SUPREME COURT OF INDIA

Government of India

Vs.

George Philip

C.A.No.4998 of 2006

(G.P. Mathur and Dalveer Bhandari JJ.)

16.11.2006

JUDGMENT:

G. P. MATHUR, J.

Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 10.8.2005 of High Court of Kerala, by which the writ petition filed by the appellants challenging the order dated 17.9.1999 of the Central Administrative Tribunal, Ernakulam Bench, was disposed of with a direction that if Shri George Philip, respondent in the present appeal, reports for duty within a period of six months, he shall be reinstated in service but will not be entitled to any back wages and thereby order of the Tribunal which had awarded full back wages was modified.

3. Before dealing with the issue raised, it is necessary to mention the essential facts. The respondent herein, Shri George Philip, was working as Scientific Officer in Plasma Physics Division, Bhabha Atomic Research Centre, Trombay, Mumbai (for short 'BARC'). He applied for and was granted Commonwealth Scholarship by the Ministry of Education for advance research training in Plasma Physics. He moved an application in the prescribed proforma seeking permission of the Central Government for being given leave for two years for the said purpose. The application form contained several columns and in the column "duration and purpose of visit" it was mentioned "about two years for advance research training in Plasma Physics" and again in the column meant for aims and objects, the same thing was repeated viz. "advance research training in Plasma Physics". The department of Atomic Energy, Government of India, vide order dated 8.2.1982 granted permission to the respondent to accept the Commonwealth Scholarship for a period of two years and he was granted extraordinary leave for the said period, subject to the conditions laid down in the Ministry of Finance O.M. No.11(1)- E(B)/67 dated June 25, 1970. The order has some bearing and, therefore, it is being reproduced below :-

"Government of India

Department of Atomic Energy

C.S.M. Marg

Bombay -400 039

Sub : Commonwealth Scholarship offered by the Govt. of Canada - Shri George Philips SO(C), Plasma

Physics Section.

Reference is invited to BARC ID Note

No.9/20/TSC/80/4922 dated 7.12.1981 on the above subject.

The proposal to permit Shri George Philips,

SO(SC), BARC to accept the Commonwealth

Scholarship awarded by the Ministry of Education for a period of 2 years is approved in the Department. He will be granted extraordinary leave for the said period subject to the conditions laid down in the Ministry of Finance O.M. No.11(1)-E(B)/67 dated June 25, 1970 as amended from time to time.

Sd/-

(P.B. Desai)

Director

Secretary, TC & TSC, BARC, Bombay 400 085

DAE ID No.36/1/81-BARC Vol. II dated February 4, 1982

...

Government of India

Bhabha Atomic Research Centre

TC & TSC

Ref: 9/20/TSC/80/540 February 8, 1982

Copy forwarded to :

1. Head, Plasma Physics Section Leave order granting EOL for two years may be issued under intimation to this section subject to the condition that Shri George Philips should not register for Ph.D. degree and that no extension of leave beyond two years will be granted. An undertaking to this effect may please be obtained from Shri George Philips and forwarded to this section for record.

A service bond for Rs.10,000/- in the enclosed form may also please be obtained in triplicate and forwarded to this section.

2. .....

3. .....

4. .....

5. Shri George Philips, SO (SC) Plasma Physics Section. Sd/- 8.2.82 (G. Sethuraman) Secretary, TC & TSC"

In accordance with the order issued by the Government of India, the respondent gave an undertaking on 9.2.1982, which reads as under :-

"UNDERTAKING

Consequent to the acceptance of the scholarship awarded by the Ministry of Education (Department of Education) for training in Canada and the grant of extra ordinary leave for a period of two years, this undertaking is given that I am not registering for a Ph.D. degree and will not request extension beyond the leave granted during the training abroad.

Signature Sd/-

Name : George Philip

Designation : SO(SC)

Comp. Code : G602/114

Dated : 9.2.82

Trombay, Bombay."

