IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31..3..2008

Coram:

The Honourable Mr.Justice P.K. MISRA
and
The Honourable Mr.Justice K.CHANDRU

W. P. No. 10138 of 2003
and
W.P.M.P. No. 12857 of 2003

1. Union of India
Rep. by the Divisional Railway Manager / Personnel
Chennai Division, Chennai

2. The Additional Divisional Railway Manager / MAS
Chennai Division, Chennai

3. The Chief Electrical Engineer
Railway Head Quarters Office
Personnel Branch, Chennai

4. The Senior Divisional Electrical Engineer
Electrical (RS) Branch
Arakkonam .. Petitioners

vs.

1. V. Munirathinam
2. The Registrar
Central Administrative Tribunal
Chennai - 104 .. Respondents

Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records on the file of the Tribunal pertaining to the order dated 30.10.2002 passed in O.A. No. 352 of 2002 and quash the same.

For Petitioners : Mr. Vellaichamy

For Respondent 1 : Mr. Ramasamy Rajarajan

ORDER

(Order of the Court was made by K. CHANDRU, J.)

Heard the arguments of Mr. Vellaichamy, learned counsel appearing for the petitioners and Mr. Ramasamy Rajarajan, learned counsel appearing for the first respondent and perused the records.

2. Challenging the order of the Central Administrative Tribunal [for short, 'CAT'] dated 30.10.2002 passed in O.A. No. 352 of 2002, the Union of India represented by Divisional Railway Manager / Personnel, Chennai Division and three other officers have filed the present writ petition.

3. The writ petition was admitted on 03.4.2003 and an interim stay of the operation of the order of the Central Administrative Tribunal (CAT) for twelve weeks alone was granted. Subsequently, it was not extended by this Court.

4. The first respondent, who was working as a Kalasi, was charge-sheeted by a charge-memo dated 27.7.1999 in terms of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charge against him was that during the year 1998, he was absent from duty for nearly 181 days and in the year 1999, from January to July alone, he was absent for 136 days. Within a period of 1-1/2 years, he had absented himself from duty for more than 317 days. A departmental enquiry was ordered against him. Though he was offered the assistance of a co-employee, he defended himself without any assistance. When he was questioned in the enquiry with reference to his absence, he informed that his wife was a TB patient and he had to take care of her which resulted in his absence. He also stated that since he was having family problem, he could not inform his superior about his absence. The muster roll extract showing his attendance was produced in the enquiry. He also accepted the charge against him and stated that in future, he will attend properly. The Senior Divisional Electrical Engineer, on the basis of the said findings, called for his further explanation. The same was not forthcoming from the first respondent and, therefore, by an order dated 01.8.2000, he was removed from service w.e.f. 25.8.2000. The first respondent filed an appeal dated 21.8.2000 and the second petitioner dismissed the appeal vide order dated 24.11.2000 confirming the punishment order. Thereafter, the first respondent preferred a revision petition and the revisional authority, viz., the first petitioner, dismissed the revision by an order dated 10.7.2001.

5. The first respondent originally moved the CAT in O.A. No. 352 of 2002 against the original order of removal and sought for waiver of appellate remedy in M.A. No. 557 of 2000. The CAT refused to waive the said pre-condition and dismissed the Miscellaneous Application by its order dated 24.8.2000. It was thereafter, after exhausting the appellate and revisional remedies, he moved the CAT with the present O.A.

6. It was pointed out by the petitioners in the reply statement that the first respondent had suppressed this information. They also pointed out that in the year 1996, the first respondent even before the issuance of charge-memo, had absented for 176 days. Even after the issuance of charge-memo, and during the period from 01.7.1999 to 30.6.2000, he again absented for 123 days. He was a chronic absentee and that no sympathy should be shown to him. Since the charges against the first respondent was proved, the competent authority imposed a proper punishment and that it was not open to the CAT to interfere with the quantum of punishment by the exercise of its power of judicial review under Section 19 of the Administrative Tribunals Act. In this context, a reference was also made to the judgment of the Supreme Court in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749]. He also submitted that the first respondent was working in a sensitive Department, viz., Electrical Rolling Stock Branch where the locos were periodically overhauled and maintained and his frequent absence had caused considerable dislocation in work.

