
(2018) 04 MP CK 0123
In the Madhya Pradesh High Court
Case No : W.P.No.4228 OF 2017

Union Of India

APPELLANT

Vs

Smt. Meera Bai & Ors

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Citation : (2018) 04 MP CK 0123

Hon'ble Judges : VIVEK RUSIA, J

Bench : Single Bench

Advocate : Atul Choudhary, Sanjay Verma,

Final Decision : Dismissed

Judgement

Learned counsel for the parties jointly submitted that this petition can be heard finally without the return, accordingly, heard finally.

The Union of India, through Divisional Railway Manager, Central Railways has filed this petition being aggrieved by award dated 02.09.2016, by

which CGIT-cum-Labour Court, Jabalpur in case No.CGIT/LC/R.110/2002 has interfered with the order of termination by modifying it to the

punishment of compulsory retirement.

That late Madanlal Gannu was working as Diesel Khalasi, Token No.1673 at Central Railway, Itarsi. He was served with the charge-sheet on the

ground of unauthorized absence from service for the period of about 3 months i.e. from 16.06.1996 to 5.09.1996. He submitted reply to the charge-

sheet. Alongwith reply he also submitted medical certificate of Rashtriya Homeo Medical Dispensary, Itarsi issued by Dr.Dixit. The said medical

certificate was disbelieved and sole charge was found proved against him and he was terminated from service vide order dated 30.10.1998. After

termination he raised an industrial dispute before the Labour Commissioner (C). The Government of India, Ministry of Labour, New Delhi vide letter

and notification No.L41012/41/2002-IR(B-I) dated 25.07.2002 has referred the dispute to the CGIT-cum-Labour Court that whether the action of the

management of Divisional Railway Manager, Central Railway, Bhopal in dismissing the services of Shri Madanlal Gannu is justified or not ?

Late Madanlal being first party before the Tribunal submitted statement of claim challenging the validity of the departmental enquiry on the ground that

he was not given proper opportunity to defend himself and he was not supplied any document in the inquiry proceedings.

The petitioner being second party submitted written statement opposing his claim by contending that he was unauthorizedly absent from duty and

committed major misconduct. The charges have been proved and penalty of removal was rightly imposed upon him. Further, appeal challenging the

removal had been also rejected. Looking to the nature of job of Diesel Loco Shed, the staff like the workman cannot remain absent without

permission/information to the higher authorities.

The CGIT has declared the departmental enquiry conducted by the department as illegal and granted liberty to the second party to prove the

misconduct before the Tribunal. During pendency of the reference, the workman has expired on 8.11.2011 and his wife and children were brought on

record but they did not adduce any evidence.

The Tribunal has found the charge of unauthorized absence proved but interfered on the point of punishment. The Tribunal has found that the

punishment given to the workman was excessive and disproportionate to the misconduct, therefore, vide order dated 02.09.2016, the Tribunal has

modified it to compulsory retirement and directed the Management to pay all retiral dues to the legal representatives of the deceased workman within

30 days and in case of default, the amount shall carry 9% interest per annum from the date of award till its realization. Being aggrieved by the award,

the Management has preferred the writ petition before this Court.

The only issue involved in this petition is as to whether the Tribunal has committed error of law while interfering into the punishment awarded to the workman.

The legal representatives of the workman has not challenged the award on the

findings of proven misconduct.

Shri Choudhary, learned counsel for the petitioner submitted that learned Tribunal has modified the punishment without assigning any reason. The

learned Tribunal has failed to assign any reason for modification when charge of misconduct has been found proved. In support of his contention he

has placed reliance upon the judgment of Honâ??ble Apex Court rendered in the case of State of Rajasthan & another vs. Mohd.Ayub Naz (2006) 1

SCC 589; wherein it is held :

â??9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principal cause of

indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service

without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a

Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he

may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended

the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that

the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grand error that the

respondent can be deemed to have retired after seeking of service of 20 years with all retrial benefits which may be available to him. In our opinion,

the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years

without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule

86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

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11. It was argued by learned counsel for the respondent that this Court while reviewing punishment and if it is satisfied that Wednesbury principles are

violated, it has normally to remit the matter to the administrative authorities for a fresh decision as to the quantum of punishment. We are unable to

countenance the said submission. In the instant case, the disciplinary proceedings were initiated against the respondent in the year 1981 and that the Division Bench disposed of the LPA only in December, 2001. Therefore, there has been a long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts and, therefore, in such rare cases, this Court can substitute its own view as to the quantum of punishment.

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13. Therefore, we do not propose to issue a direction to the disciplinary/appellate authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment.

18. For the foregoing reasons, we are of the opinion that a Government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court has no right to receive the monetary/retrial benefits during the period of question. The High Court has given all retrial benefits which shall mean a lumpsum money of lakhs of rupees shall have to be given to the respondent.

In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in S.B. Civil Writ Petition No. 2239/1991 dated 24.08.2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13.12.2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs.â??

He further submitted that the Tribunal ought not to have awarded interest on the retiral dues as there was no default or delay on the part of the petitioner to pay the retiral dues. Hence, the order is liable to be set-aside.

