



W.P.No.6417 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.6417 of 2024

G.Ganesan

...Petitioner

-Vs -

1. NLC India Ltd.,
Rep. by its General Manager
(Operations) Mine-IA/
Appellate Authority,
O/o. Chief General Manager/Mine-1A,
Block – 26,
Neyveli Township – 607 803.

2. The Deputy General Manager/
Disciplinary Authority,
O/o. Chief General Manager/Mine-1A,
NLC India Ltd.,
Block-26,
Neyveli Township – 607 803.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 30.12.2021 passed by the second respondent/Disciplinary Authority in Proc.No.TA/HR/DA/NLCIL/M1/DA/2021, imposing the petitioner the punishment of demotion to lower category in the post of Technician Gr.III/C(W3 Grade) placing him at the



W.P.No.6417 of 2024

mid-point of the scale of pay of Rs.10,300-3%-28390, that is at 21st stage with the basis pay of 19,270/- and stating that he would be eligible for refixation of pay consequent to the wage revision which came into effect from 01.01.2017 and allowing the petitioner to get settlement of terminal benefits and also praying to quash the order dated 26.05.2022 passed by the first respondent/Appellate Authority in Proc. No.NLCIL/M1A/AA/ /2022 dismissing the petitioner appeal and confirming the order of punishment imposed by the second respondent/disciplinary authority and for a direction to the respondents to restore his post and pay and to grant him promotion as Chief Wireless Operator Special grade (SG-II Grade) scale with effect from 01.06.2010 and to promote him to SG-III Grade Scale with effect from 01.06.2023 and to grant him corresponding pay revision with effect from 01.01.2017 with all monetary and other consequential benefits and to settle and pay him the revised terminal benefits based on the last drawn salary to be fixed after giving him the above two promotions and pay revision as on the date of his retirement/superannuation including revised monthly pension after adjusting the terminal benefits which were already paid to the petitioner, with interest at the rate of 12% per annum, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.N.Nithyanandam
Standing Counsel



W.P.No.6417 of 2024

ORDER

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This writ petition has been filed challenging the order passed by the second respondent dated 30.12.2021, thereby imposed punishment of demotion of lower cadre in the post of Technician Gr.III/C9W3 Grade) and placing the petitioner at the mid-point of scale of pay and the order dated 26.05.2022, passed by the first respondent thereby dismissing the appeal and confirmed the order of punishment imposed by the second respondent.

2. The petitioner had joined in the service of the respondents' corporation as contract labourer in the year 1979 and his service was utilized for wireless communication work. The petitioner is qualified with SSLC and he was appointed as Security Guard - Trainee by an order dated 02.03.1987. While being so, the first respondent issued notification thereby calling upon the applications for appointment to various posts, including the post of Wireless cum Communication operators (hereinafter referred to as "WCC operators") on regular basis, on 29.05.1985. The petitioner had applied for the said post.



W.P.No.6417 of 2024

3. The eligibility criteria for the said post is that pass in SSLC, possession of certificate for the operation of wireless communication equipment and three years experience as wireless operator or five years experience as telephone operator. Since the petitioner was working as contract labourer and carrying out the work of WCC operator, he had joined in the wireless operator course in one of the approved centres of Commercial University Ltd., namely SVRS Telegraph and Technical Institute. After completion of the said course, the petitioner was issued with wireless operator certificate on 25.06.1984. On the basis of the said certificate, the petitioner applied for the said post. However, the first respondent did not hold any interview or any selection process till 1989. Further, the petitioner's name was sponsored by the District Employment Exchange and the petitioner was selected and appointed in the post of Security Guard Trainee on 02.03.1987.

4. While being so, after his joining in the post of Security Guard, the petitioner was called for interview on 25.11.1987. Since some of the applicants filed writ petitions, the said post was not filled up. Thereafter, the petitioner was appointed as wireless operators trainee by an order dated 18.05.1989. After the training period, he was appointed as



W.P.No.6417 of 2024

regular wireless operator, by an order dated 31.12.1990 with effect from 01.07.1990. He was put in W6 Grade in the scale of pay of Rs.1251-42-1587-50-2087.

5. As per the Time Bound Promotion Scheme, that too after technical test, the petitioner was given promotion from W6 to W7 by an order dated 17.08.1996 with effect from 01.07.1994 and the petitioner was designated as Senior Wireless Operator. Once again, the petitioner was promoted as Chief Wireless Operator and he was moved from W7 grade to W8 grade. After completion of four years of service in W8 grade and after completion of technical test, once again the petitioner was promoted a Chief Wireless Operator Special Grade in E0 scale by an order dated 09.10.2006. Though the petitioner was eligible to be promoted as Chief Wireless Operator Special Grade-II, he was not promoted to the said post.



