

(2001) 03 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 1952 of 1987

C.V. George

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Cantonments Fund Servants Rules, 1937 — Rule 12
Constitution of India, 1950 — Article 226

Citation : (2002) 4 LLJ 895

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Lodha, J.—The petitioner, by means of this writ petition filed under Article 226 of the Constitution of India seeks to challenge the order of suspension dated August 1, 1975 (Exhibit "A"), the order of termination dated December 14, 1983 (Exhibit "F") and the order of appellate authority dated June 30, 1984 (Exhibit "G").

2. The petitioner is said to be ex-serviceman and joined the services of Kirkee Cantonment Board (respondent No. 2 herein) as male nurse on September 1, 1961. It appears that on July 28 & 29, 1975, his house was raided by police. The petitioner was not there and by breaking open the place of his residence, police confiscated some medicines and other articles. A criminal case was registered against him and so also he was put under suspension vide order dated August 1, 1975. Later on, the charges-sheet was served upon the petitioner under Rule 12 of Cantonment Fund Servants Rules, 1937 vide charge-sheet dated May 8, 1973. The petitioner was charged with three charges. Alongwith the petitioner No. 2 other employees were also charge-sheeted and enquiry officer was appointed by the disciplinary authority. The enquiry officer recorded the evidence of eight witnesses produced by the employer. The petitioner who denied the charges against him by filing reply to the charge-sheet also produced various documents

in support of his defence. The inquiry officer submitted a joint report on July 22, 1988 whereby as against the petitioner, charges Nos. 1 and 3 were held to be not proved. As regards charge No. 2, the enquiry officer found that the delinquent petitioner has been found guilty of breach of trust and dishonesty. On the basis of the finding given by the enquiry officer, the disciplinary authority ordered removal of petitioner from the service from the date of his suspension. The petitioner challenged the order of the disciplinary authority dated December 14, 1983 removing the petitioner from service by filing appeal before the GOC-in-C. The appeal filed by the petitioner was disposed of on June 30, 1984 by the appellate authority. The appellate authority, though maintained the order of removal but ordered that order of removal shall not be effective retrospectively and would take effect from the date of the order of disciplinary authority that is from December 14, 1983. The petitioner preferred revision application before the Central Government and it appears that since for quite some time, the revisional authority did not dispose of the revision application, the petitioner preferred writ petition before this Court which was registered as writ petition No. 1443 of 1986 for direction to the revisional authority to dispose of petitioner's revision application expeditiously. The said writ petition No. 1443 of 1986 was disposed of by this Court on September 29, 1986 directing the Central Government to dispose of the revision application filed by the petitioner within eight weeks from the date of issuance of writ. The revisional authority (Central Government) thereafter has disposed of the revision application on December 12, 1986. Though the petitioner has not annexed the said order of the revisional authority, the respondents in their counter have annexed the said order dated December 12, 1986 as Exhibit "A". By the said order, the revisional authority maintained the order of removal of the petitioner from service but again observed that the order of removal would be effective with effect from December 14, 1983.

3. As already indicated above, the petitioner is challenging the order of his suspension and the order of removal from service.

4. Mr. Saxena, advocate appearing for the petitioner has raised twofold submission: (i) that no opportunity was given to the petitioner to cross-examine the material witness Shri J.D. Tanpure and thus, the entire proceedings of enquiry are vitiated; and (ii) that though the petitioner was charged for the misconduct of possessing large quantity of drugs and medicines from his house without any justification, the enquiry officer held the petitioner guilty of dishonesty and breach of trust for which the petitioner was not charged and that vitiates the order of removal.

5. On the other hand, the learned counsel appearing for the respondents supported the order of removal. He submitted that so far as the first contention of the learned counsel for the petitioner was concerned, the fact is that the enquiry officer did not rely upon the evidence of Shri J.D. Tanpure at all and therefore, no prejudice has been caused to the petitioner for not giving him an opportunity to cross-examine Shri J.D. Tanpure. In response to the second

submission of the learned counsel for the petitioner, the learned counsel for respondents submitted that though charge No. 2 does not use expressly "breach of trust and dishonesty", the very fact that petitioner was found in possession of large number of medicines and drugs justifies the finding of the enquiry officer that petitioner was guilty of breach of trust and dishonesty.

6. We have bestowed our consideration to the arguments advanced by the learned counsel for the parties.

7. The charge-sheet served upon the petitioner comprises of three charges which read thus:

"Charge No. 1: Conduct highly suspicious in that on July 25, 1975 at about 8.45 P.M. you went to the stores and certain articles were handed over to you by the Storekeeper Shri Lokhande. You had no business to attend the stores at that time as there was no emergency case.

Charge No. 2: When your house was raided by the police a large quantity of drugs and medicines was attached from your house. There was no justification for possessing such large quantity of medicines especially when such medicines can be used by experts only.

Charge No. 3: You have prepared many indents even though they were not of your ward. While doing so, in one case you have changed the figure 120 to 1200 in the ledger when you have no authority to do so. In some cases, there are over writings and erasers.

Your house was raided by the police and a number of drugs of different varieties found, in your house. As an employee of the Cantonment Board, Kirkee you have no business to keep such large number of medicines in your house, especially as you and your family members are entitled to free medical treatment."

8. The statement of allegation in respect of Charge No. 2 is recorded thus:

"Your house was raided by the police and a number of drugs of different varieties were found in your house. As an employee of the cantonment Board, Kirkee you had no business to keep such large number of medicines in your house, especially as you and your family members are entitled to free medical treatment."

