

Kulwant Singh Gill

Vs

State of Punjab

Civil Appeal No. 2960 of 1987

(CJI Sabyasachi Kukharji, B. C. Ray, L. M. Sharma, P. B. Sawant, K. Ramaswamy JJ)

(M. H. Kania, K. Ramaswamy, K. N. Saikia JJ)

13.09.1990

JUDGMENT

K. RAMASWAMY, J. –

1. This appeal by special leave is against the judgment and decree dated February 18, 1986 in Second Appeal No 3204 of 1984 of Punjab and Haryana High Court at Chandigarh. The appellant/plaintiff while he was working as Inspector, Food and Supplies at Algaon, the Director, Food and Supplies, Punjab on June 10, 1976 visited the place and found him to have purchased sub-standard wheat landing him in receiving a charge-sheet on June 29, 1976 for his misconduct. The appellant had submitted his explanation. Rules 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for short 'the Rules' envisage the procedure to conduct an enquiry into the misconduct. But the disciplinary authority, on consideration of the explanation found that the appellant committed a minor misconduct. Accordingly by order dated April 12, 1977 directed stoppage of two increments with cumulative effect. The appellant laid the suit for a declaration that the offending order amounts to major penalty and imposition thereof without conducting enquiry as enjoined under Rules 8 and 9 is illegal. On contest by the respondent State, the trial court held that the impugned order amounts to major penalty and granted a decree invalidating the order. On appeal, though the District Court confirmed, on further second appeal the High Court held it to be minor penalty within the meaning of Rule 5(iv) of the Rules obviating the need to make regular enquiry. Assailing the legality thereof this appeal has been filed.

2. The only question that needs decision is whether stoppage of two increments with cumulative effect is a major penalty ? Admittedly Rules 8 and 9 envisage conducting an enquiry into misconduct after giving an opportunity to the delinquent employee in the manner prescribed therein and on establishing the charge to pass an appropriate order imposing a major penalty prescribed in either clauses (v) to (ix) or minor penalty under clauses (i) to (iv) of Rule 5 of the Rules. If it is a minor penalty indisputably the need to conduct regular enquiry has been dispensed with. Rule 5 prescribes the penalties thus :

"5. Penalties. - The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a government employee, namely :

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(i) censure;

(ii) withholding of his promotions;

(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 orders;

(iv) withholding of increments of pay;

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(v) 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 employee 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;

(vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the government employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the government employee was reduced and his seniority and pay on such restoration that grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the government."

3. Clauses (vi) to (ix) are not relevant to the facts of the case.

4. Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates 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 employee shall earn increments of pay during the period of such reductions 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. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v) ? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is

reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in *Sarwan Singh v. State of Punjab* [ILR (1985) 2 P & H 193 : (1985) 1 SLJ 513 (P & H)], P.C. Jain, A.C.J. speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in Rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the results will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, (sic stoppage) of earning future increments in the time scale of pay even permanently without expressly stating so. This preposterous consequence cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.

5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de hors the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the department as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the department and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf to be placed before the disciplinary authority who then is to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing

penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The trial court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under Rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs.

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