Central Administrative Tribunal. There is no infirmity in the orders passed by the Tribunal as well as Disciplinary authority, hence the challenge to the order in original application fails.

13 The jurisdiction and powers of this Court while exercising its power of Judicial Review is well settled. The scope of Judicial Review are limited. In the present case as discussed above the learned Member of the Administrative Tribunal has taken into consideration the powers of the Courts to interfere with the penalty imposed on the incumbent after the disciplinary proceedings. It is observed by the Hon'ble Supreme Court in *State of Uttar Pradesh & Others Vs. J.P.Saraswat*¹ that any interference on question of punishment is permissible in very rare cases where punishment is so

¹(2011) 4 SCC 545

disproportionate to the established charge that it would appear unconscionable and actuated malice.

14 The Tribunal has taken into account the procedure followed. Accordingly has given the finding that there are no procedural lapses in the disciplinary proceedings, as regards the proportion of punishment, it is held that the punishment of stoppage of two yearly increment without cumulative effect is not disproportionate. Considering the approach of the Petitioner in fact the Tribunal has recorded that considering unauthorised absence Employer could have imposed harsher punishment. However the Respondents have taken a lenient view and imposed only a minor penalty. Therefore, the applicant is not entitled to any relief. The Tribunal has rightly recorded that the said punishment is not disproportionate, considering the unauthorised absence of the Petitioner.

15 The Tribunal has proceeded to pass the order only after taking into consideration the material placed before it and recording its satisfaction. We do not find any ground for interference as the said decision does not suffer from any infirmity. Order of Tribunal does not require any interference.

16. Hence the Writ petition being devoid of merits stands dismissed.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)