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Court : Chennai

Decided On : Aug-09-2001

Reported in : (2002)IVLLJ18Mad

Judge : V.S. Sirpurkar and ;V. Kanagaraj, JJ.

Acts : Tamil Nadu Electricity Board Leave Regulations - Regulation 19

Appeal No. : W.A. No. 2280/2000

Appellant : Rajendran T.

Respondent : Chief Engineer, Distribution - Madras Region and Special Officer for Distribution, Tneb and anr.

Disposition : Petition dismissed

Judgement :

V.S. Sirpurkar, J.

1. An unsuccessful petitioner challenges the dismissal of his writ petition wherein he had challenged the disciplinary proceeding and the resultant punishment of dismissal. Few facts would be necessary.

2. In the year 1986, the petitioner was working as an Assistant Engineer in the Tamil Nadu Electricity Board (in short, the Board) at Perumhakkam, Chengalpattu Division. He, vide application, dated June 5, 1986, applied leave for one day, i.e., on June 6, 1986. The leave was granted. However, the petitioner did not report to duty on June 7, 1986. His explanation was called by memo, dated June 14, 1986, as he was found to be continuously absent. The memo, was received and acknowledged by one P. Jayashree for T. Rajendran (petitioner) on June 18, 1986. The petitioner sent an application on July 13, 1986 for unearned leave from July 13, 1986 to October 10, 1986. This leave was refused by memo, dated August 11, 1986, and the Petitioner was directed to join duty. However, the said memo was returned by the postal authority that the petitioner was reported to be out of India. The matters then stood still till December 4, 1986 when the petitioner allegedly turned up for joining the duty but, he was not allowed to join the duty probably on account of his continued absence for six months. A charge sheet came to be served on the petitioner on October 25, 1988 wherein four charges were framed. It was alleged that from June 7, 1986 he had not turned for duty. There were other three charges regarding his habit of leaving the headquarters without prior permission, giving false residential address and for negligence of duty. He was asked to submit his explanation. However this charge-memo was cancelled by the Board. The petitioner was given another charge- memo on December 12, 1988. There also the charge was for unauthorised absence from duty from June 7, 1986 for which, the petitioner sent his explanation. However, by the memo, dated April 10, 1989, the petitioner was placed under suspension and the petitioner was informed by the memo, dated May 20, 1989, that the earlier charge-memo, dated December 17, 1988, and the enquiry proceedings thereto stood cancelled. It was, however, stated therein that this cancellation was without prejudice to the de novo action which was proposed against the petitioner. Ultimately, a fresh charge sheet came to be issued against the petitioner on May 20, 1989 whereby the petitioner was informed that he had unauthorisedly absented himself from duty from June 7, 1986 to April 9, 1989.

3. The petitioner gave the explanation to this and claimed that he had applied for the earned leave for thirty days period from June 7. 1986 and had further extended his leave up to December 4, 1986 and on December 4, 1986 when he was not

allowed to join the same. He claimed before the authorities that he made several representations but he was suspended from service on April 1, 1989. He also refuted that he was not in India. The petitioner was found guilty and it was held that his explanation was not convincing and not satisfactory at all. He was removed from service by the order, dated January 4, 1990. An appeal came to be filed by the petitioner before the first respondent but the said appeal also came to be dismissed by the order of the first respondent, dated December 31, 1990. Hence the petitioner filed the writ petition before the learned Single judge who dismissed the said petition by his judgment, dated February 15, 2000. It seems that an application was made for speaking to the minutes. Even that application was dismissed by the learned single Judge by his order, dated February 22, 2000. The dismissal of his petition is now challenged in the appeal before us.

4. The learned counsel appearing on behalf of the appellant, Sri N.G.R. Prasad, vehemently argues that the petitioner/appellant was firstly prejudiced on account of cancellation of two charge-memos and then the infliction of the third charge-memo against him. He argues firstly that once the chargesheets were cancelled for whatever reason, there would be no question of the said charges being inflicted again by way of a fresh charge-sheet and, therefore, the last charge-sheet and the resultant proceedings therefrom are null and void. Sri Radhakrishnan, learned counsel appearing on behalf of the Board, however, pointed out that this cannot be the correct import and merely because the earlier charge-memos were withdrawn, it cannot be said that the fresh charge-memo cannot be given.

