
(2011) 07 MP CK 0104
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8245 of 2004

Jagdish Prasad

APPELLANT

Vs

M.P. State Electricity Board

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2012) 1 MPHT 328

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : K.N. Pethia, for the Appellant; Ashish Pathak, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Heard. Petitioner calls in question correctness of orders dated 13-1-2004 and 30-6-2006. By order dated 13-1-2004 the petitioner has been inflicted with a penalty of withholding of increment for six months. Whereas by order dated 30-6-2004, an appeal preferred by the petitioner against the punishment order has been dismissed.

2. Petitioner, an fix-Army Personnel, was in the employment of respondent as Security Sub Inspector, where from he retired on attaining the age of superannuation on 30-6-2004.

3. While in service the petitioner was charge-sheeted on 16-4-1994 in respect of an incident which took place on 24-3-1994. While he was posted as Security Officer at Sanjay Gandhi Thermal Power Station, Birsinghpur, when he allowed a tractor bearing registration No. M.P. 17-D-0534 carrying cement and other construction material to pass through the barrier.

4. Following two charges were levelled against him viz:-

5. The denial of charges by the petitioner led to a Departmental Enquiry culminating into an enquiry report dated 6-3-1997, which was served on the petitioner with a show-cause notice dated 22-11-2003 whereby, the petitioner

was called upon to show cause as to why on the basis of report, penalty as proposed be not imposed. In the enquiry charge No. 1 was found fully proved, whereas charge No. 2 was found to be partially proved. On the basis of charges proved petitioner was inflicted with a penalty of withholding of increment for six months on the verge of his retirement by order dated 13-1-2004 which was affirmed in appeal which was dismissed on 30-6-2004.

6. Petitioner questions the impugned orders on two counts, firstly, that the findings are vitiated so much so that the same is not in consonance with the evidence on record and secondly that the order of punishment is vitiated because of the delay caused by the respondent in taking a decision after about a decade from the date of issuance of charge-sheet.

7. In respect of first contention, the same when tested on the anvil of the proceedings and evidence which have come on record and analysed by the Disciplinary Authority does substantiate the charge of dereliction on the part of the petitioner in permitting the tractor which was under seizure to allow the same to pass through the security barriers. Findings based on cogent evidence recorded during the proceedings where the petitioner was given proper opportunity does not call for interference. Therefore, the first contention that the findings suffer from vice of perversity since have no legs to stand are rejected.

8. In respect of second contention, it is seen that the charge-sheet was issued to the petitioner on 16-4-1994 in respect of an incident which took place on 24-3-1994 and was concluded in 3 years time when the enquiry report was submitted on 6-3-1997. The respondents instead of taking action thereupon within a reasonable time sat over the same for about seven years, when suddenly on 22-11-2003, i.e., just seven months before his retirement, a show-cause notice was issued culminating into a minor penalty vide impugned order dated 13-1-2004.

9. Be that a minor penalty, the question is whether the respondents are justified in acting upon an enquiry after seven years and thereon inflicting the minor penalty.

10. This can be answered when the matter is examined, from the angle of an employee who is at a receiving end as to any prejudice is caused to him because of the long pending enquiry.

11. By way of rejoinder petitioner pleads that while in service he became entitled for first higher pay scale in 1990 after completing 9 years of service and was due for second higher pay scale after completing total 18 years of service which the petitioner was deprived of because of pending enquiry. Furthermore, it is contended though inflicted a minor penalty of withholding of increment for six months but the effect of the same is cumulative because the annual increment drawn by the petitioner is in January, which was not drawn because of the imposition of penalty. It is urged that the petitioner retired in June, 2004 and the pension was settled on lessor average income than his entitlement.

12. When examined from above angle there is much force in the contention of the petitioner that he has been prejudice because of long pending enquiry.

13. The respondents are silent in their return nor have they tendered an explanation as what were the circumstances which prevented them from taking an action on the enquiry report submitted on 6-3-1997, which they could do only after about seven years.

14. In the considered opinion of this Court the delay in enquiry caused great prejudice to the petitioner as because of the same he suffered from being considered for higher pay scale and the proper fixation of pension.

15. Question is whether an element of prejudice could be a ground for quashing a punishment. The question has been affirmatively answered by Supreme Court in the decision in M.V. Bijlani Vs. Union of India (UOI) and Others, wherein it is observed:-

16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the Disciplinary Authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare the ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer.

In view of above the impugned order deserves to be and is hereby quashed. The petition is allowed to the extent above. No costs.