

Union of India and Others

Vs

B. Dev

Civil Appeal No. 7444 of 1996

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

14.08.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J.

1. The respondent was holding the post of Assistant Director Grade I in the Directorate General of Supplies and Disposals with effect from 27-12-1967. He was sent on deputation to the Ministry of External Affairs as Director (Shipping) and was posted at the High Commission of India in London from 18-7-1975 for a period of three years. The period of his deputation expired on 18-7-1978. Thereupon he was informed on 24-10-1978 by the Counsellor (Political & Admn.), High Commission of India, London to make preparation for his departure to New Delhi where he was being transferred with immediate effect. The respondent made representations against his transfer. However, his representations were rejected and he was informed that the Ministry of External Affairs had decided that he should relinquish charge of his office on 15-12-1978. The respondent gave various excuses for not handing over charge. He said that he was suffering from a slipped disc. Then he said that his wife was not well. Ultimately, he also asked for leave. On 27-12-1978, the respondent was informed that he will be deemed to have relinquished charge on the evening of 7-12-1978. The respondent, however, purported to go on medical leave.

He reported for duty at the High Commission of India in London on 7-2-1979 but he was not allowed to join. Thereafter the respondent applied for grant of ex-India leave for two months with effect from 9-2-1979.

2. By order dated 14-2-1979, the applicant was relieved of his duties as Director (Shipping) in the High Commission with effect from 7-12-1978 and the period of his leave was regularised. He was also informed that his request for ex-India leave for two months had been rejected. The respondent, however, did not return to Delhi nor did he join duty.

3. Under a memorandum dated 9-2-1981, the President proposed to hold an enquiry against the respondent under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. A statement of imputations of misconduct was annexed to the memorandum and the respondent was directed to submit a written statement of his defence and state whether he desired to be heard in person. The articles of charge were to the following effect :

"The said Shri B. Dev who is a permanent Assistant Director (Grade I) in DGS&D, and is officiating as Deputy Director from 27-12-1967 onwards, committed grave misconduct by remaining absent from duty unauthorisedly w.e.f. 10-2-1979 to date and by continuously disobeying the government orders issued to him for joining

duty. His continued unauthorised absence from duty for such a long time and disobeying of government orders tantamount (sic) to lack of devotion to duty, and to conduct unbecoming of a government servant.

2. Shri B. Dev has thus violated the provisions of clauses (ii) and (iii) of Rule 3(1) of the CCS (Conduct) Rules, 1964 and rendered himself liable to disciplinary action under the CCS (CCA) Rules, 1965."

A statement of imputations of misconduct or misbehaviour in support of the articles of charge was also annexed. These were forwarded to the High Commission at London for service on the respondent. The First Secretary, High Commission of India in London was appointed as Enquiry Officer. Although the charges were served on the respondent and the Enquiry Officer notified to the respondent the date of the proceeding against the respondent, he chose not to appear before the Enquiry Officer despite several reminders. Ultimately an ex parte hearing was held on 4-1-1983. The Enquiry Officer submitted his report dated 18-1-1983 holding that the charge framed against the respondent of having committed a grave misconduct by remaining absent from duty unauthorisedly with effect from 10-2-1979 till 30-11-1981, the date on which he was to superannuate from government service, and thereby violating clauses (ii) and (iii) of Rule 3(1) of the CCS (Conduct) Rules, 1964, had been proved. The Enquiry Officer observed that the conduct of the respondent was deliberate and there was no mitigating circumstance in his favour. The respondent had used his tenure at the High Commission for enabling himself to stay permanently in England. He had purchased a house in London almost at the beginning of his tenure there and his motive for overstaying was clear; and in the circumstances, exemplary punishment was called for.

4. In the meanwhile, since the respondent would have retired with effect from 30-11-1981, the enquiry which was instituted against him under Rule 14 of the CCS (Conduct) Rules, 1965 was deemed to be under the CCS Pension Rules, 1972, as per the Department of Supply Order No. 9(706)/79-Vig. dated 30-11-1981. The Government of India, Department of Supply thereafter considered the report of the Enquiry Officer along with the note of the Enquiry Officer setting out the several notices sent by him requesting the respondent to remain present at the enquiry. By its memorandum dated 8-2-1984, after taking into consideration the record of the enquiry and the facts and circumstances of the case, it came to the conclusion provisionally that the penalty of withholding of full pensionary benefit permanently may be imposed on the respondent. Hence the respondent was thereby given an opportunity to make a representation, if he so desired, against the penalty proposed above. It was stated in the memorandum that such a representation should reach the undersigned within one month from the date of receipt of the memo. The respondent sent a representation.

5. The Union of Public Service Commission by its letter dated 30-11-1984 addressed to the Secretary to the Government of India, Department of Supply, considered in the detail the charge against the respondent, the report of the Enquiry Officer, the representations made by the respondent against punishment and by its detailed order of that date conveyed to the President that the Commission considered that the ends of justice would be met if the full pensionary benefits otherwise admissible to the respondent are withheld permanently and they advised accordingly. Thereupon by an order dated 18-12-1984, the President having regard to the full facts and circumstances of the case, ordered that the full pensionary benefits otherwise admissible to the respondent be withheld permanently.

6. These orders were challenged by the respondent before the Central Administrative Tribunal. By

its impugned order, the Tribunal has allowed the application of the respondent. It held that no finding was recorded in the departmental enquiry that grave and serious misconduct, as envisaged in Rule 9, had been committed by the respondent. Therefore, no action could be taken under Rule 9 of the CCS (Pension) Rules. It also held that no allegation of the sort contained in Rule 8(5) Explanation (b) had been levelled against the respondent and the misconduct attributed to him was only contravention of Rules 3(1)(ii) and (iii) of the CCS (Conduct) Rules, 1984. Therefore, action could not be taken under Rule 9. The appellants have come in appeal from the order of the Tribunal.