5. In the first place, it would be seen that when the second chargesheet, dated February 12, 1988, and the enquiry proceedings thereupon were withdrawn, it was specified in the said letter that the said action was without prejudice to the de novo action proposed against the petitioner/appellant. Sri Radhakrishnan explained that the reason for withdrawal of the charge-memos was because of the technical reasons to the effect that the said charge was framed by the Executive Engineer, O & M, Sriperumbudur, and the enquiry was also conducted on the same charge by the Assistant Executive Engineer, O & M, Thinnanur. According to the learned counsel, since the petitioner/appellant was an Assistant Engineer himself, the chargesheet could have been inflicted and the enquiry could have been conducted

only by an officer in the cadre of Superintending Engineer. Thus it is clear that the Board was within its powers to withdraw the earlier charge-memos which were issued by an officer who did not have authority to issue the same and a fresh charge-memo could be issued by the competent officer under the relevant Rules. In our opinion, there is nothing wrong with this. The argument of Sri Prasad that once the charge-memo was withdrawn, no fresh charge- memo could be issued to the petitioner/appellant and no enquiry could be held thereupon is obviously incorrect. After all, the cancellation of the first charge-memo, dated October 25, 1988, on December 8, 1988 has been done by the Executive Engineer himself probably realising that the said charge-memo could not have been issued by him. When we look at the chargesheet, dated October 25, 1988, it is apparent that the charge-memo has been given by the Executive Engineer, O. & M. Therefore, it is quite natural that he alone could withdraw the same realising that he had no power to initiate the disciplinary proceedings against the appellant. We do not see anything wrong in this. Besides to say that cancellation of the chargesheet by itself would absolve the petitioner forever is an incorrect proposition in law. The contention of the learned counsel for the appellant, therefore, is rejected as it cannot be forgotten that the cancellation of the charge-memos was for technical reasons and not on merits.

6. The learned counsel then contended further that firstly it was because of the high-handed actions on the part of the Board officials that the petitioner/appellant was not able to join the duty. The learned counsel pointed out that the appellant had come back on December 4, 1986 and had sought to join the duty but, he was not allowed to join the duty and was asked to report to the higher officials and thus it was not because of his own fault that he failed to report for the duty. The learned counsel invited our attention to Para. 3 of the finding recorded by the enquiry officer which is in the following words:

'Though he came to join duty on December 4, 1986, he was not allowed to join duty as he was absent unauthorisedly for nearly six months.'

It was further seen in the enquiry report that the matter was referred to the Superintending Engineer, Kancheepuram, by the Executive Engineer,

Sriperumbudur. However, the appellant had not bothered to get any instructions nor did he turn up for duty till April 1989. The finding is very clear and it has to be seen on the backdrop of the fact that the petitioner/ appellant was continuously absenting himself from the month of June, 1988 when he had sought leave for only one day in the first week thereof. Thereafter, he merely sent one application for earned leave for three months between July 13, 1986 and October 10, 1986, which application was rejected and he was specifically instructed to join the duty by memo, dated August 11, 1986, and it became known to the Board because of the postal endorsement on the memo that the appellant had left India. It was, therefore, obvious that though the petitioner did not have any leave and his application for leave was already rejected, even without bothering to get the leave sanctioned, the petitioner/appellant had left India. Sri Prasad has no quarrel with the proposition that the petitioner/appellant left India for some foreign country but he insists that the petitioner/appellant came back on December 4, 1986 and when he tried to join duty, he was not allowed to join. We wonder as to how the situation is going to help the petitioner/appellant even if it is held that on December 4, 1986 the appellant was not allowed to join the duty. After all, for full six months the appellant had not only absented himself unauthorisedly but had also left India without the permission of his employer probably to serve in some foreign country in a totally unauthorised manner. It is strange that the petitioner/appellant should claim an advantage for having reported for duty on December 4, 1986 and try to take the advantage of the fact that he was not allowed to join the duty.