W.P.No.6417 of 2024

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6. In the meantime, a new settlement under Section 12(3) of the Industrial Dispute Act, was signed on 04.09.2010 with effect from 01.01.2007, regarding revision of wages and conditions of service. As per the settlement, the post of E0, E1 and E2S grades and scales were changed as SG-1, SG-2 and SG-3 grades. Apart from that, new special grade scale viz., SG4 Grade was also added as per the settlement. As per the revision of pay scale, the petitioner was granted revised scale of pay as applicable to SG1 grade/scale.

7. While being so, the petitioner was served with charge memo dated 25.02.2013 under Rule 9 of the NLC Employees (Control and Appeal) Rules and proposed to hold an enquiry into the charges leveled against him. The charges are as follows :-

“That Shri G.Ganesan, CPF No.33098, while joining in NLCIL as Wireless-cum-Communication Operator/Trainee, has produced the Educational Certificate issued by the Commercial University Limited (CUL), Daryaganj, New Delhi, and secured appointment in NLCIL as WCC Operator/Trainee. Subsequently, on verification it came to know that the said University is a



W.P.No.6417 of 2024

fake University as notified by the University Grants Commission, through UGC notification. Thus, Shri G.Ganesan had produced a certificate with regard to his educational qualification issued by a fake University with an ulterior motive to get selected for the said post in NLC India Ltd.,

2.0. The said acts of Shri. G.Ganesan, CPF No.33098, Chief WCC Operator Spl. Gr S& FS/TS (Rtd) constitutes following misconducts under Sub-clause (iv), (x) and (xxvii) of Rule 26 read with Rule No.3(i) of NLC Employee's (Conduct) Rules and punishable under NLC Employee's (Control and Appeal) Rules.

Sub Clause (iv): Theft, fraud or dishonesty in connection with the business or property of the company

Sub Clause (x): Breach of any law, Rules, Regulations or orders applicable to the works or the establishment

Sub clause (xxvii): Misrepresentation regarding, name, age, qualification, previous service of experience at the time of employment.”

8. On receipt of the charge memo, the petitioner submitted his explanation. However, without satisfying the explanation submitted by the petitioner, enquiry officer was appointed to hold an enquiry. The enquiry officer submitted enquiry report and hold that the petitioner found



W.P.No.6417 of 2024

guilty of the charges. Therefore, the petitioner was issued with showcause notice and the petitioner submitted explanation. Once again the petitioner was served with another showcause notice cum provisional order of punishment, thereby proposed to impose him the punishment of demotion to lower category as Technician Grade III(c) in (W3 Grade) placing him at midpoint of the scale of pay. Once again the petitioner submitted explanation.

9. In the meanwhile, the petitioner filed writ petition in W.P.No.30344 of 2014 challenging the charge memo and the second show cause notice. This Court by an order dated 23.03.2021, directed the respondents to consider the petitioner's objection and pass appropriate orders. In the mean while, the petitioner was retired from service on 31.08.2018. As directed by this Court, the petitioner was settled with his employee contribution of Provident Fund and gratuity. The second respondent without considering the explanation submitted by the petitioner imposed punishment on the petitioner thereby demotion to lower cadre. Aggrieved by the same the petitioner preferred an appeal before the first respondent and the same was also dismissed and confirmed by the order passed by the first respondent. Hence, the



W.P.No.6417 of 2024

petitioner approached this Court by way of this writ petition.

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10. The learned Standing Counsel appearing for the respondents relied upon the judgment reported in **2022 LiveLaw (SC) 304** in the case of **State of Karnataka & anr Vs. Umesh** which held as follows :-

“17. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under



WEB COPY



W.P.No.6417 of 2024

Article 226 and trenching upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”

11. He also relied upon the judgment reported in **2023 LiveLaw (SC) 478** in the case of *the Indian Oil Corporation & ors vs. Ajit Kumar Singh & anr* which held that the judicial review cannot be exercised to re-appreciate evidence in departmental enquiry proceedings. A constitutional Court, while exercising its power of judicial review, cannot decide the case as if it is the first stage of the case, as if inquiry is still being conducted and inquiry report being prepared. Evidence cannot be re-appreciated at the stage of judicial review in a disciplinary proceeding as if conviction in a criminal trial is being re-examined by the next higher Court.



W.P.No.6417 of 2024

12. Heard the learned counsel appearing on either side and perused the material placed before this Court.

13. On perusal of records revealed that the respondents had accepted the certificate issued by the Commercial University Ltd., Delhi as a valid certificate at the time of selection and appointment of the petitioner. After the period of 24 years, the respondents questioned the validity of the certificate, based on the notification issued by the University Grants Commission dated 08.12.2009, that too after the period of 20 years from the date of the petitioner's appointment.

