

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 24.11.2023

Order Pronounced on : 02.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

Writ Petition No. 31093 of 2018
and
WMP.No.36279 of 2018

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S. Harikrishnan

... Petitioner

Versus

1. Union of India
Represented by Lt. Gen., General,
Dt. Gen. Of Military Training/MT-7
New Delhi – 110011.
2. The Commandant,
Officers Training Academy
St. Thomas Mount
Chennai – 600 016.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India prays to call for the records pertaining to the order dated 09.11.2018 made in Original Application No. 310/01778/2016 & M.As. 36/2017, 385/2017 and 386/2017 passed by the Central Administrative Tribunal, Chennai Bench and quash the same and consequently to direct the respondents to reinstate the petitioner with all monetary benefits and other benefits.

For Petitioner : Mr. M. Gnanasekar
For RR1 & 2 : Mr. R. Subramanian
Additional Central Government Standing Counsel
For R3 : Tribunal

ORDER

N. SENTHILKUMAR, J.

This Writ Petition has been filed challenging the impugned order in OA/310/01778/2016 & MAS. 36/2017, 385/2017 and 386/2017 passed by the third respondent/Central Administrative Tribunal, Chennai Bench, quash the same and consequently to direct the respondents to reinstate the petitioner with all monetary benefits and other benefits.

2. The case of the petitioner is that he was selected as a Driver through Employment Exchange on 28.09.2011 and posted as CMD, MT Section, Officers Training Academy, St. Thomas Mount, Chennai, the second respondent herein. The petitioner was sanctioned 17 days of Earned Leave by the Competent Authority with effect from 02.06.2015 to 18.06.2015. According to the petitioner, while he was on leave, he slipped down from bathroom and sustained severe back pain at his lower back. The petitioner took treatment at Government Peripheral Hospital, K.K. Nagar, Chennai. One Doctor, namely, P.R. Dhansekaran, M.S.Orth., D.Orth. Civil Assistant Surgeon, Government Peripheral Hospital, K.K.Nagar, Chennai, advised him to take bed rest for 43 days from 19.06.2015 to 31.07.2015 and he could not walk properly due to the severity of the pain and therefore, the Doctor advised him further to take leave, he continued bed rest for another 56 days from 01.08.2015 to 25.09.2015 as he was advised physiotherapy treatment. In the meanwhile, the second respondent has issued a show cause notice vide his Letter No. 4603/Disc/9607368/SH/04/Adm, dated 13.08.2015 directing him to report to duty within ten days. However, the petitioner did not give any reply to the show cause notice, but the petitioner returned to his office on 26.09.2015.

3. On 23.09.2015, the petitioner was served with Memorandum of Charges with a direction to submit a written statement of defence. The relevant portion of the Memorandum of Charges is as follows:-

“...That the said No. 9607368 Shri S. Harikrishnan, CMD, while functioning as a permanent employee in Mt Section of OTA has acted in a manner unbecoming of a Government Servant, in that, he was sanctioned 17 days Earned Leave with effect from 02.06.2015 to 18.06.2015, but has not reported for duty till date and thus has contravened Rule 3(1) (i) & (ii) of Central Civil Services (Conduct) Rules, 1964...”

4. The petitioner had submitted his explanation dated 25.09.2015 and thereafter, he continued his service. Vide letter dated 19.12.2015, when the petitioner was called for enquiry, he has given his explanation along with medical certificate issued by the Doctor. The Competent Authority upon scrutinizing all the charges levelled against the petitioner and scrutinizing all the relevant documents found that the charges were proved against the petitioner by letter dated 10.02.2016. The petitioner was served with the copy of the enquiry report vide letter dated 25.02.2016 asking to give his report within 15 days from the date of receipt of the same. The petitioner had given his reply dated 15.03.2016 stating that he did not undergo any surgery on the doctor's advise, he had underwent physiotherapy treatment and took medicines only.

5. The Disciplinary authority, after taking into account the enquiry report submitted by the Inquiry Officer and the explanations offered by the Petitioner, the Disciplinary authority arrived at a conclusion that the Petitioner had wilfully remained absent for a period of 99 days and found the Petitioner guilty of the framed charge, thus awarding him a major penalty of compulsory retirement with effect from 11.05.2016. The Disciplinary authority has also taken into account the fact of the length of service and pecuniary position of the Petitioner in according sanction to grant pension and gratuity as on the date of compulsory retirement. The Petitioner had challenged the said penalty awarded by filing O.A.No.867 of 2016 before the Central Administrative Tribunal, Madras Bench and sought for reinstatement of the Petitioner.

