

Commissioner of Rural Development and Others

Vs

A. S. Jagannathan

Civil Appeal No. 4617 of 1997

(Sujata V. Manohar, S. R. Babu JJ)

06.08.1998

ORDER

1. The respondent was working as a Block Level Accountant in 1986 in Valangaiman. He was transferred to Kumbakonam Block and was relieved in the afternoon of 8-7-1986.
2. During the period when the respondent was working as a Block Level Accountant at Valangaiman, it was found that there was shortage in the stocks of wheat and rice. There was a loss of 30 metric tons of wheat and 3 metric tons of rice valued at Rs. 51,300. Thereupon, initially the Block Development Officer issued orders for recovery of the amount from the respondent. The District Collector set aside the order of the Block Development Officer and directed him to pass appropriate orders after holding a proper enquiry. On 18-9-1988, the respondent was placed under suspension pending enquiry. He was served with a charge-sheet containing three charges. The first charge was related to his making unauthorised entries of deduction in the stock register on various dates relating to different quantities of foodgrains as specified in the charge. The second charge was that he was responsible for a large-scale misappropriation of foodstock in his custody and the third charge was that by his above action, he had caused loss to the Government. After hearing the respondent and examining the witness, the enquiry officer submitted a report dated 13-11-1989 holding the respondent guilty of the charges. The respondent was thereupon given a further hearing by the District Collector while considering the enquiry officer's report. The respondent was also given an opportunity to make a representation against the findings in the enquiry officer's report. After examining his representation, the disciplinary authority, namely, the District Collector, passed a final order dated 4-6-1991. The disciplinary authority, after examining the report of the enquiry officer and considering the respondent's representation, has come to the conclusion that various quantities of wheat and rice were deducted from the stock register by the respondent by making entries in his own handwriting unauthorisedly on various dates specified therein and stating in his own handwriting that damage was caused due to rats and heavy rain. This defence of the respondent has been disbelieved by the enquiry officer as well as by the disciplinary authority. The disciplinary authority has held that all the charges have been proved against the respondent.
3. Thereafter in his order, the disciplinary authority has observed that as the delinquent is due to retire very soon from service on 30-6-1991, a lenient view is taken and a stoppage of increments for two years without cumulative effect is ordered for gross negligence and unauthorised entries in the stock register. The disciplinary authority has also directed that the loss of Rs. 51,300 which has been caused by misappropriation of the stock of foodgrains be recovered in one lump sum from the respondent before his retirement on superannuation failing which the entire amount will be recovered from his retirement benefits. The period of suspension was also directed to be treated as service period but without pay.

4. The appeal of the respondent was dismissed. The respondent retired on 30-6-1991. He, thereafter, in December 1992, filled an application before the Tamil Nadu Administrative Tribunal challenging the above orders. The Tribunal set aside the order of the disciplinary authority dated 4-6-1991 insofar as it inflicted the punishment of stoppage of two increments without cumulative effect. The Tribunal also directed the appellant to pay the respondent's salary for the period of suspension. It thus modified the punishment imposed.

5. The Tribunal clearly had no jurisdiction to interfere with the punishment imposed by the disciplinary authority under the order of 4-6-1991. The Tribunal has purported to pass the order on the ground that three punishments cannot be imposed for the same charge. Now, the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules Prescribe various penalties that may be imposed under Rule 8. One of the penalties under Rule 8 is of withholding of increments. Another penalty which can be imposed under Rule 8(v)(a) is recovery from pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Under the Tamil Nadu Pension Rules, Rule 9(1)(b), such pecuniary loss can also be recovered from the pension of the employee if the pecuniary loss is caused by negligence or grave misconduct while in service and the employee has been found guilty of such misconduct while in service and the employee has been found guilty of such misconduct or negligence. In the present case, the disciplinary authority has clearly found that there were serious charges against the respondent which were established against him in a disciplinary enquiry which was properly conducted. The disciplinary authority has rightly observed that looking to the serious nature of the charges proved, a minor punishment of only stoppage of two increments without cumulative effect has been imposed on the respondent by taking a lenient view since he is about to retire. The order for recovery of the loss caused on account of the respondent's negligence and misconduct is also permissible under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as also under the Tamil Nadu Pension Rules, the former permitting recovery from pay and the latter permitting recovery from pensionary benefits after retirement. The Tribunal is wrong in holding that if an order is passed for recovery of the amount lost from the employee, no punishment can be imposed on him. The disciplinary authority, in the present case, was entitled to impose the punishment of stoppage of two increments without cumulative effect. At the time of passing the final order, the disciplinary authority was also entitled to pass order relating to the suspension period pending enquiry. It has directed that the period during which the respondent was under suspension be treated as service period but without pay. The order must be read as a whole. In the present case, the disciplinary authority has awarded punishment and given directions looking to the nature of the charges proved. The Tribunal was not entitled to interfere with the punishment so accorded.

6. Our attention in this connection is invited to a decision of this Court in *Union of India v. Parma Nanda* ((1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30 : (1989) 2 SCR 19) (at p. 33) where this Court has observed that the jurisdiction of the Tribunal to interfere with disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or punishment imposed by a competent authority where they are not arbitrary or utterly perverse. A similar view has been taken by this Court in *B. C. Chaturvedi v. Union of India* ((1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44) (by majority) (at p. 762). This Court observed that it is the disciplinary authority which is invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty unless the punishment is such as would shock the conscience of the High Court/tribunal. This position has again been reiterated in *Union of India v. G. Ganayutham* ((1997) 7 SCC 463 : 1997 SCC (L&S)

1806).

7. In the premises, the Tribunal's order interfering with the punishment imposed by the disciplinary authority is unsustainable in law. The appeal is, therefore, allowed and the impugned order of the Tribunal is set aside.