

(2024) 04 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No. 715 Of 2020

Kiran B. Pulekar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2024) 04 BOM CK 0017

Hon'ble Judges : Nitin Jamdar, J;M.M. Sathaye, J

Bench : Division Bench

Advocate : Rajeshwar Panchal, S.A. Ghamre, V.G. Panchal, Pramod Yadav, P.M. Palshikar, Ashok Sharma, Aayu Saxena, Archit Chaturvedi

Final Decision : Dismissed

Judgement

M. M. Sathaye, J

1. Heard learned counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the impugned order dated 13 April 2017 by which the Petitioner has been terminated from the services of Respondent No.3- Shipping Corporation of India ("SCI" for short). The Petitioner is also praying for his reinstatement into the services with consequential benefits in accordance with law. The Petitioner is also seeking direction to the Union of India and Central Vigilance Commission to take action in respect of complaints lodged by the Petitioner and to provide him protection from victimization. The Petitioner is lastly seeking payment of reasonable compensation for his victimization for violation of the right to livelihood.

CASE & SUBMISSIONS

3. In short, it is the case of the Petitioner that he was appointed as Junior Technical Assistant with SCI in October 1987 and got promoted as Section Head

in September 1994 and since then he was serving as such. The Petitioner had filed Public Interest Litigation in this Court alleging loss of crores of rupees to SCI and had questioned the competence of the Chairman and Managing Director of the SCI. It appears that the Division Bench of this Court was of the view that the PIL filed by the Petitioner was not maintainable because the Petitioner had an interest in the subject matter as an employee of the SCI and therefore, by order dated 11 April 2016, the PIL was allowed to be withdrawn with liberty to file appropriate proceedings. It further appears that thereafter, the Petitioner filed Writ Petition No. 2084 of 2016, questioning the appointment of Shri B.B. Sinha as Director of (P & A) of SCI on the ground of educational qualification held by him. This petition was dismissed on 19 June 2017 on the ground that as on that date, the Petitioner was already terminated/compulsorily retired on 13 April 2017. This Order was carried in Hon'ble Supreme Court. We are informed that in January 2019, the concerned SLP(C) No. 20074/2017 has been disposed off as infructuous. The Petitioner has filed present petition challenging the said order of termination, which is presently impugned.

4. It is contended by the Petitioner that the charge-sheet was filed against him on 9 April 2012, charging that the Petitioner contravened Rule 17(1)(ii)(e) of the governing Service Rules i.e. absenteeism from duty in December 2008 and between April 2009 to May 2011. It is contended that show cause notice dated 8 June 2011 was issued. It is contended that Inquiry Officer was appointed on 20 June 2012 who held enquiry against the Petitioner. It is further contended that the Petitioner submitted documentary evidence including attendance slips and medical papers showing that the Petitioner was suffering from health issue such as Slip Disc for which he was admitted in the hospital in August 2002. It is contended that he was admitted in hospital at Mulund in March 2009 for treatment of acute knee pain and then in July 2009 for the treatment of malarial fever. It is contended that an Inquiry Report dated 25 April 2013 was filed. It is contended that then, after a period of almost 4 years, the impugned order was passed terminating the services of the Petitioner.

5. The main thrust of argument of the learned counsel for the Petitioner is that the entire disciplinary inquiry and order of termination is a counter blast to the Petitioner filing a petition against the Director of SCI and the PIL. It is contended that the inquiry has been conducted and the impugned order has been issued out of malice, borne out of action of the Petitioner trying to expose the case relating to SCI as alleged by the Petitioner. It is submitted that the impugned order being passed by Mr. B.B. Sinha, the then Director, is violative of principles of natural justice amounting to a person becoming Judge in his own cause. It is contended that a person having any interest, stake, grudge or bias against the delinquent, cannot participate in decision making process of disciplinary proceedings. It is contended that reasonable opportunity of being heard has not been offered to the Petitioner. It is contended that the time spent, during which there was inaction on the part of the Respondent No. 4 - Director of SCI, has resulted in mental agony to the Petitioner for which he is entitled to compensation.

