

(2008) 10 KAR CK 0048

In the Karnataka High Court

Case No : Writ Appeal No. 1389 of 2008 C/w Writ Appeal No. 1387 of 2008

Karnataka State Council for Science and Technology, Indian
Institute of Science

APPELLANT

Vs

G. Ravishankar
 G. Ravishankar Vs Karnataka State
Council for Science and Technology, Indian Institute of
Science

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Karnataka State Council for Science and Technology Leave Trawl Concession Rules —
Rule 6.1, 8

Citation : (2008) 10 KAR CK 0048

Hon'ble Judges : P.D. Dinakarn, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Sawkar, for Sundaraswamy and Ramadas, in Writ Appeal No. 1389/2008 and A. Ganesh, for C/R in Writ Appeal No. 1387/2008, for the Appellant; A. Ganesh, for C/R in Writ Appeal No. 1389/2008 and Sawkar, for Sundaraswamy, Ramadas and Anand, in Writ Appeal No. 1387/2008, for the Respondent

Judgement

V.G. Sabhahit, J.—These two appeals arise out of the order dated 15.07.2008 passed in W.P. No. 28326/2002, wherein, the learned single Judge of this Court has modified the order passed by the Chairman of the Executive Committee, Karnataka State Council for Science and Technology - fourth respondent, by setting aside the penalty of dismissal and has modified the penalty to withholding four increments with cumulative effect.

2. The writ petition was filed by the employee of the first respondent in the writ petition averring that he was appointed as a Fellow (Information) in the year 1986. He applied for Leave Travel Concession (for short, "LTC"), to visit Benaras for the period from 20.12.1999 to 03.01.2000. The respondents, hereinafter referred to as the "management" sanctioned LTC, and an amount of Rs. 8,700/- was released. Thereafter, at the request of the petitioner, by order dated

27.03.2000, time granted for utilization of the LTC, was extended from 03.04.2000 to 17.04.2000, failing which, it was ordered that amount advanced to him will be recovered from his salary of April 2000 and also in future, he would be allowed to avail the LTC facility only on "Reimbursement of Travel Expenditure (without advance)", after prior approval of the competent authority. On receipt of the said order dated 27.03.2000, the petitioner was left with only a week time to take up the journey. The petitioner had booked railway tickets to perform the journey by Train and he was provided with railway tickets against waiting list. However, those tickets were not confirmed even one day earlier to the date of journey. The petitioner had to make alternative arrangement to perform the journey by hiring a private vehicle and had to pay cancellation charges of the railway tickets. The petitioner completed the tour within the sanctioned period and spent amount of Rs. 15,000/- towards up and down charges of the journey, almost double the amount he would have incurred, if he had traveled by Train. The petitioner, on returning from the journey, under the bona fide impression that he would be entitled to at least the railway fare, submitted the report of his journey enclosing the railway tickets, which were provided to him. He received the show cause notice dated 27.07.2000 stating that he had not traveled to Benares, but, had made a false claim to the LTC. The petitioner replied to the show cause notice explaining the facts narrated above and he denied the allegations made against him. However, the charges were framed against the petitioner for having lodged a false LTC., claim, and misappropriating Rs. 8,700/-, which he had drawn as advance amount for undertaking travel to Benaras under LTC. Enquiry officer submitted his report stating that the charge had been proved. The Disciplinary authority accepting the report of the enquiry officer, ordered dismissal of the petitioner from services. Being aggrieved by the said order of dismissal dated 08.04.2002, petitioner preferred, appeal before the fourth respondent and the fourth respondent by order dated. 28.08.2002, dismissed the appeal and confirmed the order passed by the disciplinary authority, which was intimated to the petitioner on 05.09.2002. Being aggrieved by the said order of discharge and the order passed by the appellate authority, the writ petition was filed for quashing the said orders.

3. The respondents resisted the petition by filing statement of objections contending that the petitioner had made a false claim of having traveled to Benaras by Train, by producing railway tickets and had misappropriated the amount of Rs. 8,700/- drawn as advance for LTC travel and the petitioner without actually travelling to Benaras had misappropriated the amount drawn and had made a false claim by producing the railway tickets and enquiry was held in accordance with law and having regard to the status held by the petitioner and the misconduct proved, he has been rightly discharged from service and order of dismissal, has been rightly affirmed by the appellate authority and wherefore, there is no merit in this writ petition and the same is liable to be dismissed.

