State of Madhya Pradesh

Vs

Ram Ratan

Civil Appeal No. 422 of 1980

(CJI Y. V. Chanderachud, Syed M. Fazal Ali, D. A. Desai JJ)

09.05.1980

JUDGMENT

DESAI, J. –

1. Respondent Ram Ratan was employed as a Forest Guard in the Forest Department of Madhya Pradesh Government. He was served with a charge-sheet dated March 6, 1969, in which he was accused of misconduct. Respondent refuted the charges. A departmental enquiry was held by the Divisional Forest Officer, Mr. Malhotra, in respect of the charges framed against the respondent. Charge of misconduct was held proved whereupon the punishing authority served the respondent with a second show cause notice dated February 12, 1970, as contemplated by Article 311(2) of the Constitution as it stood prior to its amendment by the Constitution (Forty-second Amendment) Act, 1976. The dispute in this appeal centres around the construction of this notice No. E/1/2053 dated February 12, 1970, and its relevant portion may be extracted :

> ... the inquiry Officer has concluded in the report that he is guilty of the above-mentioned charges. Hence as a result of the above said charges having been established, why you shall not be imposed major penalty under the M.P. Civil Services Act ? ...

Why you will not be removed from the State service by imposing the above said punishment ?

2. After the respondent replied to the notice the disciplinary-cum-punishing authority imposed the penalty of compulsory retirement on the respondent. The respondent questioned the validity and correctness of the punishment in Civil Suit No. 227-A/73 filed by him in the court of the Civil Judge, Civil Court, Class II, Sabalgarh. The trial Court decreed the suit and set aside the order imposing the major penalty of compulsory retirement and granted a declaration that respondent continues in service. On appeal by the State of Madhya Pradesh, the Second Additional District Judge, Morena, set aside the decree of the trial Court and dismissed the suit of the respondent. On appeal by the respondent to the High Court a learned Single Judge of the Madhya Pradesh High Court allowed the appeal of respondent and set aside the decree made by the District Judge and restored the one passed by the trial Court with the result that a declaration was granted that the respondent would continue in service till the date of his superannuation. Hence this appeal by special leave by the State of Madhya Pradesh.

3. The High Court was of the opinion that strict compliance with Article 311(2) of the Constitution along with Rule 15(4)(i)(b) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 ("1966 Rules" for short), must be insisted upon because it provides a safeguard against

arbitrary removal from service of government servants. Consistent with this approach and drawing substance from the decision of this Court in Union of India v. K. Rajappa Menon ((1969) 2 SCR 343 : AIR 1970 SC 748 : (1970) 1 SCJ 534) it was held that unless the disciplinary or competent authority tentatively determines to inflict a particular penalty and specifies the particular penalty to be inflicted on the delinquent government servant, the show cause notice cannot be sustained without such a particular penalty being specified and the final order cannot be sustained unless the specified and no other penalty is imposed.

4. Article 311(2) as it stood at the relevant time prior to its amendment in 1976 imposed a constitutional obligation upon the punishing authority to serve a second show cause notice where it is proposed after a departmental inquiry to impose on the delinquent government servant any of the penalties referred to in Article 311 so as to give a reasonable opportunity of making representation on the penalty proposed. Rule 15(4)(i)(b) of the 1966 Rules prescribes procedure to be followed by the disciplinary authority before imposing punishment to the effect that the concerned authority should give a notice setting the penalty proposed to be imposed on the concerned government servant calling upon him to submit within 15 days of the receipt of notice or such further time not exceeding 15 days, as may be allowed, such representation as he may wish to make on the proposed penalty penalty on the basis of the evidence adduced during the inquiry held under Rule 14. It would thus appear that the punishing authority has in the second show cause notice to specify the punishment which it tentatively or provisionally decides upon to impose looking to the gravity of the charge which is held proved. At that stage the decision of the punishing authority is a tentative decision and in the very nature of things it must be so because an opportunity has to be given to the delinquent government servant to make a representation on the nature of penalty. This would imply that if the delinquent officer in his representation makes out a case for a lesser punishment the disciplinary authority would keep an open mind and after applying its mind to the representation made by the delinquent government servant, the authority may either confirm its earlier tentative decision or it would be open to it to award a lesser penalty then the one tentatively decided.

5. Principle of natural justice and fair play implicit in Article 311(2) and Rule 15(4)(i)(b) would require that the disciplinary authority has to take into consideration the representation made by the delinquent government servant in response to the notice which is a constitutional obligation, and if the delinquent officer is in a position to persuade by his representation, to so modulate the punishment as would accord with the gravity of the misconduct and other mitigating or extenuating circumstances all of which may enter into the verdict of deciding upon the penalty, and consequently the disciplinary authority would be free to impose a lesser penalty than the one proposed in the second notice. This is the constitutional scheme.

