

(2002) 08 KAR CK 0076
In the Karnataka High Court
Case No : Writ Petition No. 14362 of 2000

H.R. Hareesh Kumar

APPELLANT

Vs

The Chairman and Appellate Authority, Central Silk Board and
Others

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 KarLJ 511 : (2002) 4 KCCR 381 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S.V. Narasimhan and Hiriyanna, for the Appellant; Respondents-1 and 4 served and N.S. Prasad, for Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioner, an ex-employee of Central Silk Board (for short, "the Board") is before me challenging the order of dismissal and the subsequent confirmation of the same by the Appellate Authority in this petition.

Petitioner has joined the services in the year 1990 as Senior Research Assistant. He was transferred to Central Tasar Research and Training Institute, Ranchi. He reported to duty on 24-4-1997. After working for three days, he applied for leave from 1-5-1997 to 24-7-1997 with an intention to shift his family from Mysore. Thereafter, he did not shift his family to Ranchi. He states that his aged father is a chronic asthma patient and he required medical attention. Petitioner also states that he himself has some health problems. He complains of severe backache. He sought for extension of leave. Leave was not granted. A show-cause notice dated 22-11-1998 came to be issued on account of his remaining absent without leave from 25-5-1997 to 22-11-1998. Proceedings were held. The Enquiry Officer submitted his findings. The Board accepted the findings and issued a show-cause notice with regard to the report and thereafter passed an order of removal. An unsuccessful appeal was filed by the petitioner. Petitioner in these circumstances

is before me.

2. Respondents have entered appearance and have filed a detailed affidavit supporting their action. Their defence is one of an admission on the part of the petitioner, They want this petition to be dismissed. Rejoinder is filed.

3. Heard Sri S.V. Narasimhan, learned Counsel for the petitioner and Sri N.S. Prasad, learned Counsel for the respondents.

4. Mr. Narasimhan, learned Counsel raised a plea of defective enquiry in the case on hand. Counsel further says that the findings are perverse. His further argument is that an In charge Member Secretary cannot pass the impugned order. Insofar as the appellate order is concerned, learned Counsel points out patent errors.

5. Learned Counsel for the respondent would say that the writ jurisdiction being a limited one, this Court cannot interfere with regard to appreciation of evidence. He relies on several judgments. He wants this petition to be dismissed.

6. The first argument of Sri Narasimhan, is one of defective enquiry. Material facts reveal that a memo came to be issued by the enquiring authority fixing the date of appearance as 22-3-1999. On 26-3-1999 proceedings were held and in the proceedings it is stated that the said proceeding is only preliminary in character. Articles of charge were made available to the petitioner on the said date. Initially, the enquiring authority suggested some time to express the acceptance of the charges or denial of the same. In the light of this suggestion petitioner sought for time. However, without giving time proceedings were concluded. In the proceedings petitioner has stated reading as under:

"I have perused the total content of the Memorandum signed by Member Secretary dated 22-11-1998 and find that all the contents are true and correct, and I fully agree to the charges framed against me".

He further states that:

"Although I totally agree to the charges framed, I have certain statements to be made before you regarding the circumstances under which I am forced to remain absent due to bad health of both myself and my father".

He further states that:

"I could not duly respect to the instructions by my parent institute and Head Office, Central Silk Board. I fully regret for having done this mistake. I have volunteered to present myself before the committee to explain my plea for your sympathetic consideration as humble employee".

It is also to be noticed that the enquiring authority has noticed that the DGO has accepted the charges in toto and no further regular hearings were considered essential. In the light of this material what is clear to me is that there is some procedural irregularity in conducting the enquiry. In the preliminary enquiry

proceedings articles of charge was issued to the petitioner. Sufficient time was not given. Therefore, the petitioner to a certain extent is right in complaining about the defect in the enquiry in the given set of facts. But, what cannot be forgotten is that the consistent stand on the part of the petitioner wipes out the defective character of the enquiry. The petitioner has admitted in unmistakable terms all the charges framed against him. In these circumstances, I have to accept the proceedings in the light of a clear admission notwithstanding some procedural irregularities. Therefore, the argument of the learned Counsel to accept this petition on the ground of defective enquiry is rejected. It is also to be noticed at this stage that while submitting Annexure-G, the petitioner again says that "I have done a great mistake by remaining unauthorisedly absent". In these circumstances, it is not possible for this Court to remand the matter on the ground of defective enquiry.

7. Learned Counsel further says that in the very same enquiry, the petitioner has also chosen to explain the absence. I have carefully perused the material on record. Petitioner has not produced any acceptable documents with regard to his health condition before the Enquiry Officer. He has also not chosen to seek any time on that ground before the Enquiring Officer. He has also not chosen to submit the documents to the Enquiry Officer even after the enquiry is over. Therefore, the defence of ill-health in the absence of any acceptable evidence before the Enquiry Officer is to be rejected by me. In this connection, let me see as to whether case-laws would help the petitioner.

