

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12377 OF 2019

Nanda Narayan Thombare
V/S

....Petitioner

Union of India & Ors.

....Respondents

...

Mr. Ramesh Rammurthy a/w Mr. Saikumar Ramamurthy, Ms. Kavita Anchan and Ms. Seema Sorte for the Petitioner.

Mr. R.R. Shetty a/w Mrs. Anjali Helekar, Mr. Prasenjit Khasla for Respondent-UOI.

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**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 18 JANUARY 2023.

P.C.:

1 Rule. Rule made returnable forthwith with the consent of the parties for final disposal.

2 The Petitioner joined the services of the Respondent Department as Operator Grade B. During the service tenure the Petitioner was promoted as Senior Supervisor on 20 January 2014. On 16 June 2015 charge-sheet was issued against the Petitioner. The charges were regarding absence of duty for about 2 days. The charges against the Petitioner are as under:

"Article I

Smt. N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre, Mulund absented herself from duty from 10.9.2014 to 12.9.2014 without prior intimation which is indicative of negligence and lack of interest in work.

The said conduct is in violation of Rule 3(1)(ii) & (iii) of CCS (Conduct) Rules, 1964.

Article II

Smt. N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre at Mulund refused to receive office memo which is indicative of disobedience to Superior's that amounts misconduct.

Smt. N.N. Thombare by doing so, has violated the provisions of Rule 3 (1)(i) & (iii) of CCS (Conduct) Rules, 1964.

Article III

Smt. N.N. Thombare, Sr. Supervisor while engaged in CAC work in Data Centre at Mulund made false statements using abusive and indecent language against superior's communications which is indicative of unbecoming of a government servant.

The said conduct is in violation of Rule 3(1)(ii) & (iii) of CCS (Conduct) Rules, 1964.

Article IV

Smt. N.N. Thombare, Sr. Supervisor acquired immovable property by way of purchase of flat without previous knowledge of the authority that amounts to misconduct.

Smt. N.N. Thombare by doing so, has violated the provisions of Rule 18(2) & (4) of CCS (Conduct) Rules, 1964."

3 The Petitioner approached the Central Administrative Tribunal (hereinafter referred to as 'Tribunal' for short) by filing the Original Application bearing No.620 of 2015 challenging the charge-sheet. The Tribunal dismissed the Original Application under the impugned judgment and order. Aggrieved thereby the present Petition.

4 Mr. Rammurthy, the learned Advocate for the Petitioner submits that the charges against the Petitioner were not grave. The Petitioner stood superannuated on 31 January 2017. The enquiry is not concluded. The learned Advocate for the Petitioner relies upon Rules 8 and 9 of the CCS (Pension) Rules. According to the learned Advocate for the Petitioner the charges did not imply grave misconduct. The learned Advocate for the Petitioner relies on the judgment of the Apex Court in the case of ***Union of India & Ors. vs. B Dev*** reported in **(1998) 7 SCC 691**.

5 The learned Advocate for the Respondents submits that the Tribunal has considered all the relevant aspects of the matter and has arrived at the correct conclusion. No error has been committed by the Tribunal. The Petitioner after having approached the Tribunal, secured an order of stay to the enquiry. The stay continued up to 18 September 2019 on account of which the enquiry could not be concluded. According to the learned Counsel the judgment of the Apex Court in case of ***Union of India and others*** (supra) is distinguishable on facts.

6 We have considered the submissions canvassed by the learned Counsel for the parties. On perusal of the charges against the Petitioner it would be manifest that the charges against the Petitioner were not such that would come within realm of expression 'grave misconduct'.

7 As the charges against the Petitioner do not come within the ambit and purview of the expression 'grave misconduct', it would be unfair to continue the disciplinary proceedings after retirement. The Apex Court has considered the definition of 'grave misconduct' in case of ***Union of India and others*** (supra).

8 The explanation (b) to Rule 8 of the CCS (Pension) Rules explains the expression 'grave misconduct'. The same may include the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923. The same may not be exhaustive. However, in the present case, on perusal of the charges which relate to negligence, lack of interest in duty, use of indecent language and purchase of property without the previous knowledge of the Authority. Such changes would not amount to a 'grave misconduct' as is contemplated under Rules 8 and 9 of the CCS (Pension) Rules. In the charges also it is nowhere reflected that the Department considered it to be 'grave misconduct'.

9 The Petitioner has already superannuated on 31 January 2017. In light of the fact that the charges themselves do not imply any grave misconduct nor does perusal of charges denote that the charges are such

so as to bring it within the purview of grave misconduct.

10 We hold that it would not be now fruitful to proceed with the enquiry after retirement of the Petitioner. He would be entitled for all the pensionary benefits,

11 In light of the above, the impugned judgment and order of the Tribunal is quashed and set aside and the impugned charge-sheet is also set aside.

12 The Respondents shall consider the case of the Petitioner for grant of pension and all other retiral benefits in accordance with law. The said exercise shall be done expeditiously preferably within three months from today.

13 Rule accordingly made absolute in above terms. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)