Thereafter, the respondent proceeded on leave with effect from 24.8.1982 and the leave was to expire on 23.8.1984. The Bhabha Atomic Research Centre of Government of India issued a leave order on 6.9.1982, which specifically mentioned that the grant of leave to the respondent is subject to the conditions laid down in the Ministry of Finance O.M. No.11(1)-E(B)/67 dated June 25, 1970 as amended from time to time and as approved by Department of Atomic Energy vide its ID No. 36/1/81-BARC Vol. II dated February 4, 1982. The period of leave of two years from 24.8.1982 to 23.8.1984 was to be treated as extraordinary leave. It was further mentioned that but for proceeding on leave Shri George Philip would have continued to officiate on the said post and that the period of leave will count for increment. The respondent, however, did not return to India and did not report for duty after expiry of leave on 23.8.1984. He applied for extension of leave which was refused and he continued to overstay the leave. The department sent him as many as 8 notices and telegrams wherein it was clearly mentioned that his request for extension of leave had been refused and he should immediately report back for duty. After more than two years of expiry of leave, he came back to India and reported for duty on 10.12.1986. He was placed under suspension pending enquiry

by the order dated 2.1.1987. An enquiry was accordingly held under Rule 14 of the Central Civil Services (Classification and Control of Appeal) Rules, 1965 (for short 'CCS(CCA) Rules') on the ground that by overstaying the leave w.e.f. 24.8.1984 onwards, the respondent is acting in a manner unbecoming of a government servant and had thereby contravened the provisions of Sub-rule (1)(iii) of Rule 3 of Central Civil Services (Conduct) Rules, 1964. Shri George Philip submitted his written statement of defence wherein it was mentioned that he had enrolled himself for a Ph.D. degree in the University of Alberta and as he had not been able to complete his work for award of the degree, he had not returned to India and had not joined duty. In the departmental enquiry copies of all the documents were supplied to the respondent and he was afforded opportunity to cross-examine the witnesses examined on behalf of the department. After a detailed consideration of the material on record, the enquiry officer gave his findings on 15.11.1989 to the effect that the respondent had overstayed the leave granted to him and the charge was fully established. The Secretary, Government of India, exercising powers under Rule 15(4) of CCS(CCA) Rules, after taking into consideration the representation made by the respondent and after consultation with Union Public Service Commission, imposed a penalty of removal from service with immediate effect upon the respondent by order dated 18.12.1990.

4. The respondent filed O.A. No.56 of 1992 before Central Administrative Tribunal, Ernakulam Bench (for short 'Tribunal') challenging the punishment awarded to him. The Tribunal recorded a finding that there can be no doubt that the respondent did not report for duty as he should have at the end of the period of leave and that he is guilty of abandoning the post of duty. However, it was of the opinion that having regard to the facts of the case the punishment imposed upon the respondent was harsh. Accordingly, the Tribunal by its order dated 6.1.1994 held "that the punishment imposed upon the respondent is quashed while the findings of facts are affirmed" and further directed that if the respondent moves the competent authority under Rule 29-A of the CCS(CCA) Rules within one month, the competent authority will consider the question of quantum of punishment afresh. The appellants herein filed a review petition before the Tribunal but the same was dismissed on 2.8.1994. The Secretary to the Government of India, thereafter, passed a fresh order on 3.4.1996 after consultation with the Union Public Service Commission imposing the penalty of compulsory retirement from service upon the respondent with effect from the date when the original order of punishment was passed i.e. 18.12.1990. This order was again challenged by the respondent by filing O.A. No.1127 of 1996 before the Tribunal. The Tribunal by its order dated 17.9.1999 allowed the O.A., set aside the penalty of compulsory retirement from service imposed upon the respondent and directed his reinstatement with full back wages for the period between the date of removal from service and reinstatement and treating the said period as duty for all purposes. It was also observed in the operative part of the order that the appellants may pass an appropriate order awarding penalty to the respondent commensurate with the proved misconduct keeping in view the observations made in this regard. The appellants challenged the aforesaid order of the Tribunal before the High Court of Kerala by filing a writ petition which was disposed of by the impugned order dated 10.8.2005, whereby it was directed that if the respondent reports for duty within a period of six months, he shall be reinstated in service, but he will not be entitled to any back wages. The present appeal has been filed challenging the order dated 17.9.1999 passed by the Tribunal and the order dated 10.8.2005 passed by the High Court in the writ petition filed by the appellants.