7. The learned counsel then argues that since the appellant was not allowed to join duty on December 4, 1986, he went from pillar to post and yet he was not allowed to join. The petition is beautifully vague in that behalf as to what was done by the petitioner/appellant. But, one thing is certain that thereafter the appellant left India again. Not only this, when the appellant moved the writ petition before the learned single Judge even then he was out of India. Therefore, the case of the appellant is not bettered by a mere fact that he came back on December 4, 1986 and wanted to join the duty. The enquiry report is also very clear that his claim that he had given an application for earned leave from June 8, 1986 to July 7, 1986 was also not true as no record was available about that application. Ultimately it is clear that the appellant kept on absenting himself till April 10, 1989 when he was

suspended from the service. It is clear that the appellant miserably failed to prove that he had applied for leave and was absent with intimation and legitimately. We have seen his defence statement also. It is as laconic and sketchy as the defence but, the last paragraph of the statement is worth noting, which reads as under:

'Since it will become a controversy on my part if I have applied any leave from December 4, 1986 to April 10, 1989. That is why I have not applied any leave and bearing this sufferings all these periods.'

It is, therefore, clear that even in the first six months, the appellant was totally absent and thereafter also once he was not allowed to directly resume his duties on December 4, 1986, he conveniently absented himself for the further periods.

8. A feeble attempt was made by Sri Prasad to rely on a memorandum, dated August 14, 1989. According to the learned counsel, this memorandum suggested that the unauthorised absence from the duty can be regularised by commuting the said absence into extraordinary leave without allowance retrospectively under Regulation 19(b) of the Tamil Nadu Electricity Board Leave Regulations. From this, the learned counsel argues that it was the right of the appellant to get such unauthorised absence commuted. We do not agree. In the first place, the memorandum does not anywhere say that all unauthorised absence would have to be necessarily commuted and condoned. On the other hand, in paragraph 4, it is clarified in no uncertain terms that absence without leave for more than ten consecutive days without sufficient cause is a misconduct. At any rate, in our opinion, this memorandum does not help Sri Prasad.

9. It is really interesting to note that the only straw that the appellant is trying to catch is his reporting for duty on December 4, 1986. As to what happened before and thereafter is conveniently forgotten by the appellant and there is nothing to suggest as to where the appellant was between December 4, 1986 and April 10, 1989 when he was actually suspended. When we see the appellate order, it is clear that the appellate authority has written a finding that there was enough proof available to suggest that the appellant had gone out of India. As we have already pointed out that even when the writ petition was argued, the same state of affairs continued and the appellant was away from India. The learned single Judge has

recorded a finding to that effect. Under such circumstances, we do not think that any consideration can be shown to the appellant.

10. Sri Prasad vehemently argues that for a mere absence without permission, the appellant cannot be deprived of his job and punishment of dismissal is a disproportionately harsh punishment. We only wish to point out that in the first place the appellant abandoned his responsibilities by applying leave only for one day and thereafter never bothered. He only once turned up for duty on December 4, 1986 and thereafter never turned up for duty till October 14, 1989. Under such circumstances, his towering absence for a period of about three years cannot be taken lightly and cannot be viewed as a pardonable misconduct. It is obvious that the appellant was outside India and was serving somewhere. The appellant raised a plea in his writ petition that he was attending on his ailing father for the period between June 1986 and December 1986. That claim is obviously incorrect. Ultimately it turned out that the appellant was serving outside India. It is, therefore, difficult to view the misconduct of the petitioner/appellant in a mild manner. In our opinion, the learned single Judge has correctly come to the conclusion that the disciplinary action and dismissal of the appellant from service was warranted and could not be interfered with.

11. Lastly, Sri Prasad relied on some reported decisions. First among them being *Sengara Singh v. State of Punjab*, : In this case, the Supreme Court had held that the petitioners were liable to the same benefit which was given to their colleagues and there could not be any discrimination. We do not see any such discrimination having been perpetrated against the appellant. The ratio of the aforesaid case, therefore, is not applicable. The second decision is *Coimbatore and Periyar District Dravida Panchalai Thozilalar Munnettra Sangam v. Management of Pioneer Mills Ltd.* a Division Bench decision of this Court. This also is a case where the Division Bench took the view that there cannot be a discrimination between a worker and a worker and some persons cannot be let off with lesser punishment while some others guilty of the same act cannot be harshly treated. We have absolutely no problem with the proposition. However, factually there is no discrimination here practised against the petitioner/appellant.

12.The appeal has no merits and is dismissed without any orders as to the costs.

13. Connected C.M.P. Nos. 19727 and 19728 of 2000 are closed.

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