

(2009) 05 BOM CK 0059

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 414 of 1997

Maj (Ret.) Babu Thomas

APPELLANT

Vs

Goa Shipyard Limited

RESPONDENT

Date of Decision: May 2, 2009

Acts Referred:

- Constitution of India, 1950 - Article 311
- Goa Shipyard Officers Conduct, Discipline and Appeal Rules, 1979 - Rule 23, 27, 29, 31

Hon'ble Judges: U.D. Salvi, J; P.B. Majmudar, J

Bench: Division Bench

Advocate: A.V. Nigalye and Vinita Gawas, for the Appellant; S.G. Dessai and D.B. Ambekar, for the Respondent

Final Decision: Dismissed

Judgement

U.D. Salvi, J.

The petitioner has moved this Petition in order to challenge the order of dismissal dated 21.1.1997 passed by Chairman and Managing Director of the respondent - M/s Goa Shipyard Limited as well as the order of rejection of his appeal against the said order by the Appellate Authority on 27.9.1997 and to further seek directions of his reinstatement of service of the respondent with full back wages.

2. The respondent - M/s Goa Shipyard Limited, is Government of India Public Sector undertaking incorporated under the Companies Act, 1956. Initially, it is revealed, the petitioner was appointed as a Joint Manager (Security) in March, 1991 and thereafter he was made officiating Manager (Personnel and Administration) with respondent company w. e. f. August, 1991. According to the petitioner, he was framed up in a case of criminal misconduct on the allegation of collecting/accepting illegal gratification from one Mr. Chinnaiyah, a Labour Contractor of the respondent company and was arrested by the Anti -Corruption Bureau, CID of Goa police on 14.9.94; and was thereafter placed under suspension and subjected to a

Departmental inquiry on several charges vide charge sheet dated 15.12.1994 issued under the signature of the Chairman and Managing Director of the respondent company. The petitioner was thus charged for misconduct under Rule 23 of the Goa Shipyard Officer's Conduct Discipline and Appeal Rules, 1979 under the following heads:

1. Demanding and collecting illegal gratification,
2. Accepting bribe or illegal gratification for recruitment in GSL (respondent company ,
3. Withholding authorized payments for extorting money or bribe,
4. Financial loss caused to the company by misleading the management by intentionally furnishing wrong advice,
5. Misuse of contract employee/s,
6. Violation of Company s policy on recruitment, 5
7. Creating new posts and converting Security Assistants as Personnel and Administration Assistants without sanction of the appropriate authority,
8. Attempt to extort money from contractors,
9. Prejudicing the company and its contractor by influencing a wage agreement,
10. Financial irregularities, improprieties and fraud, non accounting of Company s funds,
11. Possession of pornographic material,
12. Misuse of Company s car,
13. Unauthorized telephone bills on office and residential phone.

3. It is further revealed, that one Mr. N. P. Kumar, General Manager (Production) of the Respondent company was appointed as Enquiry Officer and part of the evidence of the principal witness Mr. Chinnaiah was recorded before him. However, the departmental proceedings were stayed on account of the interim orders passed in Writ Petition No. 137/95 moved by the petitioner before this Court on the ground that the departmental inquiry should not have been initiated during pendency of the criminal case. Ultimately, it is revealed, the said Petition was disposed off and stay vacated with the directions to the Enquiry Officer to consider the supply of necessary relevant documents. The petitioner was also permitted to have assistance of an Advocate in the said departmental proceedings. Subsequently, it appears, Cdr. General Manager, Commercial of the respondent company further conducted and concluded the inquiry with his report and recorded his findings with the charges at Serial 1, 2, 5, 6, 7, 10, 11, 12, and 13 stood proved. This report was submitted to the disciplinary authority for further action in the matter.

