ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 1683 of 2017

Mushtaq Ali

Versus

OGDCL, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.07.2022	Ch. Muhammad Zafar Iqbal, Advocate for petitioner. Mr. Wasi Ullah Khan Surrani, Advocate for respondent.

Through the instant writ petition, petitioner impugns Office Memorandum dated 04.02.2016, issued by the Human Resource Department, OGDCL/ respondents ('**Company'**) whereby he was dismissed from service of the Company with effect from 28.01.2015 on account of unauthorized absence from duty since 25.12.2015 while intervening period from 25.12.2016 to 27.01.2016 was treated as Leave Without Pay & Allowances.

2- The petitioner has prayed for reinstatement with effect from 04.02.2016 by setting aside the impugned order or else to convert the major penalty into minor with order of restoration.

3- Relevant facts are that the petitioner joined the Company as Assistant Technician Production on regular basis with effect from 01.07.2001, after rendering five years' service got promotion to the rank of Production Technician with effect from 01.07.2007 and further as Tech. Officer Production-EG-I, on 01.07.2012.

4- The petitioner was granted 30 days leave with effect from 25.11.2015 to 24.12.2015 vide O.M. dated 13.11.2015. He request for extension of leave for 20 days with effect from 25.12.2015 to 13.01.2016 was however declined with recommendations to initiate disciplinary proceedings. The proceedings were then initiated by

appointing Authorized Officer vide Office Order dated 06.01.2016, followed by Show-Cause Notice, Statement of Allegations and Notice for personal hearing dated 22.01.2016. Ultimately, the petitioner was dismissed from service vide impugned order dated 04.02.2016. The petitioner then preferred a representation/appeal which was rejected vide O.M. dated 24.02.2017. Hence, instant writ petition.

5- Learned counsel argued that treatment afforded to the petitioner was not only harsh but arbitrary as without realizing the fact of having more than ten years' service, petitioner had been thrown out of service in disregard to the rules on the subject besides the fundamental right to life and livelihood; that petitioner had been made victim of discrimination as in identical case, one of the employees namely Hassan Ali, on whose credit the unauthorized absence was much bigger than the petitioner, was reinstated by converting major penalty into minor; that the absence of the petitioner was neither deliberate nor willful, therefore, the impugned order is liable to be set aside. Learned counsel placed reliance upon case law reported as 2003 SCMR 207.

6- Conversely, learned counsel for the Company repelled the above submissions by contenting that rules under which the petitioner had been proceeded against retains non statutory character, therefore, instant writ petition is not maintainable. On merits, it is asserted that unauthorized absence is an admitted fact; that due procedure of inquiry was adopted in case of the petitioner; that his appeal was time barred and that the penalty inflicted was in accordance with law and does not call for any interference in the attending circumstances of the case.

7- Heard, record examined.

8- The admitted facts glean out of record are that at the time of dismissal from service, petitioner had more than thirteen years' service at his credit while his absence had been for about 32 days i.e. 01M-2D. As against this, one Hassan Ali, Junior Engineering (Drilling) whose

absence was on much higher side than the petitioner i.e. about 05M-06D was reinstated into service by converting major penalty into reduction to lower stage. In this view of the matter, the treatment afforded to the petitioner, on the fact of it, appears to be discriminatory.

9- In order to distinguish his case with that of Hassan Ali, a justification had been put-forth that the remedy of appeal provided under Rule 131 of the Employees Service Rules 2002 can be availed within thirty days while the appeal of the petitioner was time barred. The reason so put-forth does not inspire confidence and, otherwise, is without any substance as it did not find mention in O.M dated 24.02.2017 whereby his appeal was regretted in terms that "**his appeal has been given due consideration but cannot be acceded to, hence regretted**." By '*giving due consideration*' means it was a decision on merits and not on account of appeal being time barred, therefore, the objection to this effect being misconceived is accordingly repelled.

10- The decision of the appeal for reasons mentioned above is not sustainable in the eyes of law, *inter alia*, due to non-consideration of the longstanding service of the petitioner, the principle of proportionality i.e. '*punishment should commensurate with the gravity of the mischief*' which, in the instant case, is lacking as the mischief of unauthorized of absence for about one month had been responded by inflicting major penalty of dismissal from service which, otherwise, retains everlasting character and a stigma with bar of future service.

11- This Court in the case of '*Kaloo Khan and others v. OGDCL and others'* (**2019 PLC (C.S.)519**) has cautioned the management of the Company in awarding penalties with direction that the anomalies and the disparity in the award of penalties must be rectified at the earliest. It had also been observed that Rule 131 of the OGDCL Employees Service Rules 2002 provides that a person on whom a penalty is imposed shall have a right to appeal to the appellate authority.

12- The right of appeal is substantive law and it being a fundamental right cannot be taken away in haphazard and slipshod manner without adverting to the facts and law on the subject besides the precedents. The treatment afforded to the petitioner while dismissing his appeal is one of the classic example of casual treatment to an employee having more than twelve years' service at his credit who had been treated with dismissal from service for unauthorized absence of 32-days unlike his counterpart whose penalty had been converted to minor i.e. reduction in lower rank for mischief of unauthorized absence of about 05-Months.

13- In view of above, the instant writ petition stands **disposed of** with direction to the respondents in terms that representation/appeal, as the case may be, of the petitioner shall be deemed pending before respondents which shall be decided afresh in accordance with law on the subject purely on merits without adverting to the '*limitation*'. As the matter pertains to the year 2016, respondents are directed to decide the same within a period of one month from the receipt of this order after giving due opportunity of hearing to the petitioner. Copy of this order be sent to the respondents for information and compliance.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 02.08.2022

JUDGE

//Kamran//