

K.Anbalagan Vs. the Deputy General Manager and ors.

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Court : Chennai

Decided On : Jan-19-2012

Judge : K.Chandru, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.No.17821 of 2009

Appellant : K.Anbalagan

Respondent : The Deputy General Manager and ors.

Advocate for Def. : Ms.Rita Chandrasekar, Adv.

Advocate for Pet/Ap. : Mr.S.Kumar, Adv.

Judgement :

1. The petitioner has filed the present writ petition seeking to challenge an order passed by the respondent bank imposing compulsory retirement, dated 28.2.2009 on the petitioner.

2.In the writ petition, notice of motion was ordered on 2.9.2009. Subsequently, it was admitted on 09.12.2010. The applications for interim stay as well as for direction were dismissed on the same day. On notice from this court, the respondents have filed a counter affidavit, dated 25.11.2009.

3.The case of the petitioner was that he joined as a Probationary officer in the respondent bank in the year 1983. He served in various branches all over India. During his service, he also got appreciation from the bank. The last office held by him was the post of Senior Manager. He had completed 25 years of continuous service. During the year 1998, he had undergone an Open Heart Surgery for Mitral Valve Replacement at Madras Medical Mission Hospital, Chennai. Subsequent to the operation, he had to take regular follow up with the hospital. He had availed sick leave for six months during the year 1998. Further he had acute Myocardial Infarction and underwent coronary Angioplasty plus stenting. Therefore, he had to avail sick leave from May, 2005 to November, 2005. Since he had undergone two times Open Hear surgery, it had constantly caused giddiness and chest pain. He was asked to take sufficient precaution. He had availed sick leave for six months during June, 2002 to November, 2002 and also from May, 2005 to November, 2005.

4.He could not appear before the panel Doctor as instructed by the management, since his heart was functioning only with 35% EF which precluded him from undertaking any travel. But, however, he was transferred by an order dated 15.4.2008 toKurnool Zone and was relieved from the Zonal office, Chennai. He was asked to report for duty at Kurnool zone. But he could not report for duty due to his heart condition. He sent a representation, dated 15.4.2008 and requested for retention at Chennai on health ground. It was not considered. Therefore, he had applied for sick leave enclosing the medical certificate and requested to sanction of leave for the months of June, July and August, 2008, which was not rejected. He further sent a telegram on 19.10.2008. Since there was heavy traffic flow between Chennai and Hyderabad, he could not get any train or air ticket. He was also unable to go to Hyderabad for check up. Despite all these, he was given a charge memo, dated 30.6.2008 issued by the Deputy General Manager (Personnel).

5.The charge was that he remained unauthorised absent without prior permission. Despite his transfer and relieved, he had not joined duty at Kurnool Zone. The petitioner sent his explanation, dated 12.7.2008. Not satisfied with the explanation, an Enquiry Officer was appointed to conduct the enquiry. In the meanwhile, the

transfer order to Kurnool was modified to Stationery Department in the Head Office at Hyderabad. He had joined duty at Stationery Department and worked for two days. He had also availed joining time. During the enquiry, he had pleaded not guilty. But the enquiry officer found him guilty of charges. He was asked to send his further explanation on the enquiry report. He had sent a detailed explanation about his absence. Unfortunately, the fifth respondent by an order, dated 26.11.2008 had imposed a major penalty of compulsory retirement treating his absence from 29.5.2008 as unauthorised absence. The petitioner had preferred an appeal to the General Manager (HR), who is the appellate authority. The appeal was dismissed on the ground that there are no extenuating circumstances to interfere with the penalty. The petitioner also sent a representation to the reviewing authority on 09.01.2009. The Reviewing authority also rejected the review application. It is thereafter the petitioner has moved this court challenging the order of compulsory retirement from service.

6.The grounds raised by the petitioner was that the order has been passed without application of mind. The petitioner has produced the medical certificate as a proof of two Open Heart surgeries. The authorities did not consider the reason for his absence. The reason given that he did not appear for medical check up before the panel Doctor cannot be said to be a correct reason for dismissing him from service. The certificate produced by him was give by the specialist. The removal of the petitioner was not done following due process of law and it is opposed to principles of natural justice. The petitioner had also sent an application opting for pension, dated 17.9.2010, for which the respondent Bank by a reply dated 14.10.2010 informed the petitioner that he has no right to opt for pension as per the Joint Note submitted in the scheme framed by the Indian Banks' Association. The petitioner himself in the additional typed set has produced the scheme of the Indian Banks' Association. In any event, the rejection of the petitioner's request is not the subject matter of the present writ petition.

