



W.P.No.20562 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.20562 of 2010

K.Singarayar

...Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal -
cum – Labour Court, Chennai – 6.

2.The Principal General Manager,
Bharat Sanchar Nigam Ltd., (BSNL),
Prominad road, Contonment, Trichy 1.

3.The Chief General Manager,
Bharat Sanchar Nigam Ltd.(BSNL),
120 feet road, Anna Nagar West Extn.
Padi, Chennai 600 050.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records of the first respondent herein pertaining to the award passed in I.D.No.31 of 2006 dated 28.04.2008 quash the same and to direct the second and third respondents herein to reinstate the petitioner with continuity of service, back wages and other benefits.



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For Petitioner : Mr.G.Purushothaman
For R1 : Court
For R2 & R3 : Mr.K.R.Ramesh

ORDER

This Writ Petition has been filed to call for the records of the first respondent pertaining to the award passed in I.D.No.31 of 2006, dated 28.04.2008, quash the same and to direct the second and third respondents to reinstate the petitioner with continuity of service, back wages and other benefits.

2.It is submitted by the learned counsel for the petitioner that petitioner was appointed as Casual Mazdoor in the department of Telecommunications with effect from 13.02.1982. His service was regularized on 07.05.1993. The department of Telecommunications was renamed as Bharat Sanchar Nigam Ltd. During the year 1998, petitioner was afflicted by some neurological psychiatric problem. He was sanctioned medical leave from 27.07.1998 to 29.10.1999. Petitioner was promoted as Telecom Mechanic from 20.08.1999. His medical leave from 27.07.1998 to 29.10.1999 was sanctioned. But the medical leave from 30.10.1999 was not sanctioned. Due to his neurological psychiatric



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problem, he could not understand the reality in general and was out of gear for some years. He was not aware of the happenings around him. He was taken to his native village for continuing local medical treatment. In 2003, he recovered from the mental illness and submitted his medical fitness certificate on 03.07.2003. He was not permitted to join duty. After a long time, he was informed that he was terminated from service with effect from 19.10.2000. He was not served with any charge memo, enquiry notice and findings of the enquiry officer. The enquiry proceedings were conducted behind his back against the principles of natural justice and well established statutory principles. He initiated conciliatory proceedings before the authority concerned which ended in failure. Thereafter, the Central Government referred the dispute for adjudication before the first respondent in I.D.No.31 of 2006. After enquiry, first respondent dismissed I.D. No.31 of 2006. In the said circumstances, this writ petition is filed.

3.It is the further submission of the learned counsel for the petitioner that petitioner was not served with the charge memo and enquiry was held behind his back without giving an opportunity to defend



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the charges. That apart, the enquiry report is not a speaking order and no documents were marked and no reasons were assigned for justifying the findings of the enquiry officer. The copy of the enquiry report was not sent to petitioner calling for his explanation. The final order was passed without independently considering the evidence against the petitioner, but, merely based on the reasons in the enquiry report. Though these aspects had been taken up before the first respondent, the learned Presiding Officer has not considered these aspects and dismissed I.D.No.31/2006. In the said circumstances, this Writ Petition is filed.

4.In response, the learned counsel for the second and third respondents submitted that petitioner had been absent from 01.08.1999. Even thereafter, he did not attend the work. He was dismissed on 19.10.2000. He raised an Industrial dispute in the year 2004. The matter was referred to the first respondent in 2006. I.D.No.31/20006 was dismissed on 28.04.2008, but he filed this Writ Petition only in 2010. There was a huge delay on the part of the petitioner in approaching the Industrial Disputes Tribunal and this Court. When there is a huge delay, petitioner cannot be given any relief. In support of his submission, he



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relied on the judgment of the Hon'ble Supreme Court in **Chennai Metropolitan Water Supply And Sewerage Board and Others Vs. T.T.Murali Babu** reported in **(2014) 4 SCC 108**.

5.Considered the rival submissions and perused the records.

6.This Writ Petition is filed mainly on two grounds. (i) Enquiry Officer has not properly appreciated the evidence, to come to the conclusion that the charges against the petitioner stand proved. (ii) The final order was passed without supplying the copy of the enquiry report to the petitioner and calling for his explanation. It is also the case of the petitioner that the charge memorandum had not been served on the petitioner and that no notice was served on him with regard to the conduct of enquiry.

7.In response, the learned counsel for the second and third respondents stated that despite taking several notices to the petitioner, notice had not been served for the reasons that the Door was found



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locked or petitioner was absent. Notices had been taken to the address given by the petitioner. If petitioner changed his address, it is for the petitioner to inform the respondents about the change in the address. Petitioner has not done that. Therefore, the show cause notice and enquiry notice could not be served on him. Respondents cannot be held responsible for non service of the show cause notice and enquiry notice when petitioner had failed to inform the change of address.