9. The department in support of the charges examined 8 witnesses. The delinquent denied the allegations made against him and producing large number of documents comprising of bills for purchase of certain medicines. The enquiry officer after recording the evidence, as already noted above held that charges 1 and 3 against the petitioner have not been proved. Thus, the charge no. 1 against the petitioner that on July 25, 1975 at about 8.45 p.m., the petitioner went to the stores and certain articles were handed over to him by the store keeper Shri Likhande and that he had no business to attend the stores at that time as there was no emergency case, has not been held to be proved. Similarly,

charge No. 3 that petitioner prepared many indents even though they did not pertain to his ward and while doing so, in one case he changed the figure 120 to 1200 in the ledger has not been held to be proved. Regarding charge No. 2 which is to Hie effect that when petitioner's house was raided by police, a large quantity of drugs and medicines were attached from his house and there was no justification for possessing such large medicines especially when such medicines were used by experts only. In the enquiry report, the enquiry officer has not at all considered the evidence of Shri J.D. Tanpure and therefore, there is absolutely no merit in the contention of the learned counsel for the petitioner that by not giving an opportunity to the petitioner to cross-examine the said Shri Tanpure, the entire enquiry proceedings are vitiated. As a matter of fact, no prejudice can be said to have been caused to the petitioner by not giving him an opportunity to cross-examine Shri J.D. Tanpure since Shri Tanpure's evidence has not at all been relied upon by the enquiry officer while considering charge No. 2 against the petitioner.

10. However, so far as the second contention of the learned counsel for the petitioner that though the petitioner was charged of possessing large quantity of drugs and medicines without any justification when such medicines could be used by experts only, the finding recorded by the enquiry officer holding the petitioner guilty of breach of trust and dishonesty for which petitioner was not charged and that vitiates the order of removal is concerned, has substance. We have already noted above, the charge No. 2 levelled against the petitioner which was only to the effect that at the time of raid of petitioner's house, large quantity of drugs and medicines were found without any justification for possessing the same. In response to the said charge, the petitioner set up the defence that the said medicines and drugs were purchased by him. He produced certain bills for the purchase of said medicines. The said bills pertain to the year 1966-67, 1967-68, 1970-74 and also pertains to the period 1962, 1965, 1967, 1968, 1969 and 1970. The enquiry officer though has held that the said explanation given by the delinquent is not convincing, no reason whatsoever has been assigned by the enquiry officer that why the said statement is not convincing. Besides the point is that though the charge No. 2 has been held to be proved against the petitioner, the enquiry officer has further held the petitioner guilty of breach of trust and dishonesty for which the petitioner was not at all charged. The order of removal passed by the disciplinary authority would show that the order of removal has been passed since the petitioner was found guilty of breach of trust and dishonesty and not because petitioner was found in possession of large quantity of medicines and drugs without any justification. By reading charge No. 2 and the evidence which has come on record in respect of charge No. 2 by no stretch of: imagination, can it be said that petitioner was informed of the charge that he has acted in a breach of trust or with dishonesty. As a matter of fact, not only that the petitioner was not charged of the misconduct of breach of trust and dishonesty but there was no evidence worth the name on record before the enquiry officer to suggest that petitioner was guilty of breach of trust and

dishonesty. It is not the case of the employer that the medicines and the drugs which were found at the residence of the petitioner in the raid belonged to the employer or department. Breach of trust and dishonesty are serious misconduct and have to be specifically set up if a delinquent is to be charged with such misconduct. The contention of the learned counsel for the respondent that upon proof of charge No. 2, the necessary consequence of breach of trust and dishonesty would follow is wholly misconceived. Even if it is held that charge No. 2 is proved against petitioner, no inference of breach of trust and dishonesty can be drawn. We find that this aspect vitiates the order of removal removing the petitioner from service. The petitioner raised this point also before the revisional authority in para 20 of the revision submitted before the Central Government. Para 20 of the memo of revision reads thus:-

"20. The appellant submits that the learned De-novo Enquiry Officer did not even bother to read the complete charge sheet and the charges levelled against the Appellant. It may be seen from the original charge sheet dated May 8, 1978, that there is no charge of "Breach of Trust and Dishonesty" but the Enquiry Officer has formed a peculiar opinion and come to the erroneous conclusion that the Appellant is found guilty of "Breach of Trust and Dishonesty", which is baseless and based on extraneous matters. This is sufficient proof to show that the Enquiry officer with a biased mind came to the erroneous finding that the Appellant is guilty of breach of trust and dishonesty.

11. The revisional authority also does not seem to have dealt with this aspect at all.

12. We are of the considered view that since the petitioner was not charged of the misconduct of breach of trust and dishonesty and petitioner had no occasion to meet that charge, there was no justification for the enquiry officer to hold the petitioner guilty of breach of trust and dishonesty and since the order of removal has been passed on the ground that petitioner has been found guilty of breach of trust and dishonesty, that vitiates the order of removal.

13. Consequently, Writ Petition is allowed. The order updated December 14, 1983 (Exhibit "F") passed by respondent No.2, the order dated June 30, 1984 passed by Chief Officer, Commanding in Chief (Exhibit "G") and the order dated December 12, 1986 passed by the Central Government in revision application are quashed and set aside with all consequential benefits. No order as to costs.