7.The contention raised by the respondent Bank in the counter affidavit was that after his probation, he was posted as Manager at S.K.R.Government College Extension Counter, Gudur till July, 1991 and was later transferred to Tirupathi Branch for a short while. He was subsequently brought to Chennai and promoted

as Middle Management Grade, Scale II cadre with effect from 31.12.1993. He was posted to Kothapalli Haveli Branch in Karimnagar District, where he worked from 1.6.1994 to 3.7.1998. In June, 1998, he was transferred to Chennai and posted at Shenoy Nagar Branch, where he reported for duty on 4.7.1998. He was subsequently promoted as Middle Management Grade, Scale III with effect from 27.4.2002. Even on promotion, he was allowed to continue in Chennai despite the norms laid by the bank to transfer on promotion to other destination. In April, 2008, he was transferred to Kurnool. But he had failed to report for duty. Therefore, because of his unauthorised absence and not joining duty, he was imposed with penalty of compulsory retirement. The petitioner's surgical expenses were reimbursed by the bank. The petitioner remained absent unauthorisedly though he was relieved from the zonal office. He also refused to appear before the bank's panel doctor at Hyderabad for medical examination.

8.It was further stated that only in order to facilitate the enquiry, he was temporarily transferred to the Stationery Department in the Head Office. He had participated in the enquiry. In the enquiry, he pleaded guilty. Therefore, it was not open to him to state that he never pleaded guilty. The Kurnool branch is not the rural branch. It was the district headquarters with all medical facilities available. The respondent bank had shown him sufficient indulgence by retaining him at Chennai for more than 10 years despite his promotion to the higher post.

9.The learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in Pritam Singh Vs. Union of India and others reported in 2004 (4) CTC 789. This is for contending that in that case a person who had put in 31 years of long service was compulsorily retired on flimsy charge and that the Supreme Court had interfered with the penalty.

10.The learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in Jagdish Singh v. Punjab Engineering College reported in (2009) 7 SCC 301 and referred to the following passage found in paragraph 6, which reads as follows:

6.The courts and the tribunals can interfere with the decision of the disciplinary authority only when they are satisfied that the punishment imposed by the

disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in V. Ramana v. A.P. SRTC¹ wherein it is stated: (SCC p. 348, paras 11-12) 11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case² the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

11. The learned counsel referred to a judgment of this Court V. Senthurvelan Vs. High Court of Judicature at Madras reported in (2009) 7 MLJ 1213 and referred to the following passages found in paragraphs 9 and 12, which reads as follows: "9. Therefore, considering the fact that in spite of submission of the petitioner to the enquiry officer admitting the guilt and submitting the medical certificate to prove the fact that he was ill during the period, which forced him to abstain from duty, the same was not at all taken into consideration by the disciplinary authority, resulting in imposing the punishment of removal from service, which was confirmed both by the appellate authority and this Court in the writ petition, we have no hesitation to hold that the above said major punishment of removal from service is shockingly disproportionate to the proved charge. The disciplinary authority or at least the appellate authority should have considered this aspect that the punishment inflicted on the delinquent is shockingly disproportionate to the proved charges

and would have imposed a lesser punishment, taking into consideration the fact that the petitioner himself has admitted the guilt, who has no bad antecedents.

12. Following the above judgment of the Honourable Apex Court, since the facts are more or less similar, we have no hesitation to hold that the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and further declare that the petitioner/delinquent would not be entitled for any monetary benefits during the period he was out of service, applying the principle of 'no work, no pay' and that period would be counted only for the purpose of his service benefits. The respondents are directed to reinstate the petitioner into service within eight weeks from the date of receipt of a copy of this order and the disciplinary authority is directed to issue appropriate orders regarding the above mentioned punishment on the petitioner/delinquent immediately on his reinstatement."

12.A further reference was made to a judgment of the Supreme Court in *Chairman-cum-Managing Director, Coal India Limited v. Mukul Kumar Choudhuri* reported in (2009) 15 SCC 620 for contending that the doctrine of proportionality should be applied for interfering with the quantum of penalty. Reference was made to the following passages found in paragraphs 19 to 22 which reads as follows: "19*. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing

punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.

22. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if Respondent 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorised absence for six months.”

13. Per contra, learned counsel for the bank placed reliance upon a judgment of the Supreme Court in *Chairman & Managing Director, V.S.P. v. Goparaju Sri Prabhakara Hari Babu* reported in (2008) 5 SCC 569 by stating that the court's power is very limited in interfering with the penalty. Reliance was placed upon the following passages found in paragraphs 19 to 22 which reads as follows: “19. A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings.

20. The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See *Maruti Udyog Ltd. v. Ram Lal*²; *State of Bihar v. Amrendra Kumar Mishra*³; *SBI v. Mahatma Mishra*⁴; *State of Karnataka v. Ameerbi*⁵; *State of M.P. v. Sanjay Kumar*

Pathak⁶ and Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi⁷.)