Per contra, Shri Verma appearing for the respondents submitted that workman had 20 years of unblemished service before his death. He was absent due to illness and he submitted papers regarding his treatment which are

admissible in evidence. After death of the workman, his legal representatives are not getting any retiral dues, therefore, the punishment is excessive and disproportionate, hence, rightly been interfered by the Tribunal. The

Tribunal has assigned the reasons before interfering with the punishment, hence, no interference is called for and the petition is liable to be dismissed.

Undisputedly, the deceased workman was absent from duty from i.e. from 16.06.1996 to 5.09.1996 i.e. 2 months and 21 days. In support of his

defence he submitted medical certificate issued by Doctor Dixit, Rashtriya Homeo Medical Dispensary, Itarsi which is also a known therapy for

treatment. Since the charge has been found proved, therefore, this issue is not liable to be considered again.

The workman was appointed in the year 1978 as Ladder Man. Before termination he had completed 20 years of unblemished service. For

unauthorized absence of about 3 months the punishment of removal from service is shockingly disproportionate. He could have been awarded lesser

punishment looking to his service record.

In the case of Mohd. Ayub Naz (supra) the employee was unauthorizedly absent from service for a period of three years without intimation and the

Tribunal/Labour Court has modified the punishment without assigning any reason, but, in the present case, the absenteeism was only for the period of

only 2 months and 21 days and that too due to illness and before modifying the punishment, the Tribunal has duly assigned the reason in paragraph 10

which is reproduced hereunder :

10. Point No.3 and 4-In view of my finding in point No.1, 2 charge of unauthorized absence against workman is proved, question remains for

consideration whether punishment of dismissal imposed against deceased workman is proper and legal. The charge against deceased workman was

unauthorized absence during the period 16.6.96 to 5.9.96 i.e., for 2 months 21 days. The charge alleged against workman was not of habitual absence.

Before issuing punishment of dismissal, documents about adverse service record of deceased workman were not served on him therefore the

punishment of dismissal imposed by the Disciplinary Authority considering the adverse past record would not be justified. If proved charge of

unauthorized absence from 16.06.1996 to 05.09.1996 is taken into consideration, while imposing the punishment of dismissal, the length of service

was

not taken into consideration. As per Written Statement filed by the management, Ist party workman was in employment of 2nd party from 09.04.78.

Deceased workman was removed from service on 30.10.98. Deceased workman had completed about 20 years service before punishment of

removal was imposed against him. For unauthorized absence of 2 months and 21 days, punishment of removal from service is shockingly

disproportionate and deserves to be modified. Considering proved charges and nature of work that workman was working in Loco shed, punishment of

removal/dismissal deserves to be modified to compulsory retirement. Accordingly, I record my finding in Point No.3 and 4.â??

Therefore, the facts of the present case are different and on better footing from the case of Mohd.Ayub Naz (supra) and, thus, distinguishable.

In the recent judgment passed by the Apex Court in the case of Central Industrial Security Force vs. Abrar Ali (2017) 4 SCC 507, it is held :

â??16. We are in agreement with the findings and conclusion of the Disciplinary Authority as confirmed by the Appellate Authority and Revisional

Authority on Charge No. 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the Respondent had

intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the

Respondent deserves to be punished suitably.

17. Charge No. 3 was that the Respondent had become habitual in committing indiscipline and disorderliness. A reference was made to two major

penalties of deduction of pay and one minor punishment of reduction of seven days salary earlier.

The Disciplinary Authority found that the Respondent did not improve in spite of being punished earlier. The High Court agreed with the contention of

the Respondent and held that a fresh enquiry cannot be initiated into a misconduct for which a delinquent had already suffered a penalty. The High

Court found that any penalty imposed under Charge No. 3 would amount to double jeopardy. We disagree with the finding of the High Court as we

are of the view that the Respondent was not being tried again for previous misconduct. As the Respondent did not improve in spite of being punished

earlier and had become habitual in indiscipline and disorderliness, the

Disciplinary Authority rightly found Charge No. 3 as proved. The desirability of continuance of the Respondent was considered on the basis of his past conduct which does not amount to double jeopardy. In any event, past conduct

of a delinquent employee can be taken into consideration while imposing penalty. We are supported in this view by a Judgement of this Court in Union

of India v. Bishamber Das Dogra, reported in (2009) 13 SCC 102 held as follows:

30. ... But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the

indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.

18. The Respondent was exonerated of Charge No. 2 by the Appellate Authority. The Revisional Authority confirmed the order of the Appellate

Authority. The judgment relied upon by the Respondent in G.M. Tank Vs. State of Gujarat and Ors.(supra) is not relevant as in that case the point for

consideration was whether the departmental proceedings can be held after acquittal of a public servant in a criminal case on similar set of facts.

19. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of

dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and

not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from

service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for

the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that

the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for

pension. He will not be entitled for payment of salary and allowances for that period.

20. For the aforesaid reasons, the Appeal is allowed with the above modification in the penalty.â??

It is too harsh on the part of the Railway Administration to challenge the order of the Tribunal, especially when the workman has expired and his

dependants have no source of income. Since the deceased workman was dismissed from service, therefore, his dependents could not get any retiral dues, hence, no interference is called for. Consequently, the petition is dismissed.