

Before Surya Kant, J.

RANJIT SINGH,—Petitioner

versus

FCI AND OTHERS,—Respondents

CWP No. 165 of 2010

6th December, 2010

Constitution of India, 1950—Art. 226—Central Civil Services (Conduct) Rules, 1964—Rl. 11—FCI (Staff) Regulations, 1971—Reg. 54—Allegations against Manager and another of misappropriation and failing to maintain absolute integrity and devotion to duty—Reversion of Manager (D) to post of AG-I (D) in lowest scale of pay AG-I(D) till retirement & recovery of amount of damage—Recovery of loss—A minor penalty—Penalties imposed on petitioner is an amalgam of ‘major’ and ‘minor’ penalties—Petition allowed partly while setting aside order of imposition of minor penalty of recovery.

Held, that in the context of Regulation 54 of the 1971 Regulations, the penalties imposed on the petitioner is an amalgam of ‘major’ and ‘minor’ penalties. His reduction to the lower post is a ‘major’ penalty [clause (vi)]; while reduction to the lowest stage in the time scale with a direction that he will not earn increments till retirement is another ‘major’ penalty [Clause (v)]; the recovery of part of the pecuniary loss caused by the petitioner and his co-delinquent employee is a ‘minor’ penalty [Clause (iii)].

(Para 21)

Further held, that the disciplinary authority acted illegally and without jurisdiction in imposing both ‘major’ and ‘minor’ penalties on the petitioner by the same order. Since the charges levelled against the petitioner were of grave nature and a regular departmental enquiry was held, it is obvious that the disciplinary authority never intended to impose ‘minor’ penalty on him.

(Para 22)

P. S. Sekhon, Advocate, *for the petitioner*;

Rajesh Garg, Advocate, *for the respondents*.

SURYA KANT J.

(1) The petitioner seeks quashing of the order dated 1st/2nd November, 2007 (Annexure P3) whereby the penalty of "*reversion to the post of AG-I(D) in the lowest scale of pay of AG-I(D) till his retirement and recovery of Rs. 1,50,000*" has been imposed upon him. He also assails the order dated 27th May, 2009 (Annexure P4) dismissing his appeal against the above-stated order of punishment.

(2) Brief exordium of the facts are that the petitioner while working as a Manager (D) in the Food Corporation of India was served with a charge-sheet dated 14th August, 2006, *inter alia*, alleging that he along with one Ram Singh AG-I(D) and Lila Dhar AG-II(D) while working at FSI-Daridkot during the year 2004-05 and 2005-06 failed to maintain "*absolute integrity and devotion to duty*" and "*in connivance with each other misappropriated 1396-82-242 quintals rice Grade-A valuing Rs. 11,59,363.00.*"

(3) Pursuant to the report dated 31st May, 2007 (Annexure P1) submitted by the enquiry officer holding that the charges levelled against him stood proved, the petitioner was served with a copy of the enquiry report and after considering his explanation/objections, the disciplinary authority *vide* the impugned order dated 1st/2nd November, 2007 (Annexure P3) reverted him to the post of AG-I(D) in the lowest pay-scale of the said post till his retirement with a further direction to recover 1,50,000.00 from him. The petitioner preferred a departmental appeal which has also been turned down by the Appellate Authority *vide* order dated 27th May, 2009 (Annexure P4).

(4) The aggrieved petitioner has approached this Court.

(5) The petitioner has meanwhile retired from service on attaining the age of superannuation. The petitioner has though made a feeble attempt to seek exoneration on merits, however, having regard to the scope of interference by a writ court in the findings of facts returned in a domestic enquiry, no serious attempt could be made by his learned counsel to question the factual findings.

(6) Learned counsel for the petitioner, however, vehemently urged that the impugned order (s) have led to the imposition of three penalties on the petitioner comprising major as well as minor in nature whereas the Regulations permit the Disciplinary Authority to impose only one penalty. He relies upon the Hon'ble Supreme Court decision in **Union of India & Anr. versus SC Parashar (1)** to support his contention.

(7) Counsel for the respondent-Corporation, on the other hand, urges that 'recovery of loss' caused to the Employer coupled with other penalty does not amount to 'double jeopardy' as ruled by the Hon'ble Supreme Court in **Depot Manager, APSRT Corporation versus N. Ramulu and another (2)**. He points out that the above-cited decision was not noticed by their Lordships in the later decision in **SC Parashar's** case (supra). He urged that the Corporation has rightly adjusted the recoverable amount against the petitioner's Gratuity and such a deduction is permissible in law as ruled by the Hon'ble Supreme Court in **Secretary ONGC Ltd. and another versus VU Warrior (3)**.

(8) Having heard learned counsel for the parties at some length, I do not find any apparent conflict in the two decisions rendered in **N. Ramulu's** and the **SC Parashar's** cases.