21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See Sangfroid Remedies Ltd. v. Union of India⁸.)

22. The High Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) also cannot, on the basis of sympathy or sentiment, overturn a legal order.”

14. The Supreme Court more or less in an identical circumstance dealt with the case of a police inspector in not obeying the transfer order and going on medical leave, but refused to submit himself for examination by the medical board. When he was dismissed and that punishment was interfered with by the Tribunal, the Supreme Court took exception to the tribunal in setting aside the order of dismissal, vide its judgment in Secretary to Govt. v. A.C.J. Britto reported in (1997) 3 SCC 387 and in paragraphs 9 to 11, the Supreme Court had observed as follows: “9. The Rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of the Service penalties specified therein for good and sufficient reason. Therefore, the decision of this Court in A.L. Kalra case⁴ is clearly distinguishable. Before holding that there was no justification to initiate disciplinary proceeding against the respondents, the Tribunal ought to have considered whether there was good and sufficient reason for initiating such proceedings against him. It was not justified in taking that view on the ground that such an act of delinquency has not been specified in the Rules as an act of misconduct. Not obeying a legitimate order of his superior by a member of the Police Force has to be regarded as an act of indiscipline and would certainly provide a good and sufficient reason for initiating a disciplinary proceeding.

10. It was next contended by the learned counsel for the respondent that the intention of the respondent was not to flout the order passed by the

Superintendent of Police and non-compliance was due to bona fide reason, namely, that he did not have sufficient money for travelling from Madras to Trichy and he was denied a railway warrant for that purpose. In support of his contention that mere non-compliance with an order of a superior officer should not be regarded as an act of misconduct unless there is an intention to flout the same, the learned counsel relied upon the decision in *Union of India v. Giriraj Sharma*⁶. In that case the employee was deputed to undergo a course as an electrician. He sought leave and then applied for extension of leave. That request was rejected. For overstaying the period of leave his services were terminated. The said order was challenged in the High Court by filing a writ petition. The High Court having set aside the order, the Union of India preferred an appeal to this Court. While dismissing the appeal this Court observed that the punishment of dismissal for overstaying the period of 12 days in the circumstances of the case was really harsh as the said circumstances showed that it was not his intention to wilfully flout the order, but the circumstances had forced him to do so.

11. As against that, it was submitted by the learned counsel for the appellants that in this case the respondent had started remaining absent on medical grounds immediately after he was transferred to Trichy from Madras and that clearly indicated that he did not like the transfer and wanted to remain at Madras to carry on activities of the Association of which he was the Secretary. We find some force in this contention. The certificates produced by the respondent for obtaining medical leave clearly show that he was not all the times at Madras but had gone and stayed for quite a long period at Dindigul and Madurai. This circumstance was sufficient to raise a suspicion in the mind of the authorities that the ground given by the respondent for remaining absent at Trichy was really an excuse and he was not genuinely sick. It was under these circumstances that he was directed on 24-4-1981 to appear before the Medical Board. Without assigning any reason he did not do so. Therefore, he was again directed by an order dated 4-6-1981 to appear before the Board on 9-6-1981. This communication was received by the respondent. On 8-6-1981 he addressed a letter to the Superintendent of Police expressing his inability to appear before the Medical Board on 9-6-1981 on the ground that he had no money to travel from Madras to Trichy and that he would appear before the Board only on completion of his leave. He had also stated

therein that a railway warrant for the journey may be granted to him. What we find from the material on record is that the respondent was already in Trichy on 4-6-1981 when the said order was personally served upon him. Even though he knew on that day that he was required to appear before the Medical Board at Trichy on 9-6-1981 he went away to Madras and from there sent a letter on 8-6-1981. The learned counsel for the respondent could not point out any provision requiring the police authorities to provide a railway warrant to a member of the Service under such circumstances. Mr R. Balakrishnan, Deputy Superintendent of Police has filed an additional affidavit stating clearly that there is no such provision. This statement made in the affidavit has not been controverted. It, therefore, clearly appears to us that the reason given by him for not remaining present before the Medical Board was a false excuse. It was his intention not to comply with the said order. His not appearing before the Medical Board was with a view to avoid an enquiry regarding his true state of health so that he was not compelled to resume duty. It was thus an act of disobedience and indiscipline. Therefore, in the facts and circumstances of the case it cannot be said that there was no good and sufficient reason for initiating a disciplinary proceeding against the respondent.”

15.If it is seen in the context of the above legal precedent and the factual matrix, then the petitioner has not made out any case for interfering with the penalty of compulsory retirement imposed on him. Hence the writ petition will stand dismissed. However, there will be no order as to costs.

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