6. Per contra, learned counsel for the Respondent Nos. 3 and 4 (SCI and its Director) has submitted that due procedure as contemplated under applicable rules has been followed. He submitted that the Petitioner himself has admitted that show cause notice was given to him, inquiry Officer was appointed, inquiry report has been submitted and the Petitioner has filed documentary evidence in support of his case. He submitted that in the teeth of this admitted position, it cannot be said that the procedure was not followed. He submitted that the order of the disciplinary authority dated 13 April 2017 is clear, elaborate and self explanatory showing that due procedure was followed. He submitted that the Petitioner violated rule 17(1)(ii)(e) which provides for dismissal, termination or suspension for repeated absence without leave, over staying period above sanctioned leave without sufficient cause. The allegations of malice and disciplinary action / termination being tainted with bias or being counter blast to the Petition/PIL filed by the Petitioner are strenuously opposed. He submitted that there is nothing on record to conclude any subjective malice or mala fides. It is submitted that the Petition is devoid of merits and sweeping prayers are made in the petition which cannot be granted in the peculiar facts and circumstances of the case.

REASONS & CONCLUSIONS

7. We have carefully considered the rival submissions and perused the record. Governing Rule No. 17(1)(ii) provides that without prejudice to generality of term 'misconduct', it shall be deemed to include 'repeated absence without leave; overstaying the period of sanctioned leave without sufficient cause'.

8. Perusal of the impugned order dated 13 April 2017 shows following aspects: -

(a) That the Petitioner did not reply to the article of charges which necessitated setting up the inquiry committee. It is further shown that the inquiry report dated 25 April 2013 was submitted.

(b) It shows that the Petitioner has been found irregular in his attendance and was on unauthorized leave for which letter dated 23 February 2010 was issued asking for an explanation.

(c) Vide letter dated 22 March 2011, the Petitioner was instructed to submit his duly approved attendance sheets, which were not submitted till first week of April 2011 and therefore, finally a show cause notice dated 8 June 2011 was issued.

(d) It is recorded in the impugned order that the show cause notice was sent to the Petitioner's residential address and was also hand delivered which was duly acknowledged by him on 16 June 2011. It is recorded that the Petitioner neither replied to the show cause notice nor improved his attendance.

(e) It is recorded by letter dated 9 April 2012 that the Petitioner was issued a chargesheet with regard to unauthorized absence from duty between December 2008 to May 2011. However, the Petitioner did not respond to the chargesheet

and departmental inquiry was initiated.

(f) Inquiry Officer has concluded that the Petitioner was on unauthorized leave without permission.

(g) The Petitioner has mentioned that due to the unavoidable circumstances he could not get all the attendance sheets regularized and it has become difficult for him after retirement of Captain Mr. Mukherjee.

(h) The Petitioner justified his absence due to sickness and bad health and due to his direct involvement in the staff activities. Impugned order goes on to record that the inquiry report was furnished to the Petitioner vide memo dated 7 November 2013 asking for his comments. The Petitioner vide his letter dated 26 November 2013 requested for more time. Then the Petitioner vide email dated 19 October 2016 was reminded to submit his comments. However, the Petitioner failed to submit any further defense.

(i) It is recorded that the Petitioner has been given adequate opportunity to defend himself during the inquiry proceedings.

(j) It is categorically recorded that the documentary evidence submitted by the Petitioner contains leave application and hospitalization certificates, amounting to a total of only 26 days as against the charge of unauthorized leave of 350 days.

(k) It is found during the inquiry that Captain Mukherjee superannuated in November 2009 and till that time only 92 days out of 350 days of authorized leave had taken place. After the retirement of Captain Mukherjee balance 258 days of unauthorized leave has remained unexplained.

(l) The explanation of the Petitioner about working under Captain Mukherjee has been found to be factually incorrect considering the date of retirement of Captain Mukherjee.

(m) The explanation of the Petitioner that since he was General Secretary of the Staff Union, he was unable to punch his attendance in time because of the union related activities, has been found untenable in view of circular on electronic attendance.

