SUPREME COURT OF INDIA

Chairman, LIC of India

Vs.

A. Masilamani

C.A.No.8263 of 2012

(Dr.B.S.Chauhan and Jagdish Singh Khehar JJ.)

23.11.2012

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

This appeal has been preferred against the impugned judgment and order dated 10.1.2011, passed by the High Court of Judicature at Madras in Writ Appeal No. 7 of 2011, by way of which, the Division Bench affirmed the judgment and order dated 17.2.2010, passed by the learned Single Judge in Writ Petition No.11152 of 2002, by way of which, the disciplinary proceedings initiated by the appellants against the respondent have been quashed.

2. Facts and circumstances giving rise to this appeal are as under:

> A. The respondent was working with the appellant-Corporation as a Higher Grade Assistant at its Namakkal Branch. He had applied for, and obtained, a housing loan on 20.6.1991 from the India Housing Finance Development Ltd., Salem, for the purpose of construction of his house to the extent of 1095 sq.ft., and had also applied to the appellant- Corporation for a housing loan, under the Corporation's Individual Employees Housing Scheme for the purpose of completing construction of the said house. An amount to the tune of Rs.1,30,000/- was outstanding, against the loan availed by the respondent from the India Housing Finance Development Ltd., as also a sum of Rs.48,000/- required for completion of the said construction. The said loan

was sanctioned after completing all requisite formalities. However, it came to the notice of the appellant-Corporation that there had been certain irregularities and deviations with respect to the construction of the said house, and that the loan had been obtained upon non- disclosure of facts in entirety. Thus, a charge sheet dated 6.1.1998 was issued to the respondent, for violating the provisions of Regulations 20, 21, 27 and 39(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as, the 'Regulations 1960').

B. The respondent submitted his reply to the said charges, denying all of them, vide reply dated 30.1.1998. The Disciplinary Authority, however, was not satisfied with the explanation furnished by the respondent and therefore, proceeded to conduct an enquiry, in relation to which, the Enquiry Officer submitted enquiry report dated 27.1.1999. The Disciplinary Authority served upon the respondent, a copy of the said enquiry report, alongwith a show-cause notice dated 26.4.1999 giving him a period of 15 days to reply, to which the respondent furnished his reply dated 17.5.1999.

C. The Disciplinary Authority, after considering the reply and the enquiry report, imposed a penalty of reduction in the basic pay of the respondent, to the minimum amount specified in the time scale applicable to him, in terms of Regulation 39(1)(d) of the Regulations, 1960, as had been proposed by it in the aforementioned show cause notice, vide order dated 31.5.1999.

D. Aggrieved, the respondent preferred an appeal under Regulation 40 of the Regulations, 1960, which was dismissed by the Appellate Authority, vide order dated 11.4.2000. Thereafter, the respondent preferred a Memorial to the Chairman, Life Insurance Corporation of India, in Bombay, which was dismissed vide order dated 20.9.2001. E. Aggrieved, the respondent preferred a writ petition for the purpose of quashing of enquiry proceedings, the imposition of penalty, and also for re-imbursement of the amount that had been deducted from his salary, including all attendant benefits. The said writ petition was allowed by the learned Single Judge of the High Court, vide order dated 17.2.2010, observing that the witnesses to the case, in the process of Departmental Enquiry, had been examined in violation of the statutory rules applicable herein, as well as in violation of the principles of natural justice. The delinquent was not accorded adequate opportunity to cross-examine the witnesses. The Appellate Authority also failed to consider whether the procedure followed by the Enquiry Officer, as well as that

followed by the Disciplinary Authority, satisfied the requirements of Regulation 46(2)(a) of the Regulations, 1960. This is because, mere concurrence of the Appellate Authority, with the findings recorded by the Enquiry Officer, without provision of adequate reasoning, cannot be said to amount to adequate application of judicial mind by the Appellate Authority, for the purpose of imposing the said punishment.

F. Aggrieved, the appellant-Corporation filed an appeal, which was dismissed by the Division Bench.

Hence, this appeal.

3. Mr. Kailash Vasudev, learned senior counsel, alongwith Ms. Indra Sawhney, Adv. appearing for the appellants, has submitted that the High Court has exceeded its jurisdiction by quashing the disciplinary proceedings, as well as the punishment imposed, stating that the same does not fall within the scope of judicial review. Moreover, the decision to not remand the case for reconsideration at such a belated stage, could also not be justified. Therefore, the judgment and order of the High Court, are liable to be set aside.