6. After perusing the records, the third respondent/Central Administrative Tribunal dismissed the Original Application No. 867/2016 vide order dated 25.05.2016 on the ground that the petitioner having not exhausted the statutory appeal remedy as per Section 20 of the Central Administrative Tribunal Act, and directed the Appellate Authority to consider the application of the petitioner, if any application was made by the petitioner herein.

7. The petitioner had preferred an appeal before the Appellate Authority narrating the circumstances which led to his continuous absence. The said appeal was filed by the petitioner before the Appellate Authority on June, 2016 and on 15.08.2016 a lawyer's notice was addressed to the respondents 1&2, dated 18.08.2016 requesting to expedite and pass appropriate orders on the appeal filed by the petitioner. Subsequently, the first respondent dismissed the appeal filed by the petitioner. The first respondent has passed the order on the ground that the appeal is found to be baseless and affirmed the order passed by the second respondent. The first respondent has ratified the compulsory retirement awarded as against the petitioner. Aggrieved by the order passed by the first respondent, the petitioner has filed O.A.No. 1778 of 2016 before the third respondent. After perusing the records, the third respondent/Tribunal in Original Application No. 310/01778/2016 & MAS. 36/2017, 385/2017 and 386/2017 passed by the Central Administrative Tribunal, Chennai Bench had dismissed the appeal by order dated 09.11.2018 on the ground of unauthorized absence and confirmed the award of compulsory retirement.

8. Learned Counsel for the Petitioner primarily argued that the absence of the Petitioner was only because of the fact that he had slipped and suffered injuries which prevented him from reporting for employment. He further submitted that the Petitioner had also consulted a Doctor, one Mr. P.R.Dhanasekaran, Civil Assistant Surgeon, Government Peripheral Hospital, K.K.Nagar, who had advised the Petitioner to take bed rest for the said 99 days. In support of the said reason, the Petitioner has also submitted medical certificates issued by the said Doctor.

9. Learned Counsel for the Petitioner further argued that the Respondents could not have taken into account the past record of the Petitioner, when such past record was not made a part of the charges framed. It was argued, that in doing so, the Petitioner was not afforded an opportunity to respond to allegations regarding his past conduct.

10. The Learned Counsel for the Petitioner further submitted that the impugned orders were passed mechanically without any application of mind. It was further argued that the punishment awarded to the Petitioner was disproportionate to the charge framed as against the Petitioner and the fact

that the Petitioner could not report due to ill-health ought to have been taken into account by the Respondents before passing the impugned orders.

11. Per Contra, learned Addl. Central Government Standing Counsel appearing for the Respondents 1&2 would vehemently contend that the Petitioner got employed with the 2nd Respondent which is under military service. Any delinquency in such service has to be viewed seriously. It was argued that the explanation submitted by the Petitioner would itself show that the Petitioner did not undergo any serious hospitalisation and the Petitioner continued to absent himself from service for a continuous period of 99 days without any prior intimation whatsoever.

12. Learned Counsel for the Respondents further submitted that after examining the evidence and the materials placed before the Tribunal, it has confirmed the award of punishment of compulsory retirement and the Disciplinary Authority has passed such an order only after considering all relevant facts and materials, including the medical certificates issued by the Doctor. Learned Counsel would further contend that the 2nd Respondent being a Defence related Organisation where discipline is predominant, any insubordination has to be viewed strictly.

13. Learned Counsel for the Respondents further argued that the punishment awarded was not disproportionate to the charge framed and the impugned orders were passed by the Respondents only taking into account all the facts and circumstances of the case. Learned Counsel for the Respondents further relied on the judgment of the Hon'ble Supreme Court in **Rajinder Kumar v. State of Haryana, (2016) 15 SCC 693**, which was a case of a constable whose unauthorised absence was 37 days cumulatively on three occasions, and the penalty therein for unauthorised absence was dismissal from service.

14. We have heard Learned Counsel for the Petitioner and the Respondents, and have perused all the materials available on record.

