

(13) In view of the above, these petitions are thus, allowed. The action of the respondents and the impugned orders passed for recovery are hereby quashed while upholding the re-fixation of their salaries etc. It is, however, directed that the respondents will refund the amount already recovered either in part or whole wherever applicable as indicated herein-above.

(14) A copy of this judgment be placed on record on each concerned file.

R.N.R.

Before K. Kannan, J

ANIL KUMAR JAGGI .. *Petitioner*

versus

**PRESIDING OFFICER, CENTRAL GOVERNMENT,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH AND ANOTHER .. *Respondents***

C.W.P. No. 2346 of 2009

9th September, 2009

Constitution of India, 1950—Art. 226—Charges of misconduct—Disciplinary proceedings—Suspension—Stoppage of two increments with cumulative effect—Period of suspension also ordered to be treated as not spent on duty—Challenge thereto—Prosecuting agency finding no case to prosecute—No power to Deputy General Manager to treat period of suspension as not spent on duty under Regulations—Power of management was not more than to continue with enquiry and hand down such punishment as contemplated under Regulation 4—Manner of treatment of suspension period itself is not anyone of enumerated punishment—Orders of Labour Court set aside restricting punishment to stoppage of two increments only.

Held, that when the disciplinary authority passed an order finding him guilty, it could have been decided to terminate his services with three month's pay. The management admittedly did not inflict such a severe punishment. The question of how the suspension period were to be treated would admit of no discretion at all for as soon as the prosecuting agency say, the police, chose not to prosecute or found that there was no case for prosecution, the management was bound to treat the period of suspension as spent on duty. In this case, the department found the misconduct as established and the only thing that could be done is to look among the various penalties, the particular penalty which it could have imposed for the misconduct. Regulation 4(f) includes, inter alia, to have his increments stopped with or without cumulative effect. This is the only punishment which is possible, for the discretion which Regulation 12(3) gives to the Deputy General Manager to allow for treatment of the suspension period as spent on duty or not, is simply not available to him if clause (6) is attracted. The question of treating the suspension period as not spend on duty is not permissible in a case where the prosecuting agency chose not to prosecute at all.

(Para 9)

Further held, that the power of the Deputy General Manager to treat the period of suspension as not spent on duty is not really anyone of the punishments enumerated under Regulation 4. It shall be treated as something possible under in cases covered under Regulations 12 and 21. If by reading of Regulations 12 and 21 to the given situation, it is seen that the Deputy General Manager did not have a power to make such treatment, then the extent to which the impugned order dated 24th October, 1988 provided for such a course was without any power. The intervention regarding punishment in this case is done not with a view to reduce the punishment but on the other hand, by reading of the Regulations, I find that the Deputy General Manager did not have such a power in a case that the prosecuting agency found that there was no case to prosecute. The power of the management was no more than to continue with the enquiry and hand down such punishment as contemplated under Regulation 4. The manner of treatment of the suspension period itself is not anyone of the enumerated punishments.

(Para 10)

K. L. Arora, Advocate, *for the petitioner.*

Mahesh Dheer, Advocate, *for respondent No. 2.*

K.KANNAN, J.

(1) On certain charges of misconduct imputed against a workman in a Nationalized Bank, after constituting an enquiry, the management imposed a penalty of stoppage of two increments with cumulative effect for charge 1 and also the very same punishment for charge 2 and directed that the punishment for charges 1 and 2 shall run concurrently. The same order also provided that the employee, who was placed under suspension shall be treated as not spent on duty for any purpose whatsoever. This punishment was challenged by means of an appeal to the Appellate Authority which by the proceedings, dated 19th February, 1988 dismissed the appeal and confirmed the punishment. On a challenge after reference to the Labour Court, the Labour Court passed the impugned order stating that the Bank imposing punishment of stoppage of two increments for each charge with cumulative effect and treating the suspension period as not spent on duty was legal and justified and that the workman shall not entitled to any relief.

(2) The challenge to the award by the workman was on the ground that there had been really no misconduct that could be attributed to him but he had conceded to the charge only on an assurance that the management would impose a very lenient punishment. Even without reference to admission of the charge, there was no provision under the relevant Service Rules enabling the management to direct under the circumstances treating the suspension period as not spent on duty. The attempt of the learned counsel for the workman was also to show that the Labour Court while rejecting the reference had wrongly observed that the workman was liable to forfeit two increments for each charge as though four increments were to be cut for the alleged misconduct. The learned counsel would submit that the order of the Labour Court has been so construed by the management and hence it had applied seven incremental cuts namely, four increments for the alleged proof of two charges and three increments earned during the period of suspension from 19th April, 1985 to 29th August, 1988.