(9) In **N. Ramulu's** (supra), the delinquent driver was subjected to disciplinary action on the allegation of rash and negligent driving and was ordered to be 'removed' from service besides 'recovery' of Rs. 500 towards the damage caused by him to the Corporation's bus. The delinquent driver raised an Industrial Dispute and the Labour Court though held that the Management had established negligence on the part of the delinquent driver yet it set aside the order of removal from service after concluding that he was doubly punished. The Labour Court award was partially modified by the learned Single Judge of the High Court at the behest of the Corporation who directed the reinstatement of the delinquent driver with 50% backwages only and the amount of damages awarded to the Management was ordered to be deducted from the arrears of pay. It appears that the Management as well as the delinquent driver took up the

(1) (2006) 6 S.C.C. 167

(2) (1997) 11 S.C.C. 319

(3) (2005) 5 S.C.C. 245

matter before the Division Bench who modified the order of the learned Single Judge and held the delinquent driver entitled for full backwages. which order was further challenged before the Hon`ble Supreme Court. Setting aside the Division Bench order and after minutely examining the Service Regulations, it was held that :—

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.....*In other words, the only order that survived was the reimbursement of the loss occasioned to the appellant on account of the act of delinquent driver. It is true that that has been shown to be a penalty under Regulation 8(v) of the Regulations. But the penalty for the act of negligence was removal from service. The Explanation to Regulation 8, however enumerates various penalties which are not to be treated as penalties and one of them is as clause (5) thereof says: "The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders." This clause clearly says that the penalty of recovering loss caused to the Management under Regulation (1)(v) shall not preclude the management from imposing any other penalty. The High Court was, therefore, wrong in thinking that this was a case of double jeopardy. We think that the order passed by the learned Single Judge was eminently just and fair and Division Bench of the High Court should not have interfered with that order."*

(Emphasis applied)

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(10) It may be seen that there existed an express provision in the Service Regulations which enabled the Competent Authority to deduct the amount of damage from the delinquent employee independent of its power to impose another penalty on the employee.

(11) In **SC Parashar's** case, the delinquent Officer was a Deputy Commandant in CRPF who was charge-sheeted on the allegations that he unauthorisedly misused a new Gypsy ; caused serious accident of the said vehicle in which the driver of the Gypsy suffered serious and yet he left the vehicle unattended as well as the injured driver in a unconscious state and also did not inform the Headquarters about the accident. The disciplinary proceedings were conducted in accordance with the Central Civil Services (Conduct) Rules, 1964 and finally penalty of (i) reduction to minimum of the time scale of pay for a period of 3 years with commulative effect including loss of seniority and ; (iii) penalty of 25% of the loss of Rs. 74,341.89 incurred to the Government due to damage to the Gypsy i.e. Rs. 18,585.47, was imposed. Having held that the 'penalty' was imposed in violation of the 1964 Rules as only a minor penalty could be imposed on the delinquent officer, the High Court restored the seniority of the delinquent officer from the date his junior was promoted, with all the consequential benefits. On an appeal by the Union of India, the Supreme Court considered the question as to whether in terms of the provisions of 1964 Rules, the penalty imposed on the delinquent officer was permissible in law or not ?

(12) Rule 11 of the CCS 1964 Rules provides the following penalties:--

"PENALTIES

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant namely:

- (i) Censures ;*
- (ii) Withholding of promotion ;*
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order ;*
- (iii)(a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.*

(vi) provided for in clause (iii)(a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."

(13) With reference to the nature of 'penalties' imposed on the delinquent officer purportedly under Rule 11 reproduced above, the Hon'ble Supreme held as follows :—

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.....The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties : (1) reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect ; (2) loss of seniority ; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs. 74,341.81, i.e., Rs. 18,585.47 on account of damage to the Gypsy in 18 (eighteen) equal monthly instalments. Whereas reduction of time-scale of pay with cumulative effect is a major penalty within the meaning of clause (v) of the Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clause (iii) and (iii)(a) thereof. The Disciplinary Authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor penalties by the same order. Such a course of action could not have been taken in law."

(Emphasis applied)

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(14). Having taken note of the fact that the disciplinary authority never 'intended' to impose a 'minor penalty' on the delinquent officer, the Apex Court modified the order passed by the High Court and directed as follows :—

"..... We, therefore, in modification of the order of the High Court that the punishment which could have been imposed upon the respondent herein was reduction of pay for the period of three years with cumulative effect and, thus, if his case is considered for promotion after the said period, no further direction is required to be issued. We set aside the direction of the High Court to the effect :—

"The petitioner shall be entitled to the seniority on the basis of DPC which was held on 7th April, 1987 when his immediate junior was promoted to the rank of Second-in Command. The petitioner shall also be entitled to all consequential benefits which stood denied due to punishment of loss of seniority".

and direct that the punishment shall be reduction of pay to the minimum of the time scale of pay for a period of three years with cumulative effect."

