

(2009) 06 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 2960 of 2001

B.R. Mangalur, Sub Divisional Engineer

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 4 BomCR 630

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

**Advocate : Ramesh Ramamurthy and Saikumar Ramamurthy, for the Appellant;
V.B. Tiwari and H.K. Vardhan, for the Respondent**

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—The petitioner was subjected to chargesheet under the Central Civil Services (Classification, Control and Appeal) Rules, 1965(hereinafter "the said Rules, 1965") on the ground of alleged misconduct. A memorandum was issued to the petitioner under Rule 16 of the said Rules, 1965. It is alleged against the petitioner that while functioning as J.T.O. in charge of 57 exchange scrapping on 13th December, 1991, he tried to move scrapped cables in lorry No. MRL 9749 after 17.00 Hrs. unauthorisedly against the standing instructions on loading and transportation, without any valid gate pass by making an additional entry in the Goods Collection Memo dated 13th December, 1991 of M/s. Super Fast Carriers. The statement of imputations of misconduct was also furnished to the petitioner. Necessary documents were also supplied to the petitioner. A regular departmental enquiry was conducted against the petitioner by appointing an enquiry officer. The enquiry officer, after considering the evidence on record, came to the conclusion that from the circumstances of the case it can be inferred that the petitioner is guilty of the charges levelled against him. The enquiry officer found that the petitioner who was in charge of delivery of materials

cannot claim that he was not aware of the entries in the goods collection memo and that he admitted the knowledge of loading MXL 5246 and MTY 3601 as the entries are available in the same goods collection memo and in the same handwriting. The enquiry officer, after establishing the involvement of the petitioner, found that the petitioner failed to maintain absolute integrity, devotion to duty and his action was unbecoming of a Government servant which is in violation of Rule 3 (1) (i), (ii) and (iii) of the CCS Conduct Rules, 1964. The report of the enquiry officer was also made available to the petitioner.

2. The disciplinary authority by a detailed order dated 19th September, 1994 accepted the report of the enquiry officer and passed an order of withholding of two increments with cumulative effect. The disciplinary authority has also assessed the evidence before passing the penalty order and has considered the evidence on record which is at Exhibit G to the petition. The petitioner preferred an appeal before the appellate authority against the said order. The appeal of the petitioner was dismissed. The petitioner thereafter carried the matter further before the Central Administrative Tribunal, Mumbai Bench by way of Original Application No. 1034 of 1996. The Tribunal, by its order dated 31st May, 2001, has allowed the said application of the petitioner partly. The Tribunal rejected the application of the petitioner in connection with imposition of penalty but directed the department to consider the case of the petitioner for promotion at the time when his junior was promoted in 1998. The Tribunal also directed the respondents to constitute a D.P.C. in this behalf. The petitioner has challenged the order of the Tribunal in so far as rejection of the prayer of the petitioner for quashing the penalty order by the Tribunal by way of this Writ petition.

3. Mr. Ramesh Ramamurthy, learned Counsel appearing for the petitioner, submitted that there was no evidence against the petitioner for coming to the conclusion that the petitioner had committed the misconduct for which he was charged and that this being a case of no evidence, the order passed by the disciplinary authority imposing penalty is required to be set aside. Learned Counsel further submitted that even though the enquiry proceedings were initiated under Rule 16 of the Rules, 1965, which is for minor penalty, the ultimate penalty order withholding two increments with cumulative effect is in the nature of major penalty.

4. We have heard the learned Counsel for the petitioner and gone through the petition and documents annexed thereto as well as the order passed by the Tribunal.

5. So far as the submission of the learned Counsel for the petitioner to the effect that it is a question of no evidence, we may point out that the enquiry officer has given his finding as to how the charges levelled against the petitioner can be said to have been proved. Considering the circumstances of the case it can be said that the petitioner was involved in connection with the misconduct for which he is charged. It is required to be noted that the disciplinary authority at the time of accepting the report of the enquiry officer has given detailed reasons after

analysing the evidence on record which is at pages 79 and 79A wherein the disciplinary authority has come to the conclusion as to how the petitioner can be said to have been involved in the incident in question. By going through the reasoning given by the disciplinary authority, in our view, it cannot be said that it is a case where there is no evidence at all against the petitioner for coming to the conclusion that the petitioner was involved in the incident in question. The Tribunal has also considered this aspect and, in our view, rightly found that it cannot be said that it is a case of no evidence against the petitioner.

6. This Court while deciding the petition under Articles 226 and 227 of the Constitution of India cannot reappreciate the evidence and give its own finding as if deciding a regular appeal against the penalty order. However, in our view, even if evidence is to be reconsidered or reappreciated, then also no other view than the one taken by the disciplinary authority is possible. In a departmental enquiry, strict proof of evidence, like the criminal trial, is not necessary and, in our view, appropriate reasons have been given by the disciplinary authority for coming to the conclusion that the petitioner's involvement cannot be ruled out. The disciplinary authority, appellate authority and the Tribunal have concurrently found that on the basis of evidence on record, the petitioner has committed misconduct which finding, in our view, cannot be a perverse finding. Under the circumstances, the contention of the learned Counsel for the petitioner that this is a case of no evidence cannot be believed and the said contention, therefore, is rejected.

7. It was next argued by the learned Counsel that since the memorandum was issued under Rule 16 of the Rules, 1965, which is for minor penalty, the ultimate order of penalty which is inflicted on the petitioner is a major penalty. It is true that as per Rules, withholding of two increments with cumulative effect can be said to be a major penalty. In this connection, it is required to be noted that for imposing minor penalty, the procedure is different than the one prescribed for inflicting major penalty. For inflicting minor penalty under the Rules, no detailed departmental enquiry is necessary. It is not in dispute that in the instant case, enquiry officer was appointed, petitioner was given opportunity to defend his case, witnesses were examined and the procedure for inflicting major penalty was followed by the department. It is not a case where without following any procedure for minor penalty, major penalty is inflicted on the petitioner. It is also not in dispute that the procedure for inflicting major penalty has been followed and a departmental enquiry was held against the petitioner. In view of the same, it cannot be said that any prejudice has been caused to the petitioner in any manner. Apart from the aforesaid aspect, before the Tribunal no arguments were advanced on behalf of the petitioner. As pointed out earlier, since the procedure for imposing major penalty has already been undertaken by the department, simply because initially in the memorandum reference is made to Rule 16 of the Rules, 1965 for minor penalty, it cannot ultimately vitiate the final order as procedure for major penalty has already been undertaken by the department and a regular enquiry was held against the petitioner and it cannot be said that any

prejudice has been caused to the petitioner. We, therefore, do not find any substance in the aforesaid argument of the learned Counsel for the petitioner.

8. Considering the aforesaid aspect, in our view, it cannot be said that the departmental enquiry is vitiated in any manner or that there is no evidence against the petitioner in connection with the misconduct. The disciplinary authority in its wisdom has rightly passed the impugned order which is confirmed even by the Tribunal. We accordingly do not find any substance in this petition. No other arguments are advanced before us. The petition is accordingly dismissed with no order as to costs. Rule is discharged.