(3) The first submission on behalf of the workman by the learned counsel Shri K.L. Arora was that the charge itself was nothing substantial but it was a case avilment of priority deliveries of Bajaj Scooters against foreign exchange remittance which he obtained on two occasions, in the year 1976 and in the year 1981. According to him, the deposits had been

made through the Foreign Exchange to the Bank but cash in rupee was withdrawn for personal use but redeposited into the same account. Consequently, when the cheques had been prepared in the name of the Scooter Company with endorsements that the cheques had been issued against foreign exchange remittances, there was no element of untruth in it and the charge was wholly ill-conceived. Although there was no loss to the Government since the Foreign Exchange had been remitted into India, there was no basis in assuming that he had committed any offence. As a matter of fact, according to the learned counsel, FIR had also been lodged on the basis of a complaint given by the management but the complaint was referred, as no case having been established and that the workman was innocent.

(4) Taking the point further the attempt of the learned counsel was to show that if the criminal complaint has resulted in dropping all actions as no offence had been made, the management was in error in applying a wrong provision of the Canara Bank Service Code dealing with the disciplinary action under Chapter 11 and imposing the punishment of treating the suspension period as not spent on duty. To him, if his admission of the alleged misconduct ought to have any effect, it could extend only to the withdrawal of two increments to run concurrently for the two charges and not to have any effect during the period of suspension which was bound to be treated as duty period.

(5) The learned counsel appearing for the management however points out that the charge against the workman was not as simple as made out by the workman but it was a case of a practice of fraud in connivance with the Branch Manager by taking demand draft in favour of the scooter manufacturer with false endorsement that the foreign exchange had been deposited with the Bank, when actually cash had been deposited by the workman and the demand drafts had been purchased against cash delivered in rupees. No foreign exchange had ever come to the Bank at the instance of the workman. The Enquiry Officer as well as the Labour Court had examined this aspect at length and they have found that there had been no foreign exchange deposited at the instance of the workman. Even in the enquiry, it was not his contention that he had brought foreign exchange. On the other hand, he was trying to establish a general practice at that time with some of the officials securing demand drafts with endorsements that amounts

in foreign exchange had been deposited by utilizing deposits of even other persons. Further, no amount deposited in foreign exchange for a particular purpose, could have been even withdrawn and the amount would have been only in a fixed account against which no withdrawal was possible. I do not propose to modify the findings of either the Enquiry Officer or the Labour Court that the petitioner was guilty of a serious misconduct and not a mere minor misconduct as made to appear in the Court. There was perhaps no violation of Foreign Exchange Regulation Act that was in force at that time but it was a case of fraud of making a wrong endorsement on a draft that it was being issued against foreign exchange remittance. If the misconduct had been established the issue that would fall for consideration is only as regards the punishment.

(6) The learned counsel for the management concedes that the Labour Court was error in its observations that the stoppage of two increments with cumulative effect for each one of the charges would have the effect of stoppage of four increments. The stoppage of increments would operate only for two increments in view of the expression, 'to run concurrently'. However, according to the learned counsel for the management, the punishment was not merely with reference to stoppage of increments but also that the period when the employee was placed under suspension was to be treated as not spent on duty for **any purpose whatsoever** (emphasis supplied). The latter part of the punishment would mean that for the whole period when he had been suspended it would be as if he was not on duty and therefore he could not earn any increment during the period of suspension i.e. from 14th September, 1985 to 30th August, 1988. The issue whether such a power to treat the suspension period as period not spent on duty could be passed or not would require to be examined on the basis of the relevant service code and the regulations contained therein.

(7) My attention was brought to Regulation 8(1) which enables the Deputy General Manager of a Circle Office, among other officers, to enquire into any misconduct on the part of any employee and impose on him any punishment set out in Regulation 4 or Regulation 6 as the case may be. Regulation 9(1) prescribes procedure to be followed in conducting an enquiry against any employee for an alleged misconduct. It also states in Clause (f) that the enquiry itself need not to be held if, *(i) the misconduct is such that even if proved, the Bank does not intend to award the*

punishment of 'Discharge', or 'Dismissal' and ; (ii) the Bank has issued a showcause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct ; and (iii) the employee makes a voluntary admission of his guilt in his reply to the aforesaid showcause notice. However, if the employee concerned requests, a hearing regarding the nature of punishment, such a hearing shall be given. Regarding the nature of punishment that could be meted out, Regulation 11 stipulates that it should take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances which may exist. Regulation 12(3) states that :—

"If after enquiry, it is decided not to take any action against the employee he shall be deemed to have been on duty throughout the period of suspension and be entitled to his full salary and emoluments and all other privileges for the said period. If some punishment other than dismissal is imposed the whole or a part of the period of suspension may, at the discretion the Deputy General Manager of Circle Office/International Division/Inspection Department/ Assistant General Manager of Personnel Wing, Head Office, be treated as spent on duty and employee be given corresponding portion of his salary and emoluments."