4. A show cause notice dated 5.10.1996 along with the report of the Enquiry officer, it is revealed, was sent to the petitioner by the disciplinary authority and the petitioner was asked to submit his say as to why the report of the Enquiry officer should not be accepted. Subsequently, it is further revealed, a show cause notice dated 13.12.1996 requiring the petitioner to show cause as to why strict disciplinary action including dispensing with service should not be taken against him was issued and the reply dated 31.12.1996 to the said show cause notice was given by the petitioner. As sequel to this development, according to the petitioner the disciplinary authority passed an order of dismissal of the petitioner from service with immediate effect vide dismissal order dated 21.1.1997. According to the petitioner, the Appellate authority being the Board of Directors, upon hearing the petitioner in the appeal preferred by him against the said order of the dismissal came to the conclusion that the articles of charges at Sr. No. 1, 6, 7, 10(c) and 12 were fully established and the Articles of charges at Sr. Nos. 2, 10(a), 11 and 13 were partially established vide order dated 27.9.97 The Appellate authority however found:

- i. That the submission of the petitioner that the Inquiry officer was biased was not tenable;
- ii. That necessary documents relevant to the charges levelled against the petitioner were furnished.

5. It appears that the petitioner thereafter challenged the said order by way of Writ Petition being Writ Petition No. 414/97 and the Division Bench of this Court on reaching the conclusion that the Chairman-cum-Managing Director passing dismissal order was not a competent authority to do so proceeded to set aside the order of the dismissal vide order dated 25.11.2003 passed in the said Writ Petition without going into any other issue concerning such dismissal. The Hon"ble Apex Court however in an appeal preferred against the said order dated 25.11.2003 passed in Writ Petition No. 414/97 passed order contrary to the conclusion drawn by the Division Bench of this Court and set aside the said order dated 25.11.2003 of this Court and remanded the said matter for deciding the other relevant questions concerning the dismissal of the petitioner on merits; and that is how the matter is now before this Division Bench.

6. Learned Counsel Mr. Nigalye for the petitioner chose to assail the said order of the dismissal, which stands confirmed by the Appellate Authority, on the following grounds:

a)The Enquiry Officer was biased in as much as he was interested in procuring the evidence of guilt against the petitioner and in pursuit of his interest had given extension to the contract of cleaning undertaken by the cleaning contractor, the complainant Chinnaiah;

- b) the documents necessary for the purposes of fair inquiry were not given to the petitioner despite the demand made therefore ;
- c) the petitioner subsequent to the departmental inquiry was acquitted by the Criminal Court of competent jurisdiction upon the evidence of the complainant given contrary to the one given before the Enquiry Officer;
- d) the variance between the proposed penalty strict disciplinary action including dispensing with service as proposed in the show cause notice dated 13.12.1996 issued by the Chairman and Managing Director of M/s Goa Shipyard Limited, the employer and the one imposed as per the ultimate order of dismissal from the service passed against the petitioner.

7. We have heard both the sides at a great length and have gone through the voluminous record produced by the parties in this Petition.

8. Senior Advocate Mr. S. G. Dessai for the employer respondent pointed out from the records, how meticulously and fairly the Enquiry Officer had conducted the departmental inquiry against the petitioner and brought out the guilt of the petitioner on the basis of preponderance of probabilities in the evidence led before him. He further pointed out that the departmental inquiry against the petitioner was properly held and the order therein had already been passed much before the verdict of the Criminal Court acquitting the petitioner on giving benefit of doubt came to be pronounced. Even, otherwise, Senior Advocate Mr. S. G. Dessai submitted, the standard of proof in departmental inquiry is the preponderance of probabilities and not the proof beyond reasonable doubt as necessary for holding an accused delinquent guilty in a Criminal trial.

9. As regards bias approach of the Enquiry Officer, learned Advocate Mr. Nigalye for the petitioner could not point out any perversity in appreciation of the material placed before the Enquiry Officer except for the fact that the complainant Mr. Chinnaiah had departed from his earlier version concerning the demand and acceptance of illegal gratification while deposing before the Criminal Court. He conceded to the fact that the petitioner had not lodged any objection regarding the alleged bias of the Enquiry Officer Cdr. Mutreja during the pendency of the inquiry but thereafter when he was asked to comment on the show cause notice as to why the Enquiry Officer's report and findings should not be accepted vide show cause notice dated 5.10.1996. In this connection, it is worthwhile to note that much before the grant of extension of contract to the complainant Mr. Chinnaiah by Cdr. Mutreja - the then Commercial Manager vide letter No. 06LVR/RC-51 dated 9.8.1995, the inquiry had commenced and recording of the evidence of Mr. Chinnaiah was started on 26.4.1995 by the then Enquiry Officer Mr. N. P. Kumar. On this background, the Appellate authority, while dismissing the Appellant's/Petitioner's claim that the Enquiry Officer was biased, made following observations:

The Appellant has not specified which specified principle was violated. The Committee noted that the inquiry against the Appellant had been conducted in accordance with the Rules prescribed for this purpose and reasonable opportunities had been given to him at every stage of the proceedings. Therefore, the Committee is unable to accept the contention that the principles of natural justice had been violated. The Appellant's next contention is that the Enquiry Officer had been biased against him which came to his notice during the later part of the inquiry. Had this been the case, the Appellant should have brought this to the notice of the disciplinary authority at the relevant time and sought change of Enquiry Officer duly giving his reasons. The Committee noted that Cdr. S. K. Mutreja was appointed as Enquiry Officer in October, 95 whereas the contract extension referred to by the Appellant had taken place in August, 95. The Committee is, therefore, of the view that there is no substance in the Appellant's claim that the Enquiry Officer was biased.

10. It has been further pointed out by Senior Advocate Shri S. G. Dessai that when the board had decided to give fresh contract of cleaning, the said issue was challenged in Writ Petition and that is how the board was required to extend the services of labour contractor Chinnaiah. The petitioner was allowed to be represented by a lawyer and was given full opportunity to defend himself. Simply because for the administrative reason/s the contract had to be extended in the given state of facts and circumstances, in our view, it cannot be said that the Enquiry Officer was biased against the petitioner in any manner.

11. Learned Advocate Mr. Nigalye for the petitioner, further contended that the copies of the approval of CMD for re-designation of Junior Security Assistant (Comp.) to Junior Personal and Administration Security Assistant (Composite) and the requisition slips for official car, material for the purposes of defence, were not supplied/furnished to the petitioner. Senior Advocate Shri S. G. Dessai for the respondent submitted that the obligation to furnish documents was only in relation to the documents relevant to the matter under inquiry; and it has been consistently the case of the employer respondent that re-designations were done without any due approval and as such a document indicating such approval did not exist; and the vehicle utilization register tabulating the information on the basis of the requisition slips in form of the entries therein bearing the signatures of the petitioner vouching its correctness was produced in course of the departmental inquiry and as such the requisition slips, which were not preserved in course of time, did not actually matter. The Appellate authority did consider these facts while passing the order dated 27.9.1997. There is nothing to find fault with the observations made by the Appellate authority in the said order, we accordingly do not find any substance in this behalf.

12. In full fledged departmental inquiry which commenced and concluded before the verdict of the criminal Court, the complainant Chinnaiah vividly described before

the Enquiry Officer, the facts concerning the demand and acceptance of illegal gratification. The statement of the complainant Chinnaiah recorded by the Enquiry Officer speaks of diary entries made by the complainant Chinnaiah of the persistent demands made by the petitioner for the illegal gratification, and the petitioner having accepted and kept the tainted bribe amount in his table drawer. A reference is also found made in the testimony of the complainant Chinnaiah before the Enquiry Officer to the tape recorded conversation between the complainant Chinnaiah and petitioner concerning the money dealing and subsequent successful CBI raid resulting in detection of phenolphthalein powder used to taint the bribe amount on the hands of the petitioner. All these incriminating facts disclosed in the testimony of the complainant Chinnaiah are found scrupulously vetted by the Enquiry Officer vide report dated 19.9.1996. Learned Counsel Mr. Nigalye for the petitioner was at loss to point out any perversity in the approach of the Enquiry Officer in appreciating the evidence tendered before him. It is true that the Criminal Court had acquitted the petitioner in relation to the charge of demand and acceptance of illegal gratification. However, it is worthwhile to note that the criminal Courts verdict came much later in point of time after passing of the order by the disciplinary authority and the verdict of the Criminal Court was the result of benefit of reasonable doubt given to the accused and not due to his innocence. Simply because the complainant Chinnaiah took twist and turns before the Criminal Court in testifying the facts concerning the demand and acceptance of illegal gratification by the petitioner, it would not be prudent to interfere with the findings of the guilt of the petitioner in relation to such charge in departmental inquiry, especially when the Enquiry Officer/disciplinary authority on the basis of preponderance of probabilities in the evidence led before it had come to the conclusion that the charges particularly concerning the demand and acceptance of illegal gratification against the petitioner are proved. Needless to reiterate that in the departmental inquiry, strict proof required for proving a Criminal case beyond reasonable doubt is not the requirement to prove the delinquency of the delinquent. There may be several reasons for the complainant Chinnaiah to take such twist and turns before the Criminal Court much after he had deposed before the Enquiry Officer in departmental inquiry, but we are not concerned with such reasons; and what is important for us to look for is the fair and proper conduct of the departmental inquiry with sound appreciation of evidence tendered therein on the basis of preponderance of probabilities. We, therefore, are not inclined to accept the contention of the petitioner in that regard.