4. Learned single Judge after "hearing the counsel appearing for the parties and considering the material on record, by his order dated 15.07.2008, held that in

view of the claim made by the petitioner in his application dated 06.12.1999, wherein, he had claimed to have undertaken journey to Benaras by Train and had produced railway tickets requesting to settle the account at the earliest and on enquiry, it was proved that the petitioner had not undertaken journey by Train and even according to the reply given by the petitioner to the show cause notice, he had not produced any material to show that he had traveled by any alternative mode of transportation and wherefore, the charges against the petitioner had been proved. Accordingly, the disciplinary authority and the appellate authority were justified in holding that the charge of misconduct against the petitioner had been proved, However, having regard to the mitigating circumstances, the learned single Judge held that the penalty of termination of service is excessive and in view of the fact that the petitioner had challenged the promotion of one K.R. Shivakumar in W.P. No. 6539/1993 and had also questioned his transfer in. W.P. Nos. 26200-25 of 2001, imposition of extreme penalty and other facts and circumstances of the case, Interest of justice would be met by modifying the order of dismissal to one of withholding four increments with cumulative effect and ordered that the petitioner shall be reinstated without any backwages. Being aggrieved by the said order of the learned single Judge dated 15.07.2008, the respondents-management have preferred Writ Appeal No. 133-9/2008 and the writ petitioner being aggrieved by the denial of full back wages and continuity of service and the finding that the charges had been proved against him, has preferred Writ Appeal No. 1387/2008. Since both the Writ Appeals arise out of the same order passed by the learned single Judge, they are disposed of by this common order.

5. Learned Counsel appearing for the Management submitted that the charge of having made a false claim for having undertaken journey by availing LTC., facility and misappropriation of advance amount of Rs. 5,700/-, drawn by the petitioner has been proved as even according to the explanation given to him to the show cause notice,, he had not undertaken journey by Train as railway tickets could not be confirmed and the petitioner has not produced any material to show that he had undertaken journey by alternative mode of transportation and the charges against him have been proved, Having regard to the fact that the petitioner was working as a Fellow {Information) and the misconduct alleged against him, the order of dismissal for the proved charges is justified and the petitioner is not entitled to leniency. Learned Counsel submitted that ii Is well settled that this Court would not interfere with the order of penalty unless the same shocks the conscience of the Court and it is disproportionate to the proved charges and in the absence of any finding to that effect, the learned single Judge was not justified in modifying the order of dismissal and ordering penalty of withholding four increments with cumulative effect while ordering reinstatement of the petitioner.

6. Learned Counsel appearing for the writ petitioner submitted that the learned single Judge having rightly held that the penalty of dismissal of the petitioner was disproportionate to the charges proved, ought to have ordered

reinstatement of the petitioner with backwages and continuity of service and the learned single Judge was not justified in rejecting the claim for backwages and continuity of service and ordering reinstatement.

7. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinized the material on record.

8. It is clear from the material on record that the fact that the petitioner had made an application for withdrawal of the advance amount stating that he wanted to avail LTC., to visit Benaras during the period from 20.12.1999 to 03.01.2000 and he had drawn advance of Rs. 8,700/- is not disputed. It is clear from the material on record that the petitioner in his reply as per Annexure "G" dated 03.08.2000 to the show cause notice issued by the management has clearly admitted that though he had booked railway tickets, the seats reserved were in the waiting list and it was impossible for him to travel long distance with dependants, without confirming reservation and wherefore, he decided to cancel the tickets and utilize the amount to travel by alternative means and he was forced to take the said urgent measure in a hurry as he was not in a position to postpone the travel and he incurred expenses of Rs. 15,000/-, for which he did not have any documentation. Therefore, it is clear that in the first instance, when the petitioner was asked to show cause by notice dated 27.07.2000, he has admitted in his explanation to the show cause notice as early as on 03.08.2000 that he did not travel by Train and he had cancelled the railway tickets and that he had utilized the amount to undertake travel to Benaras by alternative means, but, he had no document for having performed the journey. In the absence of any material produced by the petitioner that he had undertaken journey by alternative means of transportation, it is clear that the charges against the petitioner have been proved and there is a concurrent finding to that effect by the disciplinary authority and the appellate authority and the learned single Judge has also held that the charges against the petitioner are proved and wherefore, the finding is unassailable. However, so far as punishment imposed upon the petitioner is concerned, the learned single Judge has modified the order of dismissal by holding that the order of dismissal is disproportionate to the charges proved against the petitioner and has imposed punishment of withholding four increments with cumulative effect and has directed that the petitioner shall be reinstated without backwages.

9. It is well settled that in departmental proceedings, unless the punishment or penalty imposed by the disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. (The Regional Manager and Disciplinary Authority, State Bank of India, Hyderabad and Another Vs. S. Mohammed Gaffar,). It is also well settled that when the charges of misconduct are held to have been proved against the employee, the Court will not disturb the

punishment imposed upon the employee unless the punishment shocks the conscience of the Court and is disproportionate to the proved charges. In the case of Union of India (UOI) and Another Vs. S.S. Ahluwalia, , the Hon''ble Supreme Court has held as follows:

The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the Court can itself impose lesser penalty. In the present case the penalty imposed upon the respondent was very small, namely, 10% deduction from pension for one year. Thus, there was hardly any occasion for the High Court to interfere with the order of penalty passed by the competent authority. However, having regard to the facts and circumstances of the case and specially to the fact that the penalty was a small one, the part of the order of the High Court setting aside the order of penalty is not interfered with.