This clause is relevant, for it states that if the punishment other than dismissal is imposed, the whole or a part of the period of suspension may, at the discretion of the Deputy General Manager or the offices mentioned there, be treated as spent on duty and be given corresponding portion of salary and emoluments. By implication, if the Manager may at the discretion direct the suspension to be treated as spent on duty, he could also direct that the period of suspension be treated not spent on duty. According to the learned counsel for the respondent management, it is this power available under Regulation 12(3) which was used by the Deputy Manager to state that the entire period of suspension shall be treated as not spent on duty.

(8) This interpretation, according to the learned counsel for the workman, ought not to be taken which in view of Regulation 21, the power did not vest in the Manager. It shall, therefore, become relevant to consider that the power to direct suspension during the pendency of the enquiry itself is not challenged before me and it could be seen to be traced to Regulation 15, Regulations 21(2)(a) & (b) provide that a Deputy General Manager of the Circle or other officers may himself take steps to prosecute the employee or get him prosecuted or direct an officer of the Bank to enquire into the misconduct and to take steps to prosecute. Clause (3) of Regulation 21 states that if the employee is convicted, he may be dismissed with effect from the date of his conviction. Regulation 21(3)(b) states that if the employee is acquitted, it shall be open to the Deputy General Manager to proceed against him under the provisions set out in the regulations. This implies that mere acquittal would not absolve the workman of being proceeded against for alleged misconduct departmentally. While a criminal conviction itself could be the basis of a charge and a punishment of removal is removal is also possible, the department may in appropriate circumstances proceed to take action independently of the criminal prosecution or its result. A proviso to the above provision states that if the employee is acquitted only giving the benefit of doubt, he may be paid such pay and allowances as the General Manager thinks fit and the period of suspension shall not be treated as period spent on duty, unless the Deputy Manager or other persons so directs. Since, the whole argument is advanced on the interpretation of this clause only, they are reproduced as under :—

“(b) the employee is acquitted it shall be open to the Deputy General Manager of Circle Office/International Division/ Inspection Department/Assistant General Manager of Personnel Wing, Head Office, to proceed against him under the provisions set out herein above regarding misconducts. If after enquiry it is decided not to continue the employee in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice ; and he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to full pay and allowances minus such subsistence allowance as he has drawn and all other privileges for the period of suspension.

Provided that if the employee be acquitted by being given the benefit of doubt, he may be paid such portion of such pay and allowances as the Deputy General Manager of Circle Office/International Division/Inspection Department/Assistant General Manager of Personnel Wing, Head Office, may deem proper and the period of his absence shall not be treated as period spent on duty unless the Deputy General Manager of Circle Office/International Division/Inspection Department/Assistant General Manager of Personnel Wing, Head Office, so directs."

The proviso which is referred to above cannot be read disjointedly ; it has to be necessarily taken as an excepted circumstance provided under the sub-clause (b). In other words, if the employee is acquitted but the department proceeds to take action independantly and if it decides not to continue the employee in service, in such an event, he would be liable for termination of service only with three months' pay any allowances in lieu of notice. In such an event, the suspension period shall also be taken only as duty period. There is no direction to do otherwise. If the acquittal however is merely by giving the benefit of doubt, even the payment of three months' salary is not assured and he will be paid only such portion of such pay as the Deputy Manager or other Officers may deem proper and the period of his absence shall be treated as period spent on duty, if the Deputy General Manager so directed. The proviso is in fact more stringent in that, one, if the acquittal is made by only giving a benefit of doubt (and not an honourable acquittal), the salary could even be less than the three month' pay and allowances and the period of absence would be treated as not spent on duty and no salary need to be given. For other types of acquittal such a say the honourable acquittal but the departmental enquiry finds him guilty of misconduct, he could be subjected to removal from service but he would always be entitled to three months' salary and allowances and also compulsory consideration of the suspension period as duty period.

(9) Clause (6) of the very same provision (in Regulation 21) has also relevance. If, after steps have been taken to prosecute the employee is not on trial within a year, the employee may be treated as if he committed the misconduct. However, if the authority which was to start the prosecution refuses to do so or comes to the conclusion that there is no case for prosecution, the employee may still be proceeded under the provisions of sub-clause (b) of clause 3 above. In such an event, he shall be deemed

to have been on duty during the period of suspension and shall be entitled to full salary and allowances. If after the enquiry, it is decided not to continue the employee, he shall be liable only to termination with three months pay and allowances in lieu of notice. Clause 6 is reproduced :—

“If after steps have been taken to prosecute the employee under clause (2) of this Regulation he is not put on trial within a year of the commission of the offence, the employee may be dealt with as if he has committed an act of misconduct as defined in this Chapter provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution, the employee may be proceeded against under the provisions of sub-clause (b) of clause (3) of this Regulation but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to full salary and allowances minus such subsistence allowance as he has drawn and to all other privileges for such period. If after enquiry it is decided not to continue the employee in service, he shall be liable only to termination with 3 months' pay and allowances in lieu of notice :