13. Next question that arises before us is regarding the controversy over the show cause notice issued to the petitioner in respect of the proposed penalty. Senior Advocate Mr. S. G. Dessai for the employer respondent resorted to Article 311, sub Clause (2) with amendment thereto in the Constitution in order to contend that it was not necessary to give to the petitioner/delinquent any opportunity of making any representation on the penalty proposed and therefore the show cause notice in

question was redundant. He further pointed out from the Officer's Conduct, Discipline and Appeal Rule 31 governing action on the inquiry report, that no such notice was necessary before imposing major penalty. Rule 31 (c) reads as under:

If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 27 should be imposed on the Officer it shall, notwithstanding anything contained in Rule 29 make an order imposing such penalty.

Rule 27 speaks of minor penalties and major penalties, particularly major penalties as under:

(f) reduction to a lower grade or post, or to a lower stage in a time scale;

(g) removal from service which shall not be a disqualification for future employment elsewhere;

(h) dismissal.

Rule 29 deals with procedure for imposing minor penalties. Reading of these provisions signifies the merit in the submissions of Senior Advocate Mr. S. G. Dessai made on behalf of the employer respondent. The rules thus indicate that there is no provision for giving show cause notice or hearing to the petitioner on the punishment. It is also not in dispute that the inquiry was initiated for major penalty and due procedure in that connection was followed, particularly the report of the Enquiry Officer required to be given under Goa Shipyard Officers Conduct, Discipline and Appeal Rules, 1979 was given to the petitioner with the letter dated 5.10.1996.

14. Perusal of the notice/letter dated 13.12.1996 of the respondent - M/s Goa Shipyard Limited, reveals a requisition, though superfluous, to show cause as to why strict disciplinary action including dispensing with service should not be taken. On this background, learned Advocate Mr. Nigalye for the petitioner submitted that the penalty of dismissal from service could not have been imposed on the petitioner. To supplement his contention, he relied upon judgments reported in 1998 1 CLR 319 (Chandrakant Damodar Kale v. Nagpur Improvement Trust and Anr.) and State Bank of India and others Vs. T.J. Paul, Before looking for wisdom in the judgments, it would be necessary to understand the phrase dispensing with. Plain dictionary meaning of the word dispensing with is to do away with (New Oxford Advanced Learner's Dictionary, 7th Edition). Evidently, phrase dispensing with service means and includes, both, removal from service without any disqualification of future employment elsewhere or dismissal, within the meaning of major penalties under Rule 27. The petitioner was aware that he was subjected to departmental proceeding for major penalties and was furnished with the report of the Enquiry officer thereafter. It, therefore, cannot be said that any prejudice was caused to the petitioner upon imposition of the penalty of dismissal prescribed under the said rule. Both the aforesaid judgments have deprecated imposition of punishment not

prescribed under the disciplinary rules or punishment which is higher than the punishment for which show cause notice was issued. The judgments cited by the petitioner therefore do not come to his rescue in the given set of facts and circumstances in the present case.

15. It has been further pointed out to us that the petitioner even did not take up this point concerning show cause notice dated 5.10.1996 before the Appellate authority. No grievance on this behalf was made at any point of time except for the first time by way of this Writ Petition. We, therefore, do not find it necessary to interfere with the impugned order/s on the said count.

16. In the result, the petition fails and is dismissed, accordingly, with no order as to costs.

17. The petitioner moved an application being Misc. Application No. 185/2009, in order to incorporate in the petition the facts concerning his acquittal by the Criminal Court subsequent to the filing of the petition. Due cognizance of the said facts has been taken by us while disposing of this petition. The purpose for which the said application for amendment of the petition was moved has thus been served. Nothing, therefore, survives on that count. Misc. Application No. 185/2009 therefore stands disposed of accordingly with this petition.