It is clear from the above said principles laid down by the Hon''ble Supreme Court that unless the imposition of order of dismissal in the present case, shocks the conscience of this Court and is held to "be disproportionate to the charge proved against the petitioner, it would not be appropriate to interfere with the penalty imposed by the disciplinary authority and confirmed in appeal. However, if it is found that the penalty is disproportionate and shocks the conscience of the Court, this Court is entitled to interfere with the order of penalty and the matter should be remitted to the disciplinary authority for consideration of the question of imposition of penalty in accordance with law. It is clear from the facts of the present case that though the petitioner had withdrawn amount of Rs. 8,700/- as advance for undertaking trawl under LTC., by Train and had also made a claim by producing the railway tickets, which had not been confirmed, at the earliest point in time when he was issued show cause notice as per Annexure "F" dated 27.07.2000, he has admitted in the cause shown to the said notice as per Annexure "G" dated 03.06.2000 that since the seats in the Train were not confirmed, he could not undertake the journey and he cancelled "the railway tickets and used the amount for travelling by alternative mode of transportation. However, the petitioner has not been able to prove that he has traveled by alternative mode and had undertaken the journey to Benaras. It is not as if the petitioner had suppressed the fact that he cancelled the railway tickets and bad made a false claim by producing the tickets, which were not confirmed, that he traveled by Train. The circumstances under which he made claim of amount under railway tickets to Benaras as per LTC., has been explained in the reply to the show cause notice stating that though he had cancelled the railway tickets, the advance amount was used for travelling by alternative mode of transportation and he had no document to substantiate "the same and wherefore, he thought that he can claim at least railway fare for the journey

undertaken by him. It is also clear from the material on record that the petitioner has to avail LTC., as per the Karnataka State Council for Science and Technology Leave Trawl Concession Rules [hereinafter referred to as the "KSCST LTC., Rules") copy of which is produced at Annexure "B". Rule 6.1 of the KSCST LTC., Rules requires the employee to produce evidence of his having actually performed the journey, submitting the serial number of railway tickets, cash receipts etc. Rule 8 of the KSCST LTC., Rules enables the Secretary, KSCST., to waive production of cash receipts, if he is otherwise satisfied about the journey undertaken by the employee. In the office order dated 27.03.2000 at Annexure "D" the petitioner was intimated by the management that if the petitioner does not undertake the LTC, availed and does not perform the journey, the entire TA advance shall be recovered from the salary of April 2000 and also, in future, he would be allowed to avail the LTC, facility only on "Reimbursement of Travel Expenditure (without advance)", after prior approval of the competent authority. It is also to be noted that the misconduct alleged against: the employee does not fall under any of the misconduct specifically enumerated, removal from service would not; be appropriate as held by the Hon"ble Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., Further, it is also clear from a perusal of the material on record in the present case that the employee was working as Fellow (Information) since 1986 and earlier, no allegation dereliction of duty in the discharge of his function is made. The decision relied upon by the learned Counsel appearing for the management is not helpful in the facts of the present case as in the case of Director General Indian Council of Medical Research and Others Vs. Dr. Anil Kumar Ghosh and Another, , the employee had wrongfully claimed House Rent Allowance for a period of 10 years. Similarly, the decision in B.C. Chaturvedi Vs. Union of India and others, is also not helpful to the management in the present case as the said case pertained to acquisition of disproportionate assets amounting to corruption under the Prevention of Corruption Act, 1947. The decision in the State of Meghalaya and Others Vs. Mecken Singh N. Marak, is also not helpful to the Management in the present case as the said case pertained, to the Police official, who was on duty and was guilty of misconduct. The decision in Divisional Controller, KSRTC., (NWKRTC) v. A.T. Mane AIR 2004 SC 4761 is also not helpful as the said case pertained to a Conductor, who had misused Rs. 93/- collected by way of issuance of tickets. In the present case, having regard to the above said peculiar facts of the case and the charge against the employee, which is held to be proved, we are of the opinion that punishment of dismissal of the employee from service shocks the conscience of the Court and is disproportionate to the charge proved. When once it is held that the punishment of dismissal is disproportionate to the charge proved, the matter is to be remitted to the disciplinary authority for considering the question of punishment afresh in accordance with law.

10. However, the learned single Judge has substituted the penalty in the order passed by him by holding that the order of dismissal has to be modified to one withholding of four increments with cumulative effect, which is erroneous. Having

regard to the facts of the case and the learned single Judge having rightly held that the charge had been proved against the employee and the punishment of dismissal was disproportionate, ought to have remitted the matter to the disciplinary authority as it is for the disciplinary authority to pass fresh order regarding penalty to be imposed to the employee, having regard to the material facts bearing upon the question of imposing the punishment and to that extent, the order passed by the learned single Judge is liable to be modified.

11. Accordingly, we pass the following Order:

Writ Appeal No. 1389/2008 and Writ Appeal No. 1357/2008 are allowed in part. The finding of the learned single Judge setting aside the order of dismissal of the employee [appellant in W.A. No. 1387/2008) by holding that the same is disproportionate to the charges proved against him is upheld. However, the penalty imposed by the learned single Judge in modification of the order of dismissal to one withholding of four increments with cumulative effect, is set aside and the matter is remitted to the disciplinary authority for passing, fresh orders on the question of penalty in accordance with law.