Provided that if during the pendency of the enquiry the employee is put on trial the enquiry shall be stayed after which the provisions of clause (3) of this Regulation shall apply. Provided further that if the employee is put on trial after the conclusion of the enquiry but before the passing of the order thereon, the passing of the order shall be stayed after which the provisions of clause (3) of this Regulation shall apply :

Provided further that if the employee is put on trial the conclusion of the enquiry and order thereon an appeal under Regulation 20, if one is pending, shall be stayed after which the provisions of clause (3) of this Regulation shall apply.”

It is this clause which is directly attracted in a case where a complaint against offence is given to a prosecuting agency and the authority comes to a conclusion that there is no case for prosecution. All that could be done is to proceed against the employee under sub-clause (b) of clause (3) which might include a situation of finding him guilty and a decision taken

to terminate his services as well. If the decision is taken to terminate the services, he shall be entitled to three month's pay and allowance in lieu of notice but the period of suspension shall always be taken to be spent on duty. The difference between Regulation 21(3)(b) and Regulation 21(6) is that if he employee is acquitted and a decision is taken to proceed against the person departmentally and still further if after the enquiry it is decided not to continue the employee in service, he shall be entitled only to three months' pay and allowances and he shall also have the benefit of treating the suspension period as being on duty. However, if sub-clause (6) operates, the first thing is that period of suspension ought to be treated as period spent on duty and shall also be entitled to full salary and allowances minus such subsistence allowance as he has drawn. After the enquiry, if it is decided not to continue, he shall be liable only to termination with three months' notice, pay and allowance in lieu thereof. Clause (3)(b) and clause (6) employed two different languages in the manner of treatment of the period to suspension. As regards the case of an employee who is acquitted, the first expression is the entitlement of the management to proceed against the employee under the regulations and after the enquiry if it is decided not to continue in service, pay him three months' salary and treat the period of suspension as spent on duty. However, if the prosecuting agency done not prosecute or comes to a conclusion that there is no case for prosecution the reference to how the period of suspension is to be treated is preceded in its reference under this regulation to even the result of the enquiry. Consequently, if the prosecuting agency had decided not to prosecute on the ground that there was no case, it shall first be taken that the period of suspension hitherto undergone should be treated as duty period. It may then consider the result of the enquiry. If after the enquiry the misconduct is proved and it is decided not to continue the employee, he shall only be liable to termination with three months' pay and allowances. At that stage, the question of treating the suspension period as not spent on duty is not available. In this case, when the disciplinary authority passed an order finding him guilty, it could have decided to terminate his services with three months' pay. The management admittedly did not inflict such a severe punishment. The question of how the suspension period were to be treated would admit of no discretion at all for as soon as the prosecuting agency say, the police, chose not to prosecute or found that there was not case for prosecution, the management was bound to treat the period of suspension as spent on duty. In this case, the department found the misconduct as established and the only thing that could be done is to look among the

various penalties, the particular penalty which it could have imposed for the misconduct. Regulation 4(f) includes, *inter alia*, to have his increments stopped with or without cumulative effect. This is the only punishment which is possible, for the discretion which Regulation 12(3) gives to the Deputy General Manager to allow for treatment of the suspension period as spent on duty or not, is simply not available to him if clause (6) is attracted. The question of treating the suspension period as not spent on duty is not permissible in a case where the prosecuting agency chose not to prosecute at all.

(10) The power of the Deputy General Manager to treat the period of suspension as not spent on duty is not really anyone of the punishments enumerated under Regulation 4. It shall be treated as something possible under in cases covered under Regulations 12 and 21. If by reading of Regulation 12 and 21 to the given situation, it is seen that the Deputy General Manager did not have a power to make such treatment, then the extent to which the impugned order dated 24th October, 1988 provided for such a course was without any power. The intervention regarding punishment in this case is done not with a view to reduce the punishment but on the other hand, by reading of the Regulation, I find that the Deputy General Manager did not have such a power in a case that the prosecuting agency found that there was no case to prosecute. The power of the management was no more than to continue with the enquiry and hand-down such punishment as contemplated under Regulation 4. The manner of treatment of the suspension period itself is not anyone of the enumerated punishments.

(11) Under the circumstances, the Labour Court that toes the line of the punishment accorded by the disciplinary authority and the Appellate Authority are set aside. The punishment shall be restricted to stoppage of two increments only. The management is bound to cast away the stoppage of increments made beyond the two increments and accord to the workman the payments that are due to him within a period of two months from the date of receipt of the copy of this order. The writ petition is allowed, with costs assessed at Rs. 5,000.

R.N.R.