(15) As may be seen from Rule 11 of the CCS 1964 Rules "Recovery from his pay of the whole or part of any pecuniary loss caused by an employee" is one of the prescribed penalty (minor), unlike in case of **N. Ramulu's** case (supra), where the Rules enabled the disciplinary authority to recover the loss of damage caused by the delinquent employee independent of the 'penalty' which may be imposed on the basis of proven misconduct. Both the decisions are, thus, founded upon the construction of the statutory Rules which was the subject matter of consideration and do not contradict each other.

(16) Adverting to the case in hand, it is indeed not in dispute that the disciplinary action against the petitioner was initiated under the FCI (Staff) Regulations, 1971. Regulation 54 thereof prescribes the following penalties :—

"54. Penalties.

Notwithstanding anything contained in any other regulation, and without prejudice to such action to which an employee

may become liable under any other regulation or law for the time being in force, the following penalties may (for good and sufficient reasons and as hereinafter provided) be imposed on any employees of the Corporation.

MINOR PENALTIES :

- (i) Censure.
- (ii) Withholding of his promotion :
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him, to the Corporation by negligence or breach of orders.
- (iii)(a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely effecting his pension.
- (v) withholding of increments of pay.

MAJOR PENALTIES :

- (v) *Save provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period of reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.*
- (vi) *Reduction to a lower time-scales of pay or post which shall ordinarily be a bar to the promotion of the employee to the time scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of Corporation was reduced and his seniority and pay on such restoration to that post.*
- (vii) *Compulsory retirement :*
- (vii) *Removal from service which shall not be disqualification for future. Employment under the Corporation.*
- (ix) *Dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation."*

(17) The Explanation to Regulation 54 excludes certain actions from the ambit of "penalties" within the meaning of these Regulation to the extent of (i) discharge of an employee for his failure to pass an examination; (ii) compulsory retirement of an employee under the Rules; (iii) termination or reversion to a lower category of an employee appointed on probation; (iv) discharge of an employee on retrenchment for want of vacancy; (v) termination of services as per the contract or agreement; (vi) reversion of an employee for want of vacancy; and (vii) replacement of the services of an employee who has been borrowed from other organisation.

(18) The Exclusion clause, thus, does not say that the 'pecuniary loss' caused by an employee to the Corporation can be recovered in addition to the imposition of one of the penalty defined under Regulation 54. The fact of the matter is that the penalties contained in Regulation 54 are *pari materia* to those included in Rule 11 of CCS Rules, 1964.

(19) Since the provision considered in **N. Ramulu's** case (supra) had no similarity with the provisions amalgamated in **SC Parashar's** case (supra) and the Regulations under consideration in the instant case have a very close proximity with those interpreted in **SC Parashar's** case (supra), the *ratio decidendi* of the later decision will hold the field and need to be followed, if so required.

(20) This is an admitted fact that by virtue of the impugned orders following three penalties have been imposed on the petitioner :—

- (1) His rank has been reduced from Manager (D) to AG-I(D);
- (2) He has been placed in the lowest scale of pay as AG-I(D) till his retirement;
- (3) Recovery of Rs. 1,50,000 has also been imposed on him.

(21) In the context of Regulation 54 of the 1971 Regulations, the penalties imposed on the petitioner is an amalgam of 'major' and 'minor' penalties. His reduction to the lower post is a 'major' penalty [clause (vi)]; while reduction to the lowest stage in the time scale with a direction that he will not earn increments till retirement is another 'major' penalty [Clause (v)]; the recovery of part of the pecuniary loss caused by the petitioner and his co-delinquent employee is a 'minor' penalty [Clause (iii)].

(22) Following the *dictum in SC Parashar's* case (supra), there appears to be no escape but to hold that the disciplinary authority acted illegally and without jurisdiction in imposing both 'major' and 'minor' penalties on the petitioner by the same order. Since the charges levelled against the petitioner were of grave nature and a regular departmental enquiry was held, it is obvious that the disciplinary authority never intended to impose 'minor' penalty on him.

(23) As a result of the above discussion, the writ petition is allowed in part ; the impugned punishment order to the extent of imposition of minor penalty of recovery of Rs. 1,50,000 from the petitioner is hereby set aside while the impugned order (s) imposing two major penalties are upheld. Since the recovery amount has already been deducted from the Gratuity at the time of the petitioner's retirement, the respondents are directed to refund the recovered amount to him within a period of three months from the date of receipt of a certified copy of this order failing which the petitioner shall be entitled to interest @ 7% p.a. on the said amount.

(24) Since the minor penalty of recovery of Rs. 1,50,000 imposed on the petitioner has been set aside, the allied question as to whether or not such recovery can be effected from the Gratuity need not be gone into by this Court.

(25) Ordered accordingly. **Dasti.**

R.N.R.