5. Shri Vikas Singh, learned Additional Solicitor General, has submitted that while seeking prior permission of the Central Government for availing the Commonwealth Scholarship awarded by the Ministry of Education, the respondent had stated in unambiguous terms that he was going to join a

University in Canada for advance research training in Plasma Physics and the duration of the said training was about two years. He had never indicated at any point of time that he wanted to enroll himself for a Ph.D. degree. The Department of Atomic Energy, Government of India, had by order dated 8.2.1982 sanctioned leave to the respondent for a period of two years. In the said order it was clearly mentioned that the extraordinary leave was being granted for a period of two years subject to the condition that the respondent should not register himself for Ph.D. degree and that no extension of leave beyond two years will be granted and an undertaking in that regard may be obtained. The respondent gave an undertaking on the very next day i.e. on 9.2.1982, wherein he clearly stated that "I am not registering for a Ph.D. degree and will not request extension beyond the leave granted during the training abroad." However, the respondent did not report for duty after his leave expired on 23.8.1984 and he requested for extension of leave on the ground that he had enrolled himself for Ph.D. degree and his work was not complete. The request of the respondent was turned down and the department sent him 8 notices and telegrams asking him to report for duty, but he did not comply with the directions issued and instead reported for duty on 10.12.1986, after more than two years of expiry of leave. In the departmental enquiry the respondent was held guilty of the charges and accordingly the punishment of removal from service was imposed by the competent authority on 18.12.1990. The Tribunal in its judgment and order dated 6.1.1994 had affirmed the findings recorded by the enquiry officer but had merely quashed the order of punishment, as in its opinion, it was disproportionate to the charge and had directed for a fresh consideration limited to the question of punishment. Thereafter, an order of compulsory retirement from service was passed against the respondent. This order was also challenged by the respondent before the Tribunal and curiously enough this time the Tribunal passed an order of reinstatement with full back wages treating the period of removal from service till reinstatement as period spent on duty for all purposes. Learned counsel has submitted that the Tribunal having affirmed the findings recorded by the enquiry officer in its first order dated 6.1.1994, it was not open to the Tribunal to take a contrary view at the second stage when the order of compulsory retirement was challenged by the respondent and it could not have gone into the merits of the case. Learned counsel has further submitted that having regard to the facts and circumstances of the case the punishment of compulsory retirement form service imposed upon the respondent could not be said to be disproportionate to the gravamen of the charge and the High Court erred in setting aside the said order and directing reinstatement of the respondent.

6. Shri Raju Ramachandran, learned senior counsel for the respondent, has submitted that the respondent had joined for a Ph.D. degree in a University in Canada and as he had not been able to complete the work required for the said degree, he had no option but to stay there even after expiry of leave. Learned counsel has submitted that it was a case of helplessness of a scientist who was keen to do research work and to get a Ph.D. degree and if the respondent had obtained the said degree, it would have been of immense value to Bhabha Atomic Research Centre as well. Learned counsel has thus submitted that the requirement of discipline will be satisfied by the order passed by the High Court, whereby the penalty of compulsory retirement has been set aside and the respondent has been directed to be reinstated but without any back wages.

7. We have given our anxious consideration to the submissions made by learned counsel for the parties. It requires to be noticed that while seeking permission of the Central Government to proceed to Canada, the respondent had clearly mentioned that the purpose of his visit was "for advance research training in Plasma Physics" and the duration of the training was "two years". In the order dated 8.2.1982 passed by the Department of Atomic Energy, Government of India, it was clearly mentioned that the respondent is being sanctioned extraordinary leave for a period of two