7. The enquiry against the respondent was initiated while he was in service. He was charged under Rules 3(1)(ii) and (iii) of the CCS (Conduct) Rules. These Rules are as follows :

"3. General. - (1) Every government servant shall at all times -

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a government servant.

#(2) * * *"#

It would not be correct to say that a government servant who is charged with not maintaining devotion to duty or with conduct unbecoming of a government servant cannot be held guilty of grave misconduct. The gravity of the misconduct would depend upon the nature of the conduct. The Tribunal has wrongly held that because the enquiry was initiated under Rules 3(1)(ii) and (iii) of the CCS Conduct Rules, the respondent cannot be held guilty of grave misconduct.

8. The enquiry was continued under Rule 9 of the CCS (Pension) Rules after the date of superannuation of the respondent. The Tribunal is of the view that "grave misconduct" as defined in Rule 8(5) Explanation (b) (sic) of the CCS (Pension) Rules has not been committed. Hence no action for grave misconduct can be taken under Rule 9. Now under Rule 8, pension is subject to future good conduct. Under sub-rule (3) of Rule 8 if the authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, serve upon the pensioner notice as specified therein, take into consideration the representation, if any, submitted by the pensioner; and under sub-clause (4), where the authority competent to pass an order is the President, the Union Public Service Commission shall be consulted before the order is passed. Sub-rule (5) referred to by the Tribunal does not appear to be relevant in the present case. It deals with appeals from orders passed by an authority other than the President. Under Explanation (b) to Rule 8, the expression "grave misconduct" is defined to include

"the communication or disclosure of any secret official code or password or any sketch, plan model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 ...".

The explanation clearly extends grave misconduct to cover communication of any official secrets. It is not an exhaustive definition. The Tribunal is not right in concluding that the only kind of misconduct which should be held to be grave misconduct is communication etc. of official secret. There can be grave misconduct is communication etc. of an official secret. There can be many kinds of grave misconduct. The explanation does not confine grave misconduct to only the type of misconduct described there.

9. The relevant rule in the present case is Rule 9. Learned counsel for the respondent contended before us that Rule 9 can be invoked only if the government servant has caused any pecuniary loss to the Government. This contention is also unsustainable. Rule 9 as it stood at the relevant time was as follows :

"9. Right of President to withhold or withdraw pension - The President reserves to himself the right to withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that the Union Public Service Commission shall be consulted before orders are passed."

10. Rule 3(1)(o) defines "pension" as including gratuity except when the term "pension" is used in contradiction to "gratuity".

11. Rule 9 gives to the President the right of - (1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.

12. The Tribunal has held that no charge of grave misconduct was framed or found proved against the respondent. This is clearly incorrect looking to the express language of the charge as framed and the enquiry report. The charge as framed expressly charged the respondent with having committed grave misconduct by remaining absent from duty without authorisation and by continuing to disobey government orders issued to him for joining duty. He was charged with lack of devotion to duty and of conduct unbecoming of a government servant, and this was violative of the provisions of Rule 3(1) sub-clauses (ii) and (iii) of the CCS (Conduct) Rules. The finding also is that this charge of grave misconduct has been proved in the enquiry report. The conduct, therefore, of the respondent falls under Rule 9 and the order of the President dated 18-12-1984 cannot be faulted.

13. Our attention is drawn to a decision of this Court in *D. V. Kapoor v. Union of India* ((1990) 4 SCC 314 : 1990 SCC (L&S) 696 : (1990) 14 ATC 906 : AIR 1990 SC 1923). In that case also, disciplinary proceedings were initiated against the government servant under Rule 3(ii)(iii) of the CCS (Conduct) Rules and were later continued under Rule 9 of the CCS (Pension) Rules, 1972. The charge against the appellant there was that he absented himself from duty without any authorisation and despite his being asked to join duty, he remained absent. The Enquiry Officer, however, held that his absencing himself from duty could not be termed as entirely wilful because he could not move due to his wife's illness. The Enquiry Officer recommended that the case of the appellant should be considered sympathetically. The recommendation and finding of the Enquiry Officer were accepted by the President. However, it was decided to withhold full gratuity and payment of pension

in consultation with the Union Public Service Commission. In these circumstances, this Court held that there was no finding that the appellant had committed grave misconduct as charged that the exercise of power under Rule 9 was not warranted.

14. The present case, though prima facie similar to the above case, contains some vital differences. No legitimate reason has been found for the respondent absenting himself or refusing to join at Delhi. The Enquiry Officer has come to a conclusion that the respondent wilfully disobeyed government orders and only gave untenable excuses, first regarding his illness, and thereafter, his wife's illness in order not to join duty. It is also found that the conduct was premeditated and the respondent had already purchased a house at London at the beginning of his tenure indicating that he had no intention at any time of returning to Delhi. In the present case, the Enquiry Officer has in these circumstances, come to a finding holding the respondent guilty of grave misconduct. Therefore, looking to the facts of the present case, the charge of grave misconduct has been correctly held to be proved and, therefore, the order of 18-12-1984 cannot be faulted.

15. The order of 17-6-1987 is order by the President rejecting the revision petition of the respondent. Both these orders are, in the premises, upheld. The impugned order of the Tribunal is set aside and the original writ petition filed by the respondent in the Delhi High Court which was subsequently transferred to the Central Administrative Tribunal at New Delhi is dismissed.

16. The appeal is accordingly allowed. There will, however, be no order as to costs.