8.This Court agrees with the learned counsel for the second and third respondent that non service of the show cause notice and the enquiry notice was only because of the non intimation of the change of address of the petitioner to the respondents. Therefore, petitioner cannot complain about the non service of the show cause notice and enquiry notice. However, even in an ex-parte enquiry, proper procedure should be followed in conducting the ex-parte enquiry. Perusal of the enquiry report shows that the enquiry officer gave the report under the heading preliminary enquiry. It reads that the enquiry officer summoned the Charge Officer Shri.K.Singarayar for appearing for a preliminary inquiry on 05.06.2000 vide office letter No.X2/KB/2000-2001, dated 24.05.2000.



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Since there was no appearance for the petitioner, enquiry was adjourned to 26.06.2000. On 26.06.2000 also, petitioner was not present. Therefore, the enquiry officer concluded the enquiry and passed an order that “the records were examined” and the charges levelled against the charged officer stand proved only on the basis of the documentary evidence. This order does not reflect what are the documentary evidence produced by the Presiding Officer and on what basis and from what documents, the enquiry officer came to the conclusion that the charges levelled against the petitioner stand proved.

9. Even without communicating the copy of the report, calling for the representation from the petitioner, the disciplinary authority proceeded to pass final orders. The final orders reads as follows:

In his report, the inquiry officer has reported that the charges leveled namely continuous unauthorized absent for duty from 01.08.99 against the charged officer Shri.K.Singarayar stands proved solely on the basis of documentary evidence produced before him.



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The report was carefully studied after taking all the points into consideration, the findings of the inquiry officer were fully agreed to. A heavy punishment warrants against the official for his misconduct.

10.This order does not reflect whether the copy of the enquiry report was sent calling for petitioner's representation and whether petitioner submitted any representation. It is plain and clear that the final order has been passed without supplying the copy of the enquiry report to the petitioner.

11.In the said circumstances, this Court is of the view that the enquiry report suffers from the vice of lack of application of mind. Final order was passed without supplying the copy of the enquiry report to the petitioner giving him an opportunity to explain his position by way of a representation. It is not correct.

12.It is true that the Hon'ble Supreme Court held in paragraph No.7 of the judgment in ***Chennai Metropolitan Water Supply and Sewerage Board and Others*** reported in (2014) 4 SCC 108 as follows:



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7. The learned Single Judge, by the impugned judgment, after narrating the facts, noted the statement of the learned counsel for the respondent that even if the employee had absented from duty, there was no past misconduct of desertion/absence and, therefore, the punishment of dismissal from service for the first time desertion/absenteeism is too harsh and disproportionate and deserved to be interfered with. The learned Single Judge did not advert to any other facet and referred to the decisions in *Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi*[1], *B. C. Chaturvedi v. Union of India*[2], *V. Ramana v. A.P. SRTC*[3], *Jagdish Singh v. Punjab Engineering College*[4] and Division Bench judgment in *V. Senthurvelan v. High Court of Judicature at Madras*[5] and opined thus:-

“10. Applying *the said judgment* to the fact of this case and considering the counter filed by the respondents wherein it is not stated as to whether the petitioner has deserted / absented on any previous occasion, this Court is of the view that this writ petition deserves to be allowed.



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11. This writ petition is allowed with a direction to the respondent to reinstate petitioner with continuity of service but without backwage, within a period of four weeks from the date of receipt of a copy of this order.”

13.It is not in dispute that there is a delay on the part of the petitioner in approaching the Industrial Disputes Tribunal and this Court. However, in the light of the submissions made by the learned counsel for the petitioner that petitioner suffers certain neurological disorder, moroso, when there are glaring acts of commissions and omissions made by the enquiry officer and the disciplinary authority in the conduct of the enquiry and in passing final orders as discussed above, this Court is of the view that the enquiry report, the final order passed by the disciplinary authority and the order passed by the learned Presiding Officer in I.D.No.31 of 2006, dated 28.04.2008 are liable to be set aside and accordingly set aside.

14.In the result, this Writ Petition is allowed. Petitioner had attained the age of superannuation and therefore, he is ordered to be notionally reinstated into service with continuity of service but without



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backwages. Petitioner is entitled only for terminal benefits as per rules.

Terminal benefits should be granted within a period of three months from the date of receipt of a copy of this order.

15.Accordingly, this Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition, if any, is also closed.

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order

NCC: Yes/No

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G.CHANDRASEKHARAN, J.

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