years and this was subject to the condition that he should not register for Ph.D. degree and that no extension of leave beyond two years will be granted. The respondent also gave an undertaking on 9.2.1982 that he would not register himself for a Ph.D. degree and that he would not request extension of leave during the training abroad. In fact, the leave order dated 6.9.1982 clearly specified that the period of leave was from 24.8.1982 to 23.8.1984 and the said period of leave will count for increment. The fact that the respondent enrolled himself for a Ph.D. degree shows that he did not state the correct facts while moving the application to the Ministry of Education for award of Commonwealth Scholarship and while seeking permission to go abroad and applying for leave. His intention right from the beginning was to somehow get a scholarship in order to join a University in Canada for award of a Ph.D. degree. There can be no manner of doubt that he violated the undertaking given by him that he would not register for a Ph.D. degree and would not request for extension of leave. Though as many as 8 notices and telegrams were sent to the respondent refusing his request for extension of leave and asking him to report for duty, but he chose to overstay the leave by over two years. In the enquiry the charges were found to have been proved and this finding was affirmed by the Tribunal in its first order dated 6.1.1994. It is indeed surprising that when the respondent challenged the order of compulsory retirement passed thereafter, the Tribunal went into the question as to whether the charges are proved or not and after examining the evidence again which it was not entitled to do, directed for reinstatement with full back wages and issued a further direction that the period of his absence shall be counted as period on duty for all purposes. This is clearly illegal as the order dated 6.1.1994 passed by the Tribunal affirming the findings recorded in the enquiry had not been challenged by the respondent and the only issue before the Tribunal was the quantum of punishment which had been imposed upon the respondent as a consequence of the direction issued in the first order of the Tribunal dated 6.1.1994. The High Court has observed that the benefit granted by the Tribunal cannot be denied to the respondent since it did not find any illegality in its approach excepting the direction regarding the wholesale back wages. With respects, the High Court failed to notice that the findings in enquiry having been affirmed by the Tribunal at the first stage, it was not open to the Tribunal while hearing the O.A. challenging the award of punishment of compulsory retirement, to go into the question regarding establishment of charge against the respondent. Thus, the second order of the Tribunal dated 17.9.1999 and the order passed by the High Court dated 10.8.2005 in that regard are clearly illegal.

8. Another question which arises for consideration is whether in view of the findings recorded in the enquiry, which were affirmed by the Tribunal in its first order dated 6.1.1994 that the respondent violated the undertaking given by him by registering himself for a Ph.D. degree and further in not reporting for duty after expiry of leave on 23.8.1984 and overstaying his leave by more than two years, the punishment of compulsory retirement imposed upon him can be said to be suffering from such illegality which may warrant interference either by the Tribunal or by the High Court in exercise of jurisdiction under Article 226 of the Constitution.

9. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial noncompliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. The scope of judicial review in matters relating to disciplinary action against employees has been settled by a catena of

decisions of this Court and reference to only some of them will suffice. In B.C. Chaturvedi v. Union of India (1995) 6 SCC 749, it was observed as under in para 18 of the reports :-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are 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. If the

punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In Om Kumar v. Union of India (2001) 2 SCC 386, after considering large number of cases, the principle was summarized as under in para 71 of the reports:-

"71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing

authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain (2005) 10 SCC 84, it was observed that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

In Mahindra and Mahindra Ltd. v. N.B. Narawade (2005) 3 SCC 134, the respondent was dismissed from service on the charge of having used abusive and filthy language against his supervisor. The labour Court on the finding that the punishment of dismissal was harsh and improper, directed his reinstatement with continuity of service and two-third back wages. The writ petition filed by the employer was dismissed both by the learned Single Judge and also by the Division Bench of the High Court. In appeal a three Judge Bench of this Court set aside the judgments of the High Court and also the award of the labour Court and upheld the order of the disciplinary authority dismissing the respondent from service. In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489, the respondent workman was found sleeping at about 11.40 a.m. while he was on duty in the first

shift. On some earlier occasions also he was found guilty of similar misconduct. After domestic enquiry wherein he was found guilty, he was dismissed from service. The labour Court held that the punishment of dismissal was harsh and disproportionate and no reasonable employer could impose such punishment for the proved misconduct and accordingly directed reinstatement with fifty per cent back wages. There was a revision to the Industrial Tribunal and then a writ petition and finally in letters patent appeal the Division Bench of the High Court modified the award of the labour Court by directing the employer to pay a sum of Rs.2,50,000/- to the workman. In appeal this Court, after referring to large number of earlier decisions, set aside the judgment of the Division Bench and restored the order passed by the employer.