The Letter of the second respondent dated 19.12.2015 is as follows:-

“Inquiry – Civilian

1. An inquiry by the Disciplinary Authority has been ordered under Rule 14 of the Central Civil Service (Classification Control and Appeal) Rules 1965 against No. 9607368 Shri S. Harikrishnan, CMD of Officers Training Academy, Chennai.
2. The Memorandum articles of charges issued to you (No. 9607368 Shri. S. Harikrishnan, CMD) vide letter No. 4603/9607368/SH/Adm, dated 23.09.2015. For which you have acknowledged for memorandum on 29.09.2015, but no explanation has been received till date.
3. It is for your kind information that I, the

undersigned have been appointed as the Inquiring Authority by the Commandant, Disciplinary Authority, Officers Training Academy, Chennai to inquire into the charges framed against you.

4. In view of the above, you are hereby directed to report to the undersigned (Inquiring Authority) for preliminary hearing at 1000 hrs on 31.12.2015 at QM Office of Officers Training Academy, Chennai.”

15. Thereafter, after enquiry, the report was intimated to the petitioner vide Letter No. 4603/Discp/9607368/SH/18/Adm, dated 10.02.2016 which reads as follows:-

“Establishment Section
Discipline : CIV EMP

1. A copy of the Inquiry report in respect of No. 9607368 Shri S. Harikrishnan, CMD, duly completed by the Inquiry Officer is forwarded herewith.

2. In case this Academy do not receive any representation within the stipulated time, it will be assumed that you have no representation to make and action will be taken in accordance with the existing Rules and Regulation.”

16. The Petitioner was directed to submit his representation within 15 days before the Establishment Section. The Enquiry Officer conducted an enquiry by examining the Petitioner and the Petitioner had also requested for extending the time for his reply to the enquiry as his mother was hospitalised and that he could not issue the reply in time. In his reply dated 15.03.2016,

the Petitioner has given an explanation that his unauthorised absence is only on medical grounds, that his absence may therefore be condoned and that his leave may be regularised.

17. The Disciplinary Authority *vide* its order dated 11.05.2016 has imposed compulsory retirement and considering his long service and pecuniary position sanctioned grant of pension and gratuity. The 1st Respondent, who considered the appeal of the Petitioner after being directed by the 3rd Respondent, affirmed the order of the 2nd Respondent on the ground that the grounds of appeal were baseless and that the Petitioner had been awarded punishment for similar charges earlier.

18. On consideration of the grounds of challenge to the impugned order of the 3rd Respondent upholding the orders of the 1st and the 2nd Respondent, and the arguments advanced by the learned counsels for the respective parties, we are able to discern that there are three main issues involved in the present Writ Petition: One, on whether the reasons given by the Petitioner were considered by the 2nd Respondent. Two, whether past conduct could have been taken into account while awarding punishment.

Three, whether punishment accorded was proportionate to the charge framed.

19. On perusal of the facts and the materials placed before us, the Petitioner who was appointed through the Employment Exchange seems to have not considered the value of his employment seriously, that too when he has been employed in a force attached to the military service. The Paramount consideration is discipline in the military services and any lenient view will render great organisational disorder.

20. Firstly, though it was argued by the Learned Counsel for the Petitioner that the reasons adduced by the Petitioner for his absence was not considered by the Respondents, we are unable to accept such a contention. The Inquiry Officer, after taking into account the medical certificates, has concluded as follows:

“13. In the light of the above stated facts, the Inquiring Officer arrives at the following conclusion:-

(a) The charged official has absented himself from the duty from 19.06.2015 to 24.09.2015 without any prior permission or intimation to the authorities at OTA, Chennai and that he has done the same or previous occasions also and he is a habitual absentee.

(b) In spite of residing a Govt accommodation in DGQA Complex Pazhavanthangal which is near to the

place of work and so advanced communication system available in the city the charged official didn't even bother to inform anyone in the MT Sec about his sickness which shows his lackadaisical attitude towards his profession and acted in a manner unbecoming of a government servant.

(c) It is surprising that the individual was under treatment from a orthospecialist for such a long period without having been hospitalised for not even one day during the entire period of absence.

(d) The above facts lead to the conclusion that the charge has been proved beyond doubt.”

21. We find that the Petitioner's unauthorised absence coupled with the fact that the Petitioner did not choose to inform his superior authorities at any point in time during his unauthorised absence was rightly viewed by the 2nd Respondent as a serious lapse. If such unauthorised absence is not viewed strictly, it will set a bad precedent, especially amongst persons serving in positions in the offices of armed/military forces. The Petitioner seems to have come up with a version for the first time after almost 100 days, only after receiving a show cause notice from the authorities.