(n) It has been found that union activities could not be considered so unplanned or so haphazard that the Petitioner neither punched his attendance in time nor applied for leave in advance.

(o) Finally, it is recorded in the concluding paragraphs of the impugned order that the Petitioner being the General Secretary of the staff union, was well aware of the existing rules and regulations and was expected to observe them diligently, who has not only failed to comply but has not paid any heed to verbal as well as written notices issued to him and it clearly indicates nonchalance and contempt by the Petitioner towards the rules and regulations and policy of the employer.

9. From the aforesaid discussion and dates, it can be seen that basic procedure such as issuance of show cause notice, appointment of Inquiry Officer, submission of his report, it being served upon the delinquent and due opportunity to defend case has been followed in the present case. The material discussed in the impugned order is not shown to be non-existent or any different. Mere allegations of malice is not sufficient in the case of disciplinary inquiry. The degree of proof required in such cases is much higher and there has to be subjective satisfaction. It is material to note that Mr. B. B. Sinha, the then Director of the SCI has not been made party here to defend these allegations. In the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Ors. (2013) 1 SCC 524 the Hon'ble Supreme Court in paragraphs 25 & 27, has explained difference between malice in law and malice in fact. Present argument is squarely based on alleged malice in fact. In light thereof, nothing can be concluded about it without the concerned person being made party. This basic requirement under principles of natural justice is not fulfilled here for us to deal with the aspect of alleged malice. In fact, we find this argument more as a red herring, a scent introduced purposely to distract our pursuit. By filing cases against an employer, an employee can not escape from a disciplinary action, by simply alleging bias. Such a situation cannot be countenanced. The aspect of mala-fides, bias or malice and aspect of charges of absenteeism are independent considerations. In the present case, the disciplinary inquiry has found that charges have been proved against the Petitioner.

10. Perusal of medical papers produced on record shows that first is MRI report dated 16 August 2002 about slip disc issue. Second is Discharge summary showing Petitioner was hospitalized for malarial fever from 28 July 2009 to 1 August 2009. Third is a medical certificate dated 18 November 2011 showing fracture of left ankle with an advise for 3 months' rest. The first and third document is not relating charge-sheet period (December 2008 to May 2011 which included unauthorized leaves) and second document is for about 5 days. This lends credence to finding in the impugned Order that hospitalization certificates accounted for a total of only 26 days as against the charge of unauthorized leave of 350 days.

11. Before parting it is necessary to deal with the case laws relied upon the Petitioner. First judgment relied by the Petitioner is Krushnakant B. Parmar Vs. Union of India and Anr. (2012) 3 SCC 178 In the said judgment the question dealt with was whether unauthorized absence from duty amounts to failure of devotion or behavior unbecoming of a government servant. It was held that the question cannot be decided without deciding whether absence is willful or because of the compelling circumstances. In the case at hand, it is found that the explanation given by the Petitioner was in respect of a small duration of unauthorized absence and there is no explanation for major part of the absenteeism. In that view of the matter, a delinquent who has not offered any explanation at all for major part of unauthorized leave / absenteeism has to be held as willfully defaulting from attending duty. In that view of the matter, the

said judgment does not advance the case of the Petitioner.

12. The second judgment relied upon by the Petitioner is that of the State of Punjab and Ors. Vs. Bakshish Singh (1998) 8 SCC 222. In this case, the order of dismissal was set aside as it was found that proper opportunity of hearing was not given and the employer himself had regularized and treated the period of absence from duty as period of leave without pay and therefore it was held that it cannot be legally said that the delinquent was guilty of misconduct arising out of unauthorized absence from duty. The facts in the present case are entirely different from these. In the present case, the show cause notice itself makes it clear that the leave was not authorized and there is nothing on record to show that it was ever regularized. It is already found that due procedure was followed and sufficient opportunity was given to the Petitioner. In light thereof this judgment also does not advance the case of the petitioner.

13. In view of the fact situation explained above, no case is also made out for grant of any compensation or action against employer as prayed by the Petitioner.

14. The petition is found completely devoid of merits and it is accordingly dismissed. No order as to costs.