10. There are several decisions of this Court wherein the order of disciplinary authority directing removal or dismissal of an employee on the ground of long absence or overstay of leave has been upheld. In Mithilesh Singh v. Union of India & Ors. (2003) 3 SCC 309, the appellant who was constable in Railway Protection Special Force left duty without leave being granted and returned after 25 days and then sought leave. The order of removal from service passed by the authorities was set aside by a learned Single Judge in a writ petition filed by the employee who directed that some punishment other than order of removal or dismissal or compulsory retirement from service may be passed. The Division Bench of the High Court restored the order passed by the disciplinary authority and the said judgment was affirmed by this Court in appeal on the ground that the scope of interference with punishment awarded by the disciplinary authority is very limited and unless the punishment is shockingly disproportionate, the Court cannot interfere with the same and the employee having failed to show any mitigating circumstances in his favour, the punishment awarded by the authorities could not be characterized as disproportionate or shocking. In Delhi Transport Corporation v. Sardar Singh (2004) 7 SCC 574, several cases of conductors involving absence from duty ranging from 45 days to 294 days without sanctioned leave were considered. The order of the Single Judge of the High Court holding that the employer was justified in passing the order of termination/removal was affirmed by this Court reversing the order of Division Bench of the High Court, wherein the order of the Industrial Tribunal refusing to accord approval to the punishment had been approved. In Union of India & Ors. v. Ghulam Mohd. Bhat (2005) 13 SCC 228, the order of removal from service passed against the respondent, who was a constable in CRPF on the ground that he had overstayed his leave by 315 days was affirmed by this Court reversing the decision of the High Court, by which it was held that the misconduct alleged called for a minor punishment and not a punishment of removal from service. In State of Rajasthan & Anr. v. Mohd. Ayub Naz (2006) 1 SCC 589, the respondent who was an employee of cooperative department remained absent for about 3 years and his service was terminated after a departmental enquiry. The learned Single Judge of the High Court took the view that the facts and circumstances of the case called for a lesser punishment and thus directed that the employee shall be deemed to have retired after having put in 20 years of service with all retiral benefits, which order was affirmed in letters patent appeal before the Division Bench. This Court set aside the order of the High Court with the observation that while considering the quantum of punishment, the role of administrative authority is primary and that of Court is secondary, confined to see if discretion exercised by the disciplinary authority caused extensive infringement of rights and held that the punishment of removal was absolutely correct.

11. The contention of Shri Raju Ramachandran, learned senior counsel that respondent was in a dilemma as he had not been able to complete the research work for award of a Ph.D. degree and, therefore, he could not return to India to join duty and also that if the respondent had completed his Ph.D., he would have been more useful and advantageous to BARC, cannot be accepted. Bhabha Atomic Research Centre is a premier scientific institution of the country where research is

conducted in the field of atomic energy. The work is basically of experimental nature for which very expensive equipment has to be acquired. If the employees of BARC are allowed to proceed on long leave in order to acquire some higher degree or expertise which may advance their own career prospects, the ultimate sufferer would be BARC as the equipment on which they are working would lie idle for a long period. The nature of work being highly specialized, there would not be many people in the organisation who may carry on the work in that particular field unlike a factory where one workman may be substituted by another to work on a particular machine. By the time the employee returns for work, the equipment may become obsolete resulting in wastage of public money. The fact that while sanctioning leave a specific undertaking was sought from the respondent that he would not register for a Ph.D. degree and that he would not ask for extension of leave, clearly shows that BARC was guarding against such a contingency as for completing Ph.D. in the field of atomic energy and related subjects requires considerable amount of practical work, which cannot normally be completed in two years. At any rate, the respondent being fully aware of the conditions under which he was sanctioned leave, viz., that he was not to register for Ph.D. degree and was not to make a request for extension of leave beyond two years, it was not open to him to enroll himself for Ph.D. and then seek extension of leave on the ground that he had not been able to complete the research work for award of the degree and should not be compelled to leave his work midway.

12. We are, therefore, of the opinion that in the facts and circumstances of the case, the punishment of compulsory retirement imposed upon the respondent cannot be held to be disproportionate, much less shockingly disproportionate, and there was absolutely no ground on which the Tribunal or the High Court could interfere with the order passed by the appellants.

13. Before parting with the case we consider it our duty to refer to a rather unusual one-sided approach of the High Court. In the penultimate paragraph of the judgment, the High Court has observed "that the respondent was not personally representing himself in the proceedings and he had authorized throughout his power of attorney holder, obviously indicating that he was not available for being considered for employment". Then in the operative portion of the order six months' time is granted to the respondent to report for duty. It appears that this long period of time was granted to the respondent as he was not present in India and was abroad. In a case involving overstay of leave and absence from duty, granting six months' time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution has the tendency to negate or destroy the same.

14. In the result, the appeal is allowed with costs. The judgment and order dated 17.9.1999 of the Tribunal and the judgment and order dated 10.8.2005 of the High Court are set aside and the order of compulsory retirement passed by the appellants is affirmed.