22. Though, it is common that such absences do occur, any leave/absence must, to the maximum extent possible be authorised and an

opportunity must be given to the Government employees before any action is proposed, to show cause if such absence was genuine and is founded by proper reasons and explanations.

23. It is for the competent authority to decide whether the explanation given by the delinquent is satisfactory, and if such explanation is not satisfactory, it is then open for the Department to conduct an enquiry to examine the truth behind the explanations/reasons. It is not for this court to substitute its views for the view of the Competent authority on whether the explanation was satisfactory or not. This Court can interfere, only if the Competent Authority, has not come to a conclusion about the reasons/explanations given by the delinquent.

24. The 2nd Respondent, after relying on the report of the Inquiry officer, has come to a conclusion as follows:-

6. On analyzing all the available records, the statement of the Charged Official that he was in bed rest for such a long time (for 99 days) without having been hospitalized is not acceptable. Moreover, as stated by the Inquiry Official did not even bother to inform about his ailment to anyone in the Academy, which shows his lackadaisical attitude towards his

profession and acted in a manner unbecoming of a Government Servant.

7. It is observed from his service records that the Charged Official is a habitual absentee and awarded punishment twice in the past for the same offence as per the details given below:-

(a) Minor Punishment: Reduction of pay by one stage for a period of two years without cumulative effect during April 2011 for unauthorised absence.

(b) Major Punishment : Reduction of pay by one stage for a period of two years with cumulative effect” during July 2012 for unauthorised absence of 174 days.

8. The Charged Official was also warned not to absent from duty without prior permission or intimation while ordering the above punishments.

9. On careful examination of the case, the Competent Disciplinary Authority finds that the Charged Official Shri S. Harikrishnan, CMD has willfully remained absent from duty with effect from 19.06.2015 to 25.09.2015 (99 days).

25. The 3rd Respondent Tribunal has also considered the same and held as follows:-

It is not in dispute that the Enquiry Officer found the charge has been proved. The Disciplinary Authority had ascribed reasons and passed an order of compulsory retirement from service and on a perusal of the order of compulsory retirement it is vivid that the medical certificate was belatedly submitted and he has remained unauthorisedly absent from 19.06.2015 to 25.09.2015 for 99 days without intimation. Though the applicant submitted the Medical Certificate at the time of conducting the inquiry, the Inquiring Authority concluded his report stating that “the Charged Official did not even bother to inform anyone in the MT Section

about his sickness which shows the lackadaisical attitude towards his profession. The individual acknowledged the receipt of show cause notice but neither reported for duty nor the office received any communication from him. He had exhibited adamant attitude in not responding to the communications from the employee while he was unauthorisedly absent. The Appellate Authority rejected his appeal being devoid of any merit and substance.

26. We, therefore, hold that the Respondents have arrived at a conclusion and have satisfied themselves, based on relevant materials and the Petitioner has not made out a ground for lack of application of mind in passing the impugned orders.

27. Secondly, on the question of whether past conduct could be considered while awarding punishment, the Hon'ble Supreme Court had originally observed as thus, in State of Mysore Vs. K. Monche Gowda (AIR 1964 SC 506):

“We.....hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation...”

In fact, this position was later clarified by the Hon'ble Supreme Court

in **SBI v. Mohammed Babruddin, (2019) 16 SCC 69**, after considering *Monche Gowda*, as follows:

“23. ..., there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show-cause notice will not vitiate the punishment imposed.”

28. Irrespective of the above, while the Petitioner has taken a ground that his past conduct ought not to have been considered while determining punishment, we are able to see from the records that the Petitioner was specifically put on notice, at the stage of framing of charges, about the factum of his past absence also being considered. The relevant portion of the charges framed is as follows:-

“Annexure-II

Statement of Imputations of Misconduct or Misbehaviour in support of the Article of Charge framed against No. 9607368 Shri S. Harikrishnan, CMD.