14. Admittedly, the respondents did not even whisper about the certificate should be only from the recognized institution during the selection process, with regard to possession of certificate for operating the wireless and communication equipment. The respondents also failed to put the petitioner on notice about this condition at the time of selection and appointment. After having been accepted the certificate without any condition or reservation, the respondents cannot contend that the certificate issued by the said university as not a valid one.



W.P.No.6417 of 2024

15. On perusal of enquiry report, the enquiry officer concluded that the petitioner while joining NLCIL, has produced certificate with regard to education certificate from Commercial University Limited, Daryaganij, New Delhi, which was a fake university as notified by the University Grants Commission through notification, with ulterior motive to get selected for the post of Wireless Communication Operator-Trainee.

16. As rightly pointed out by the learned counsel appearing for the petitioner that the petitioner was not put on notice as conditions that the certificate issued from the institution recognized by the University Grants Commission and no one including the petitioner and corporation were aware that the Commercial University whether recognized university or not. When it was notified to be fake university only in the year 2009, there is no ulterior motive can be attributed by the petitioner. In fact the conditions for appointment for the post of WCC operator is only mere possession of certificate in operation of wireless communication equipment, it was not qualified on the conditions that as such certificate should be issued by the educational institution which are recognized by the University Grants Commission or by the State Government and Central Government or any other statutory body.



W.P.No.6417 of 2024

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17. It is also evident that the respondents accepted and acted upon the certificate produced by the petitioner at the time of his appointment. After the period of 25 years, they cannot now say that such certificate should have been issued by the university which is recognized by the University Grants Commission. Therefore, the question of cheating or misappropriation of the petitioner for getting appointment does not arise. In fact, the petitioner was already appointed and working as regular Security Guard. Thereafter, the petitioner was appointed as Wireless Operator-Trainee.

18. Even if the petitioner was not appointed as Wireless Operator, he would continue his service as regular Security Guard and he would reach the position of Assistant Officer which belongs to SGI grade, which is equivalent to the Chief Wireless Operator Special Grade SGI scale, in which now the petitioner was placed by the respondents. At the time of the petitioner's appointment as a Wireless Operator viz., at the induction level, he was placed in W6 Grade/Scale. Therefore, the petitioner cannot be demoted to a position which is lower to his induction level Grade and Scale. As per the punishment, now the petitioner was



W.P.No.6417 of 2024

demoted to W3 Grade/Scale which is three levels lower than his induction level.

19. That apart, the possession of certificate for operating the wireless and communication equipments was not an essential qualification to the post of Wireless Operator. Therefore, the ex-servicemen, Police personnel, telephone exchange operators were appointed as wireless operator on regular basis without reference to and also without insisting for any certificate for operation of wireless communication equipments. In fact, they were appointed only based on their experience. Further the certificate produced by the petitioner is only certified course. It cannot be termed as a degree or diploma to be recognized by the University Grants Commission.

20. In fact, even according to the University Grants Commission reported that the commercial institution is not recognized by the University Grants Commission. Therefore, the certificate course conducted by the said Commercial University cannot be said that it was not recognized by the University Grants Commission. Further, the certificate course conducted by the said university in the respondents'



W.P.No.6417 of 2024

premises. The respondents permitted and licensed the said university to conduct the said course within the premises of the respondents.

Therefore, the petitioner and others had joined in the certified course and they had successfully completed their Course and they were issued with Wireless Operator certificate. Hence, the judgment relied upon by the learned Standing Counsel appearing for the respondents are not helpful to the case on hand.

21. In view of the above discussions, the orders passed by the first and second respondents cannot be sustained and liable to be quashed. Accordingly, the impugned orders dated 30.12.2021 passed by the second respondent in Proc.No.TA/HR/DA/NLCIL/M1/DA/2021 and the order dated 26.05.2022 passed by the first respondent in Proc. No.NLCIL/M1A/AA/ /2022 are hereby quashed. The petitioner is entitled for all notional promotion and subsequent monitory benefits, corresponding pay revision with all monetary and other consequential benefits. The respondents are directed to disburse the revised pay and other benefits after adjusting the terminal benefits which are already paid to the petitioner, with applicable interest within a period of twelve weeks from the date of receipt of a copy of this Order.



W.P.No.6417 of 2024

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There shall be no orders as to costs.

11.03.2024

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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W.P.No.6417 of 2024

To
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W.P.No.6417 of 2024

G.K.ILANTHIRAIYAN. J.

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W.P.No.6417 of 2024

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