

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-21-10-2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 11220 and 19751 of 2002

and W.P.M.P.No. 15158 of 2002

W.P.No. 11220 of 2002

1. Union of India, represented by the
Secretary, Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi-110 001.
2. The General Manager,
Southern Railway,
Chennai-600 003. ... Petitioners.

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-104.
2. J.K. Viswanathan. .. Respondents.

W.P.No.19751 of 2002 सत्यमेव जयते

J.K. Viswanathan. .. Petitioner..

Vs.

1. Union of India, represented by the
Secretary, Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi-110 001.
2. The General Manager,
Southern Railway, Park Town,
Chennai-600 003.

3. The Registrar,
Central Administrative Tribunal
Additional Bench, Chennai-104.

.. Respondents.

Writ Petitions have been filed under Article 226 of the Constitution of India (i) for issuance of a Writ of Certiorari calling for records of first respondent in O.A.No. 1155 of 2000 including the order dated 28-11-2001 and quash the same; and (ii) for issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the portion of the order dated 28-11-2001 made in O.A.No. 1155 of 2000 on the file of third respondent the Central Administrative Tribunal, Madras Bench modifying the punishment of dismissal from services to that of compulsory retirement and quash the same and consequently direct the respondents to reinstate the petitioner into service with all the consequential benefits.

Mr. V.G. Sureshkumar:- For petitioners in W.P.No. 11220/2002 and for respondent 1 and 2 in W.P.No. 19751/2002.

Mr. P.P. Shanmugasundaram, senior counsel for Mr. N.R. Elango for petitioner in W.P.No. 19751/2002 and for 2nd respondent in W.P.No. 11220/2002.

COMMON ORDER

(Order of Court was made by P. Sathasivam, J.,)

Since both the writ petitions filed against the very same order of the Central Administrative Tribunal, dated 28-11-2001, they are being disposed of by the following common order.

2. Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 28-11-2001 made in O.A.No. 1155 of 2000 modifying the penalty of dismissal from service into one of compulsory retirement with effect from 24-2-1999, Ministry of Railways and Southern Railway have preferred W.P.No. 11220/2002. Questioning the very same order of the Tribunal modifying the punishment, the applicant, namely, J.K. Viswanathan filed W.P.No. 19751/2002 praying for quashing of the said order and for consequential direction to reinstate him into service with all consequential benefits.

3. For convenience, we shall refer the parties as arrayed before the Tribunal. The applicant by name J.K. Viswanathan was charge-sheeted on two grounds, namely, (i) that he was in dual employment when he engaged himself as Manager with M/s. Kirloskar Electric Company, Bangalore from 1-12-1995 to 8-1-1997 without prior permission; (ii) and that he had misused the Metal Pass on two occasions i.e., on 9-11-1995 and 10-11-1995. A full-fledged enquiry was conducted and after the conclusion of the enquiry, the Enquiry Officer had held both the charges had proved. Though initially the General Manager, Southern Railway issued a show-cause notice, calling upon the applicant to show cause why he should not be dismissed from service in view of the Service Rules applicable to the applicant, he (General Manager) forwarded the papers to the Railway Board/disciplinary authority for passing appropriate order based on the enquiry report. The Railway Board had imposed penalty of dismissal from service. Thereafter, the appellate authority in consultation with the Union Public Service Commission, had rejected the appeal filed by the applicant and confirmed the order of the disciplinary authority. The order of dismissal was challenged before the Central Administrative Tribunal, Madras Bench in O.A.No. 1155/2000. The Tribunal after recording the fact that there is no dispute regarding the enquiry and the manner in which findings were rendered by the enquiry officer, taking note of the proportionality of the punishment imposed on the applicant and considering his unblemished service to a span of 32 years, and all other circumstances, set aside the extreme penalty of dismissal and converted into one of compulsory retirement. Questioning the same, the Railway administration as well as the applicant preferred the above writ petitions.

4. Heard Mr. V.G. Sureshkumar, learned counsel for Railway Administration and Mr. P. Shanmugasundaram, learned Senior Counsel for the applicant.

5. Mr. V.G. Sureshkumar, learned counsel for the Railway Administration, by drawing our attention to Rule 10 of Railway Servants (Discipline and Appeal) Rules, 1968 and Rule 15 sub-rule (1) and sub-rule (5) of the Railway Services (Conduct) Rules, 1966, submitted that the Tribunal is not justified in interfering with the punishment and prayed for setting aside the impugned order. On the other hand, the contention of Mr. P. Shanmugasundaram, learned senior counsel for the applicant, is that inasmuch as the General Manager has initiated the proceedings and issued show-cause notice and also forwarded the papers to the disciplinary authority with his recommendation for dismissal on the ground that he is not competent authority under the Rules, the ultimate penalty imposed by the disciplinary authority and modified

by the Tribunal cannot be sustained. He also contended that inasmuch as the applicant was not furnished with the copy of the report of the Union Public Commission/Central Vigilance Commission, the order of dismissal is liable to be set aside on the ground of violation of principles of natural justice.

