

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4356 of 2014

Muhammad Ismail,
Petitioner through:

Syed Abdul Waheed, advocate

Respondent No.1
Through:

Mr. Muhammad Nishat Warsi, DAG

Respondent No.2
Through:

M/s. Moin Azhar Siddiqui and Ali Ahmed Turabi, advocates

Date of hearing:

16.09.2019

Date of short order:

16.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner is Ex-Deputy Manager Purchase of Pakistan Steel. He was served with the allegations with regard to his performance in procurement of spare parts for revamping of bloom-caster in the Spot Purchase Cell (SPC) with effect from 16.7.2002 to 10.1.2003, thus he delayed the purchases without any lawful justification. As per record, the aforesaid allegations were construed as misconduct on his part, compelling the Respondent-department to hold an enquiry into the matter. Consequently, an Enquiry Officer was appointed to scrutinize the conduct of the Petitioner with respect to the aforesaid charges. The enquiry officer found him guilty of the allegations as discussed supra; thereafter he was served with a Show Cause Notice dated 12.8.2003 for inflicting major penalty, per petitioner he replied vide letter dated 18.8.2003 by refuting the findings of enquiry officer. As per record he was also granted personal hearing by the Competent Authority to explain his conduct, but he kept on saying the same story and pleaded innocence.

2. We have noticed that the Competent Authority, after careful examination of enquiry report, his reply to show cause notice and facts of the case, decided against him by reducing him to one stage lower in the pay and grade i.e. demotion to the position of Assistant Manager (PSE-II) vide Office Memorandum dated 5th September, 2003. Petitioner being aggrieved by and

dissatisfied with the aforesaid minor penalty i.e. demotion order, assailed the same by filing Service Appeal No.854 (K) (CE)/2003 before the learned Federal Service Tribunal (FST), Islamabad (Karachi Bench). The learned FST vide Judgment dated 28.4.2009 did not find fit to interfere with the minor penalty imposed upon him by the Respondent-Pakistan Steel. However, certain recommendations were made with regard to his regular promotion with the observation that the aforesaid minor penalty should not come in the way of his future promotion. The Respondent-Pakistan Steel being aggrieved by and dissatisfied with the judgment dated 28.4.2009 preferred Civil Appeal No.190-K/2009 before the Hon'ble Supreme Court, which was disposed of vide judgment dated 21.7.2014 and the matter was transferred to this Court for decision in accordance with law.

3. Syed Abdul Waheed, learned Counsel for the Petitioner has argued that Petitioner was regular employee of Pakistan Steel Mills and was erroneously demoted on the purported allegations; that the allegations were denied by the Petitioner on the premise that the subject office file was marked to him for the first time on 03.7.2003, on which he made his observations about the purchase procedure and re-submitted it to his immediate superior (Manager); that on 16.7.2002 his proposal was approved, thereafter on 27.7.2003 he assigned the file to his junior namely Mr. Anwar office Assistant of Spot Purchase Cell (SPC) with the remarks that "necessary quotations may be obtained" but the said official was transferred and posted out of SPC Section. Consequently, the subject file was handed over to another junior officer of SPC Section, later on the Petitioner was also transferred out of the aforesaid Section vide order dated 22.10.2003. Thus, the action could not be completed within the aforesaid period, for which the Petitioner could not be held responsible.

4. We queried from the learned Counsel with regard to inordinate delay of the action on purchases of the aforesaid material within the stipulated time, which was Misconduct on his part. Learned Counsel reiterated his submissions and further added that the Petitioner was not at fault as the matter was assigned to someone else, as such the Petitioner could not have been found guilty of the purported charges. We confronted him with the enquiry report

dated 8.8.2003, whereby he was finally found guilty of negligence in duty. However, he emphasized the learned FST recommended his case for promotion in next rank vide judgment dated 28.4.2009. We again said that the aforesaid decision of learned FST is no more in the field. Learned Counsel argued that the petitioner had denied the allegations on the ground that on 11.7.2003 he was on leave, therefore, he was not guilty. He lastly submitted that the demotion order of the petitioner may be set-aside.

5. Mr. Moin Azhar Siddiqui, learned Counsel for the Respondent-Pakistan Steel has raised the question of maintainability of the instant petition and supported the impugned order dated 5th September, 2003. Further, he referred to his para-wise comments and argued that Petitioner, after thorough probe was found guilty of misconduct, thus no premium at this stage can be given to the Petitioner on his belated pleas; that since he stood retired from service on 8.4.2009 and now through these proceedings he is assailing his demotion, which took place in the year 2003, therefore, at this juncture, no further order is required from this Court on the issue, as the disciplinary proceedings initiated against the petitioner were based on correct factual position, thus cannot be called in question in writ petition. He lastly prayed for dismissal of the instant Petition.

6. Mr. Muhammad Nishat Warsi, learned DAG has supported the stance of the learned Counsel representing the Respondent-Pakistan Steel.

7. We have heard the learned Counsel for the parties at length and perused the material available on record.

8. Firstly, we would address the question of the jurisdiction of this Court with regard to maintainability of the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. As per the profile of Pakistan Steel Mills, it is a State Enterprise. The Chief Executive of the Company is nominee of Government of Pakistan and has been delegated with such powers by the Board of Directors as are necessary to effectively conduct the affairs of the Mills.