6. If the view that the High Court has taken is to be accepted that the disciplinary authority must tentatively decide upon the penalty and specify the penalty in the second show cause notice and after taking into consideration the representation made by the delinquent government servant in response to the notice it can only confirm the tentative decision but cannot award a lesser punishment, the exercise of giving second show cause notice becomes self-defeating and giving of the notice inviting the representation on the question of penalty would be an exercise in futility. Such an approach would render a tentative decision as final and the rest being an empty formality. Such could not be the underlying object in enacting a constitutional mandate for the protection of government servants.

7. In service jurisprudence for different types of misconduct various penalties prescribed in service rules. 1966 Rules prescribe as many as 9 penalties which can be awarded for good and sufficient

reasons. In the list of penalties the first three are styled as "minor penalties" and the remaining six are styled as "major penalties". Compulsory retirement is one of the major penalties. Similarly, removal from service which shall not be a disqualification for future appointment in government service and dismissal from service which shall ordinarily be a disqualification for future employment under the government are the other two major penalties. The disciplinary authority keeping in view the gravity of misconduct committed by the government servant will tentatively determine the penalty to be imposed upon the delinquent government servant. Degree of seriousness of misconduct will ordinarily determine the penalty keeping in view the degree of harm that each penalty can inflict upon the government servant. Before serving the second show cause notice the disciplinary authority will determine tentatively the penalty keeping in view the seriousness of misconduct. But this is a tentative decision. On receipt of representation in response to notice, the disciplinary authority will apply its mind to it, take into account any extenuating or mitigating circumstances pleaded in the representation and finally determine what should be the penalty that would be commensurate with the circumstances of the case. Now, if a major penalty was tentatively decided upon and a lesser or minor penalty cannot be awarded on the view taken by the High Court because this was not the specified penalty, the government servant to whom a notice proposing major penalty is served would run the risk of being awarded major penalty because it would not be open to award a lesser or a minor penalty than the one specified in the show cause notice. Such a view runs counter to the principle of penology. In criminal and quasi-criminal jurisprudence where the penalties are prescribed it is implicit thereunder that a major penalty would comprehend within its fold the minor penalty. If a major penalty is proposed looking to the circumstances of the case, at that stage, after taking into consideration the representation bearing on the subject and having an impact on the question of penalty a minor penalty can always be awarded. In penal statute maximum sentence for each offence is provided but the matter is within the discretion of the judicial officer awarding sentence to award such sentence within the ceiling prescribed by law as would be commensurate with the gravity of the offence and the surrounding circumstances except where minimum sentences is prescribed and court's discretion is by legislation fettered. This is so obvious that no authority is needed for it but if one is needed, a Constitution Bench of this Court in Hukum Chand Malhotra v. Union of India (1959 Supp 1 SCR 892 : AIR 1959 SC 536 : 1959 SCJ 419), dealt with this very aspect. Relevant portion of the second show cause notice which was before this Court may be extracted :

> On a careful consideration of the report, and in particular of the conclusions reached by the Enquiry Officer in respect of the charges framed against you the President is provisionally of opinion that a major penalty, viz., dismissal, removal or reduction should be enforced on you ...

Ultimately, after taking into consideration the representation made by the concerned government servant penalty of removal from service was imposed upon him. It was contended before this Court that in view of the decision of the Privy Council in High Commissioner for India and High Commissioner Pakistan v. I. M. Lall ((1948) 75 IA 225 : AIR 1948 PC 121) and Khem Chand v. Union of India (1958 SCR 1080 : AIR 1958 SC (1959) 1 LLJ 167), it is well settled that the punishing authority must either specify the "actual punishment" or "particular punishment" in the second show cause notice otherwise the notice would be bad. Repelling this contention this Court observed as under :

> Let us examine a little more carefully what consequences will follow if Article 311(2) requires in every case that the "exact" or "actual" punishment to be inflicted on the government servant concerned must be mentioned in the show cause notice

> issued at the second stage. It is obvious, and Article 311(2) expressly says so, that the purpose of the issue of a show cause notice at the second stage is to give the government servant concerned a reasonable opportunity of showing cause why the proposed punishment should not be inflicted on him; for example, if the proposed punishment is dismissal, it is open to the government servant concerned to say in his representation that even though the charges have been proved against him, he does not merit the extreme penalty of dismissal but merits a lesser punishment, such as removal or reduction in rank. If it is obligatory on the punishing authority to state in the show cause notice at the second stage the "exact" or "particular" punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the government servant concerned. This will be against the very purpose for which the second show cause notice was issued.
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> ... If in the present case the show cause notice had merely stated the punishment of dismissal without mentioning the other two punishments, it would still be open to the punishing authority to impose any of the two lesser punishments of removal or reduction in rank and no grievance could have been made either about the show cause notice or the actual punishment imposed.