6. We have carefully considered the rival contentions and also perused all the materials.

7. Inasmuch as the applicant had no grievance over the enquiry proceedings as well as the findings rendered by the enquiry officer, there is no need to traverse the enquiry and the findings of the enquiry officer. The fact remains that both the charges levelled against the appellant are found to be proved. As pointed out by the learned counsel appearing for the Railway administration, if the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he has to forward the records of the enquiry to the appropriate disciplinary authority. This is evident from Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968. It is not in dispute that the competent authority for imposition of penalty of dismissal, is the Railway Board; accordingly the General Manager who issued show cause notice conveying the proposed punishment has forwarded all the proceedings to the Railway Board for further action. Ultimately, the Railway Board considering all the materials, including the gravity of the proved charges, imposed the penalty of dismissal from service and the same was upheld by the appellate authority. Learned counsel for the Railways also contended that inasmuch as the applicant engaged himself in a private concern, namely, M/s. Kirloskar Electric Company for the period between 1-12-95 and 8-1-97 which is contrary to Rule 15 (1) and (5) of the Railway Services (Conduct) Rules, 1966, the Railway Board is fully justified in imposing the extreme penalty of dismissal and according to him, the Tribunal committed an error in interfering with the punishment. It is true that as per the above mentioned Rule, no railway servant shall, except with the previous sanction of the Government, engage directly in any trade or business or negotiate for or undertake any other employment. It is clear that without the sanction of the prescribed authority, no railway servant is permitted to undertake any other employment, when he was in service. However, as rightly observed by the tribunal, except the above violation, there is no deficiency of service in the case of the applicant, more particularly when he had completed 32 years of service with an unblemished record. These two prime aspects have been considered by the Tribunal which after finding that except the proved charges no other short comings noticed in the discharge of his duties, modified the penalty of dismissal into one of compulsory retirement. Inasmuch as the Tribunal has adduced acceptable reasons for such modification, we

concur with the same and reject the argument of the counsel for the Railway administration.

8. It is also relevant to note that when the Rule does not empower the General Manager to impose penalty of dismissal, as rightly pointed out by the Tribunal and argued by the learned senior counsel for the applicant, the General Manager ought not to have recommended the punishment of dismissal to the competent authority, namely, the Railway Board. In other words, the burden of awarding punishment lies on the Railway Board.

9. Now we shall consider whether the Tribunal is justified in modifying the punishment? In this regard, it is useful to refer the following conclusion of the Supreme Court in B.C. CHATURVEDI v. UNION OF INDIA, reported in (1995) 6 Supreme Court Cases 749: (pp.18 and 22)

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19 to 21. xx xx

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience."

10. In STATE OF UP. v. JAIKARAN SINGH, reported in (2003) 9 Supreme Court Cases 228, it was held that,

"Normally, the Court in exercise of power under Article 226 does not interfere with the quantum of punishment alone if the charges are established against the delinquent and there is no lacuna in the procedure adopted in the departmental proceedings. But at times if the Court feels that the punishment inflicted is grossly unjust and shocks the conscience then in appropriate cases the Court may interfere...."

11. In Writ Petition No. 92/98 dated 08-10-2001 (A. RAMASWAMY v. STATE OF TAMIL NADU, REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF EDUCATION, CHENNAI-9), a Division Bench of this Court, almost in identical circumstance and taking note of the fact that there was only a single instance of proof of receipt of Rs.5,000/- from a friend on the promise of getting her selected for the Teacher's post, that he also repaid the amount together with interest and he had put in 33 years of unblemished service and on the verge of retirement, the said incident had taken place, accepted the plea for reduction of the penalty and passed an order modifying the penalty of removal from service into one of compulsory retirement.

12. In view of the factual conclusion, namely, that except the two charges, no other shortcoming has been noticed during the tenure of 32 years of service rendered by the applicant and of the fact that he had no other deficiency in service, in the light of the judicial pronouncements, as discussed above, we hold that the Tribunal is fully justified in modifying the extreme penalty of dismissal from service into one of compulsory retirement and no interference is called for at the instance of Railway administration.

13. Coming to the claim of the applicant regarding non supply of the Advice tendered by UPSC and CVC, admittedly, there is no rule or Government Order mandating the department to supply copy of the Advice received by those bodies. As rightly pointed out by the Railway counsel, as well as concluded by the Tribunal that both these bodies are entitled to submit their advice and the fact that the copy was not furnished to the applicant would not vitiate the entire proceedings. As rightly pointed out, the applicant had taken part in the enquiry and the enquiry officer ultimately concluded that both the charges had proved. As observed earlier, it is not the case of the applicant that the enquiry was not conducted in the manner known to law or he was not given adequate opportunity nor the findings of the enquiry officer are perverse.

In such circumstances, in the absence of enabling rule or notification or order by the department or Government, it cannot be contended that due to non-supply of the advice tendered by UPSC and CVC, the entire proceedings are vitiated. The Tribunal properly considered this aspect and rightly rejected the claim of the applicant. We are in agreement with the said conclusion.

14. With regard to the suggestion of the General Manager regarding proposed punishment, as said earlier, after finding that the proper authority to impose penalty of dismissal is the Railway Board, the General Manager has forwarded the entire records to the said authority and merely because he suggested the mode of punishment to be inflicted, the entire proceedings cannot be quashed. This aspect was also considered by the Tribunal and taking note of all the circumstances, including the past record of service of the applicant, the Tribunal rightly modified the penalty of dismissal into one of compulsory retirement.

15. Under these circumstances, we are in agreement with the conclusion arrived at by the Tribunal and unable to accept the contentions raised by the Railway Administration as well as the applicant. Consequently, both the writ petitions are dismissed. No costs. Connected miscellaneous petition is closed.

R.B.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:-

1. The Secretary, Union of India,
Ministry of Railways, Railway Board, Rail Bhavan,
New Delhi-110 001.
2. The General Manager,
Southern Railways, Park Town, Chennai-600 003.
3. The Registrar, Central Administrative Tribunal
Additional Bench, Chennai-104.

+ 2 ccs to Mr.N.R.Elango, Advocate SR No.42649
+ 1 cc to Mr.V.G. Sureshkumar, Advocate SR No.42674

AKM(CO)
SR/24.10.2005

Common Order in
W.P.Nos.11220 & 19751 of 2002
and WPMP 15158 of 2002.