9. In view of the above background and status of Respondent-Pakistan Steel Mills, the same is a 'Person' performing functions in connection with the affairs

of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution, thus, this Court has jurisdiction in the subject affairs of Respondent-Steel Mills under the Constitution.

10. Having decided the question of maintainability, now we have to see whether the petitioner was erroneously demoted from the post of Deputy Manager (PSE-III) to Assistant Manager (PSE-II) in the year 2003 and his previous posting can be restored, even after his attaining the age of superannuation on 8.4.2009. For convenience sake, an excerpt of the office Memorandum dated 5th September, 2003 is reproduced as under:-

MEMORANDUM

Subject: REDUCTION TO ONE STAGE LOWER IN THE PAY GRADE i.e. DEMOTION TO THE POST OF ASSISTANT MANAGER (PSE-II)

Mr. Muhammad Ismail, Deputy Manager (P.No.041084) of Purchase Department, is formed that as a result of domestic enquiry, he has been held guilty of the charges as contained in the Statement of Allegations & Charges No.REF/I.E./Enq./2003/555 dated 10-07-2003. He was served with a Show Cause Notice No.A&P-Enq.Cell/2003/1823 dated 12-08-2003 giving him an opportunity to Show Cause as to why a major penalty should not be inflicted upon him, which was replied by him. He was also granted personal hearing by the Competent Authority to explain his conduct, but he failed to justify his acts. Therefore, the Competent Authority, after careful examination of Enquiry Report, his reply to Show Cause Notice and facts of the case, has decided that he may be reduced to one stage lower in the pay grade i.e. demotion to the position of Assistant Manager (PSE-II).

2. Accordingly, he stands reduced to one stage lower in the pay grade i.e. demoted as Assistant Manager (PSE-II) with immediate effect. His pay in the reduced grade will be fixed according to the rules on the subject.

Sd/-
(HAMID PERVEZ)
Incharge (A&P)

11. Perusal of enquiry report clearly depicts the factual position of the case that the Petitioner was found guilty of the charges leveled against him and was recommended for demotion from Deputy Manager (PSE-III) to Assistant Manager (PSE-II), his appeal for withdrawal of demotion order was also declined vide Memorandum dated 3.10.2003. An excerpt of the enquiry report dated 08.08.2003 is reproduced as under:-

“FINDINGS:

“It is clear from the documents placed at Annexure ‘A’ to ‘P’ and the cross-examination of both sides that the Prosecutor has proved through cross-examination that accused kept the case file No.36006/SPC from 16-7-2002 to 10-01-2003 without taking any action in the light of approval accorded on 10-7-2002 by the Competent Authority given at para-129 of noting Page No.34 Annexure-‘E’. He was transferred to TOC as per letter placed at Annexure-‘G’ and subsequently he also took charge of TOC as per letter placed at Annex. ‘H’. On the other side the accused, inspite of asking 49 questions during cross-examination of the Prosecutor’s statement has failed to prove and produce any documentary evidence or witness in his defence. He has also tried to misguide the enquiry officer by quoting in his defence reply at Annexure-‘C’ the estimated cost involved as Rs.4.39 Million in the place of actual estimated cost Rs.4,39,942/= means Rs.0.439942 Millions. It is ten times higher than the actual estimated cost mentioned at para-137 of noting page No.34 placed at Annexure-‘E’. It is also evident that during the processing of his case he simply passed on

the case file to his Junior Officer and then did not monitor the progress at any stage. The charges leveled against the accused are thus established. Hence the accused is found GUILTY of the charges leveled vide SOA&C No.REF/I.C./Enq/2003/555 dated 10-07-2003.

RECOMMENDATIONS:

It is recommended to demote him from Deputy Manager PSE-III to Assistant Manager PSE-II grade.”

12. Apparently, the Respondent-Pakistan Steel while awarding minor penalty to the Petitioner followed the relevant procedure and the rules and regulations pertaining to the service issue of its employees. The record placed before us is showing that the Petitioner was confronted with the relevant record, besides full opportunity to rebut the allegations was afforded to the Petitioner but he failed to discharge his burden. Hence, the proceedings were concluded and Petitioner was found involved of breach of service discipline. The aforesaid allegations of recklessness of duty were serious in nature on the part of Petitioner which is/was violation of service discipline, amounting to misconduct on the part of the Petitioner; therefore, at this juncture no premium can be given to the Petitioner. Apparently, we do not see malice on the part of Respondent-Pakistan Steel to falsely implicate the Petitioner in the charges as discussed supra.

13. In the light of above legal position of the case, the Respondent-Pakistan Steel Mills is/was competent to award minor penalty, if they find/found any employee to be guilty of the dereliction of duty, therefore, contention of the Petitioner that he was mistakenly demoted is not borne out of record. Thus, his contentions are untenable, hence, discarded.

14. Considering the case of Petitioner in the above perspective, we find no merit in the instant Petition.

15. We conclude that there is no illegality, infirmity or material irregularity in the impugned order dated 5th September, 2003 passed by the Respondent-Pakistan Steel. Consequently, the instant Petition is dismissed along with listed application[s].

16. These are the reasons for our short order dated 16.9.2019, whereby we have dismissed the instant petition.

JUDGE

JUDGE