Article

That the said No. 9607368 Shri S. Harikrishnan, CMD was sanctioned 17 days Earned Leave with effect from 02.06.2015 to 18.06.2015, but has not reported for duty till date. In this connection, this office has issued a Show Cause Notice through registered post to the individual at this residential address, directing him to report for duty immediately and submit his written explanation for his unauthorised absence from duty vide letter No. 4603/Disc/9607368/04/Adm, dated 13.08.2015. The individual acknowledged receipt of ibid letter on

14.08.2015, but neither reported for duty till date nor communicated any reason for his unauthorised absence from duty. It is pointed out that the indl has already been awarded a minor punishment of "Reduction to a lower stage in the time scale of pay by one stage of pay for a period of two years, without cumulative effect and not adversely affecting his pension" with effect from July 2011, and a major punishment of "Reduction of pay by one stage for a period of two years with cumulative effect. The above clearly shows his arbitrary behaviour towards the duty assigned to him. Unauthorised long absence from duty by the individual causes extra burden on the co-workers and subverts discipline of the Organisation. He is neither interested nor devoted to his job and failed to maintain absolute integrity towards his job. Hence No. 9607368 Shri S. Harikrishnan, CMD has contravened Rule 3 (1) (i), (ii) & (iii) of CCS (Conduct) Rules 1964."

29. It is critical to note that in the reply of the Petitioner dated 15.03.2016, the Petitioner has also noted about the observations regarding his previous conduct, and has explained the same as follows:-

"6. Earlier I was imposed punishment for my absence on medical reason which was due to accident that time."

We further note that, based on the conclusion in the enquiry report, the 2nd and the 1st Respondents have also taken this into consideration. Further, the 3rd Respondent has also made it clear that reference to past conduct was only to decide the penalty, and not to arrive at a finding of fact. Therefore, we find no

reason to interfere with the impugned on the above ground.

30. At this juncture, we note that the Hon'ble Supreme Court has also taken into account past conduct while considering the question of penalty, such as in the case of *Union of India v. Subrata Nath, 2022 SCC*

OnLine 1617:

“28. We find ourselves in complete agreement with the findings returned by and conclusion arrived at by the Disciplinary Authority, duly confirmed by the Appellate Authority and upheld by the Revisional Authority in respect of both the Articles of Charge levelled against the respondent and the punishment imposed on him. The respondent being a member of the disciplined force, was expected to have discharged his duty diligently. His gross negligence and dereliction of duty has resulted in theft of 800 kgs. copper wires from the spot where he was performing his duty. Further, the records reveal that the respondent did not mend his ways during thirteen years of service rendered by him and was awarded eight punishments for various delinquencies out of which, three punishments included stoppage of increment on two occasions for one year without cumulative effect twice and stoppage of increment for two years without cumulative effect on one occasion. In such circumstances, the desirability of continuing the respondent in the Armed Forces is certainly questionable and the Disciplinary Authority could not be expected to wear blinkers in respect of his past conduct while imposing the penalty of dismissal from service on him.”

31. Lastly, on the question of whether the punishment granted to the Petitioner was disproportionate to the charges framed and levelled against the

Petitioner, it is trite law that this Court cannot interfere with the punishment, unless the punishment offered shocks the conscience of this Court. It is relevant to note the judgment of the Hon'ble Supreme Court in ***Union of India v. P. Gunasekaran, (2015) 2 SCC 610***, where it was held as follows:

“13. Under Article 226/227 of the Constitution of India, the High Court shall not:

...

vii). go into the proportionality of punishment unless it shocks its conscience.”

32. As seen from the records, and also considering the judgment of the Hon'ble Supreme Court in ***Rajinder Kumar v. State of Haryana, (2016) 15 SCC 693***, which the Tribunal has also relied on, we come to a conclusion that the punishment awarded to the Petitioner is neither disproportionate nor something which shocks the conscience of this Court. Also considering the fact that the Petitioner has been given penalties on two earlier occasions, the Petitioner has been habitual in taking unauthorised leave, which suffers from serious indiscipline. We also note that the 2nd Respondent, in passing the order, has consciously taken into consideration the fact of the Petitioner's period of service and pecuniary position in concluding on grant of pension and gratuity.

33. We therefore, find no illegality or irregularity, in the impugned order in O.A.No.310/01778/2016 & M.As.36/2017, 385/2017 and 386/2017 passed by the 3rd Respondent/Central Administrative Tribunal. In the result, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

**[D.K.K., J] [N.S., J]
02.02.2024**

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
MSM

To

1. Union of India
Represented by Lt. General,
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Pre-Delivery Order in
W.P.No. 31093 of 2018

Delivered on
02.02.2024