8. The first case relied on by the learned Counsel for the petitioner is of Delhi Cloth and General Mills Co., Ltd. Vs. Thejvir Singh, . That was a case with regard to short date of notice of enquiry. In that case, notwithstanding the denial of charges, the authority gave an hour's time for evidence. It was in those circumstances, the Supreme Court set aside the order on the ground of violation of rules of natural justice.

The second judgment relied on by the learned Counsel is a judgment of the Supreme Court in the case of Jagdish Prasad Saxena v. State of Madhya Bharat AIR 1961 SC 1070. In the said case, the Supreme Court noticed that the admission was not unambiguous.

In the case on hand, it is seen that petitioner has admitted his guilt without any reservations in several places. Therefore, these two judgments do not come to the aid of the petitioner.

9. Learned Counsel states that the findings of the Enquiry Officer is not to be accepted by this Court. I have carefully perused the findings of the Enquiry Officer. The Enquiry Officer has noticed the admission and holds that the petitioner is guilty of the charges. The respondent has sent the enquiry report along with a memorandum dated 8-8-1999. The petitioner again says in page 44 as under:

"As a Government Servant, I have realised and understood that, I have done a

great mistake by remaining unauthorised absent. I humbly request your good self to pardon my grave mistake and also I vow that, in future, I will not repeat my mistakes. I am also sorry, for the inconvenience created by me to the Board".

In the light of this admission, it is not possible for this Court to set aside the report of the Enquiry Officer.

10. It is also necessary at this stage to refer to a judgment relied on by the Counsel in the case of State of Punjab and Others Vs. Dr Harbhajan Singh Greasy, , with regard to the finding of the Enquiry Officer. That case is also clearly distinguishable on facts. In that case, the admission was not supported by any admission in writing. In the case on hand, as I mentioned earlier, the petitioner admits his guilt at several places.

11. I must also notice the judgment of the Supreme Court, cited by the learned Counsel, in the case of State Bank of Patiala and others Vs. S.K. Sharma, . The Supreme Court in the said case noticed that the complaint of violation of procedural provision should be examined from the point of prejudice. In the case on hand, the material on record would show that no prejudice as such is pointed out by the petitioner assuming that there is a defect in the proceeding"s.

12. I must also notice the Apex Court judgment in the case of Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another, , wherein the Apex Court has ruled that enquiry is not necessary when one admits his misconduct. In fact recently in similar circumstances accepting the plea of admission in the case of Prasad Babu Vs. The Corporation Bank and Others, , I have ruled as under:

"6. When he was asked to submit his explanation, he had admitted these charges. He has also stated that he owed some money to some parties and on account of the pressure by the said parties, and in order to clear them, he committed these acts. Taking note of his admission, the respondents have rightly passed the impugned order. The theory of "no admission" cannot be accepted in view of his explanation as per Annexure-C. He also admits in the petition that he did admit the charges levelled against him. Therefore, the Bank is right in removing him in the light of his clear admission. In the light of the admitted charges, no enquiry is necessary. Any enquiry if held is wastage of time and money of everybody concerned. Since I have come to a conclusion on facts that the petitioner had admitted without any reservation, he has no case in this petition under Article 226 of the Constitution of India".

13. The second argument of the learned Counsel is that the show-cause notice in terms of Annexure-F is defective and therefore the same is to be set aside. It is seen from the show-cause notice that it has been issued by the Member Secretary (In charge). From a reading of this annexure, what is clear to me is that the Board in terms of this Annexure has sought for representation/ submission of the petitioner. This can be equated to a communication by the

Board. No prejudice is caused to the petitioner on account of such communication being issued by the Member Secretary (In charge). This argument is therefore rejected.

14. I must also notice at this stage that the disciplinary authority has chosen to pass a very detailed order. It is not a case of mere absence for ,a few days. Petitioner has remained absent for more than 15 months. It cannot be forgotten that the petitioner was holding a responsible post and a public sector cannot afford to suffer such a long absence. In the given set of facts, the removal cannot be said to be bad in law.

15. The last argument of the learned Counsel for the petitioner is that he did provide two medical certificates and they have not been properly considered. Petitioner has submitted no leave application along with the medical certificates. The Appellate Authority has chosen not to rely on these medical certificates. A reading of the medical certificates does not inspire confidence in me with regard to the acceptance of the same. These two medical certificates have not been produced at the time of enquiry but they were produced at a later stage. I have perused the medical certificates to satisfy myself as to whether the petitioner was really not keeping well as suggested. A look at the medical certificate would show that the two medical certificates were obtained from Dr. Kiran Kalaiah, Orthopedic Surgeon, K.R. Hospital, Mysore under the OPD No. 15082, dated 26-5-1997 for the period from 16-5-1997 to 28-12-1997 and from 10-1-1998 to 29-5-1999. There is no medical certificate for the period between 29-12-1997 to 9-1-1998. The certificates also do not clearly indicate with regard to the nature of the disease alleged to have been suffered by the petitioner. It cannot be accepted that the petitioner was throughout unwell as suggested. In these circumstances, and in the given set of facts, I do not find that I should interfere in a case like this.

Petition stands rejected. Parties to bear their respective costs.