8. The High Court in support of its decision has relied upon K. Rajappa Menon case ((1969) 2 SCR 343 : AIR 1970 SC 748 : (1970) 1 SCJ 534). The High Court appears to be of the view that the decision in Rajappa Menon case ((1969) 2 SCR 343 : AIR 1970 SC 748 : (1970) 1 SCJ 534) is an authority for the proposition that if the punishing authority fails to specify any particular punishment to be imposed on the government servant the show cause notice cannot be sustained without such a particular punishment being specified. Such was not the cases before this Court in Rajappa Menon case ((1969) 2 SCR 343 : AIR 1970 SC 748 : (1970) 1 SCJ 534). The contention canvassed before this Court that if disciplinary authority specifies the penalty tentatively decided upon by it, it would indicate that the authority has finally made up its mind and, therefore, the notice would be bad. This contention was in terms negatived relying upon Khem Chand case ((1948) 75 IA 225 : AIR 1948 PC 121) and it was observed that the procedure which is to be followed under Article 311(2) of the Constitution of affording a reasonable opportunity includes giving of two notices, one at the enquiry stage and the other when the competent authority as a result of the enquiry tentatively determines to inflict a particular punishment. It is quite obvious that unless the disciplinary or the competent authority arrives at some tentative decision it will not be in a position to determine what particular punishment to inflict and a second show cause notice cannot be issued without such a tentative determination. This is of no assistance in the case under discussion.

9. It is thus incontrovertible that if any particular penalty is specified as tentatively proposed in the second show cause notice the disciplinary authority after taking into consideration the representation made by the delinquent government servant can award that penalty or any lesser penalty and in so doing Article 311(2) will not be violated. In fact, this leave open a discretion to the punishing authority which accords with reason, fair play and justice.

10. The fact situation in this appeal is that in the notice dated February 12, 1970, the disciplinary authority stated that it was tentatively proposed to impose major penalty, viz., removal from service. Original notice is in Hindi language. Its translation in English language is placed on record. It clearly transpires from the notice that the punishing authority tentatively proposed to impose a major penalty of removal from service. Ultimately, after taking into consideration the representation

of the respondent the disciplinary authority imposed penalty of compulsory retirement. In relation to penalty of removal from service the penalty of compulsory retirement inflicts less harm and, therefore, it is a lesser penalty compared to removal from service. Compulsory retirement results in loss of service for certain years depending upon the date of compulsory retirement and the normal age of superannuation, but the terminal benefits are assured. In removal from service there is a further disqualification which may have some repercussion on terminal benefits. It was not disputed before us that in comparision to removal from service compulsory retirement is a lesser penalty. Therefore, when in the second show cause notice major penalty of removal from service was tentatively proposed, it did comprehend within its fold every other minor penalty which can be imposed on the delinquent government servant. That having been done, no exception can be taken to it.

11. The High Court was accordingly in error in holding that the second show causes notice was invalid and on this ground allowing the second appeal of the respondent and decreasing his suit. Accordingly this appeal will have to be allowed.

12. The next question is, what order we should make in this appeal. If the appeal is allowed, naturally the suit of the respondent will stand dismissed. The respondent was a Forest Guard, a petty servant, serving in the Forest Department of the State. The charge against him was that he removed some forest wood worth about Rs. 310.12p. He has been in this litigation for the last 10 years. He won in the trial Court and in the High Court. This appeal was preferred by the State for a decision on the question of law which may affect other cases. Allowing the State appeal would clarify the legal position and that would serve the purpose of the State in preferring the appeal.

13. A welfare State would hardly be interested in pursuing its employee serving in the lower echelons of service as would inflict unbearable burden on him. Further, if the order made by the High Court is not interfered with, the respondent would have to be reinstated in service but by the passage of time he would have by now retired on superannuation also and accordingly he would be entitled to his salary for the period commencing from the date of his compulsory retirement to the date of his normal retirement on superannuation. Since we are exercising our extraordinary jurisdiction under Article 136 of the Constitution, we are not bound to set aside the order of the High Court directing reinstatement of the respondent but as he would now only be entitled to his back wages, we quantify the same at Rs. 10,000 and direct that the State shall pay the same with costs quantified at Rs. 1000 to the respondent. Such an approach accords with the demands of social justice, reason and fair play. (see Punjab Beverages Pvt. Ltd. v. Suresh Chand ((1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165)).

14. The State shall pay the amount herein directed to be paid within two months from today and the respondent shall be entitled to his terminal benefits from the date of his retirement on superannuation.

15. This appeal stands disposed of accordingly.

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