7. However, the CAT, by placing reliance upon two decisions of the Supreme Court, viz., Pyare Lal Sharma v. Managing Director, Jammu and Kashmir Industries Ltd., Srinagar [(1989) 3 SCC 448] and 1996 (2) SLR 17, held that since the first respondent had put in 20 years of service and that his absence was consequent on the illness of his wife, the punishment of removal from service was disproportionate and, therefore, it directed the reinstatement. However, it granted liberty to the petitioners to impose a minor penalty. It also held that the period of absence should be adjusted against his leave entitlement and that he will not be given the benefit of backwages. It is against this order, the present writ petition has been filed.

8. Mr. Vellaisamy, learned counsel relied upon the decision of the Supreme Court in Union of India v. Sardar Bahadur [(1972) 4 SCC 618] and submitted that the CAT cannot interfere with the quantum of punishment imposed by the employer. He also submitted that the reasons given by the CAT to interfere with the punishment imposed by the Railways was not proper. In fact, even before the period covered by the charge-memo, the firs respondent was absent and he further absented himself subsequent to the period covered by the charge-memo. He further submitted that it is not a case of a single instance of absence but the first respondent had absented himself in bits and pieces spread over a whole year thereby preventing the Department from even making alternative arrangement. He also never furnished any proof of illness of his wife in the enquiry and nothing prevented him from applying for leave. He further submitted that his habitual absence calls for a deterrent punishment.

9. Mr. Ramasamy Rajarajan, learned counsel for the first respondent supported the stand of the CAT and submitted that mere

absence should not result the first respondent being deprived of his service put in for more than 20 years.

10. We have given our anxious consideration to the rival submissions. In this context, it is necessary to refer to certain decisions of the Supreme Court, which has dealt with the cases of punishment given to employees on charge of misconduct relating to habitual absence.

(i) Burn & Co. Ltd. v. Workmen [AIR 1959 SC 529],

Para 6: ".... There should have been an application for leave but Roy thought that he could claim, as a matter of right, leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the Company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with his services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension...."

(ii) LIC of India v. R. Dhandapani [(2006) 13 SCC 613]

Para 7: "It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under the said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of the management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient.

Para 8: "In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private

benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd. v. A. Unnikrishnan [(2006) 13 SCC 619]."

(iii) State of Punjab v. Sukhwinder Singh [1999 SCC (L&S) 1234]

Para 5: "The High Court was right in noting that the respondent was a member of a disciplined force and that absence from duty was unbecoming of a member of such force. It was in that light that the High Court should have looked at the repeated acts of the respondent's absence from duty. The fact that the respondent is a member of the Scheduled Castes is neither here nor there for the purposes of considering whether or not he is guilty of misconduct and breach of discipline, nor the fact that he had gone to give his pay to his mother and was detained on account of her illness. It is necessary that members of the police forces should attend the duties which they have been allocated and not absent themselves. This is a paramount public interest that must overweigh private considerations. The High Court was, therefore, in patent error in looking benignly at the numerous acts of absence of the respondent.

Para 6: That the order of dismissal did not use the "mantra" of "gravest act of misconduct" is not determinative. The substance of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct.

Para 7: We are unable to accept the submission of learned counsel for the respondent that we should also take a lenient view of the matter in view of the circumstances that impelled the High Court to pass the order under challenge."

11. The judgments in Burn & Co. Ltd. Case and LIC of India case (cited supra) recently came to be quoted with approval by the Supreme Court in L&T Komatsu Ltd. v. N. Udayakumar [(2008) 1 SCC 224].

12. Likewise, the judgment in Sukhwinder Singh's case (cited supra) came to be quoted with approval by the Supreme Court in Harjit Singh v. State of Punjab [(2007) 9 SCC 582].

13. Therefore, both on the ground of jurisdiction lining the judicial review to interfere with the quantum of punishment and also the premise on which the CAT had interfered with the punishment by holding that the habitual absence of the first respondent was not grave, it must be held that the order of the CAT is clearly erroneous and is liable to be interfered with by this Court.

14. In that view of the matter, the writ petition will stand allowed and the order of the CAT dated 30.10.2002 in O.A. No. 352 of 2002 will stand quashed. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

The Registrar
Central Administrative Tribunal
Chennai - 104

LA (CO)
KRD / 18.6.08

W. P. No. 10138 of 2003