4. Per contra, Mr. V. Ramasubramanian, learned counsel appearing for the respondent, has opposed the appeal, contending that the High Court had taken note of every fact, and if after doing so, the court had come to the conclusion that the said disciplinary proceedings, had in fact, been conducted in violation of the principles of natural justice and applicable statutory rules, then no interference is warranted. The fact that the appellant was refused an opportunity, to complete the said enquiry de novo, on the ground of delay, is fully justified in law. Thus, no interference is called for, and the said appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties, and perused the record. It may be pertinent to refer to the relevant statutory provisions involved herein:

Regulation 39(1) of the Regulations 1960 reads as under: “39(1). Without prejudice to the provisions of other regulations, (any one or more of) “the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed (by the disciplinary authority specified in Schedule-I)” on the employee who commits a breach of regulations of the Corporation, or who display negligence, inefficiency or indolence or who knowingly does

anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct –

(a) ……

(b) …….

(c) …….

(d) reduction to a lower service, or post, or to a lower time scale, or to a lower stage in a time-scale."

Regulation 46(2) of the Regulations 1960 read as under: "In case of an appeal against the order imposing any of the penalties specified in Regulation 39, the appellate authority shall consider-

a) Whether the procedure prescribed in these Regulations has been complied with, and if not, whether such non-compliance has resulted in failure of justice;

b) Whether the findings are justified; and

c) Whether the penalty imposed is excessive, adequate or inadequate, and pass orders ……

xxxx xxxxxxxx "

6. The charges framed against the respondent are as under:

i) That in your letter dated 13.5.1994 requesting for release of Rs.26,000/- as second instalment of housing loan under M.L. No. 7803003 you had willfully omitted to bring to the notice of the Corporation that you had constructed the rear side of the house (comprising of kitchen, store, toilet and reading room) measuring 385 sq.ft.

ii) That your above action tantamounts to breach of agreement.

iii) That you submitted a letter dated 20.6.1994 giving false information that you had completed the house in all aspects whereas by your letters dated 10.11.94 and 29.11.94 you had informed us that the rear side of the house was not constructed. It was found that even as on 2.9.1997 the work to complete the construction was not commenced.

iv) That you had drawn housing loan in excess by giving false statement as mentioned above.

v) That you are putting the premises to commercial use without the knowledge and approval of the Corporation.

vi) That you are carrying on manufacturing of Jute bags and Cotton floor mats business in the said premises without the knowledge of the Corporation.

7. In the present case, the High Court after reappreciating the entire evidence available on record, came to the conclusion that in the course of enquiry proceedings, certain witnesses had not been examined in the presence of the delinquent respondent, and that hence, no proper opportunity was given to him to cross-examine such witnesses. Moreover, the documents relied upon by the Enquiry Officer, were not properly proved by any witness and ultimately, it was held that the findings of the Enquiry Officer stood vitiated, for non-compliance with mandatory requirements of the regulations applicable herein, as well as for violating of the principles of natural justice. The court further held that the Appellate Authority had not applied its mind to the case, and had failed to consider the case as required under Regulation 46(2), of the Regulations, 1960. Thus, in light of the aforementioned observations, the court set aside the punishment imposed upon the respondent, and also refused to give the appellant any opportunity, to continue the enquiry from the point that it stood vitiated, consequently therefore, denying any opportunity to prove the documents relied upon, as also denying the respondent adequate opportunity to cross-examine the concerned witnesses etc., only on the ground that a long time had now passed.

8. In view of the issues raised by the learned counsel for the parties, the following questions arise for our consideration:

i) When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., non-observance of

statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated and;

ii) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

9. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide: Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc. AIR 1994 SC 1074; Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls Ors., (2002) 10 SCC 293; U.P. State Spinning C. Ltd. v. R.S. Pandey Anr., (2005) 8 SCC 264; and Union of India v. Y.S. Sandhu, Ex-Inspector AIR 2009 SC 161).

10. The second question involved herein, is also no longer res integra.

Whether or not the disciplinary authority should be given an opportunity, to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine, the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds.

The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The

essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh Anr., AIR 1990 SC 1308; Union of India Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition Excise Department v. L. Srinivasan,(1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India Ors., AIR 2006 SC 3475; Union of India Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; and The Secretary, Ministry of Defence Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250).

11. The word "consider", is of great significance. Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be".

Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Director, Marketing, Indian Oil Corpn. Ltd. Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vithlabhai Patel Ors. v. State of Gujarat Anr., AIR 2008 SC 1771).

12. The instant case requires to be considered in the light of the aforesaid settled legal propositions.

After hearing the counsel for the parties, we are of the view that the impugned judgment and order dated 10.1.2011, in Writ Appeal No. 7 of 2011, as well as the order of the learned Single Judge dated 17.2.2010, passed in Writ Petition No. 11152 of 2002, cannot be sustained in the eyes of law and are therefore hereby, set aside. The present appeal is allowed. The matter is remitted to the disciplinary authority to enable it to take a fresh decision, taking into consideration the gravity of the charges involved, as with respect to whether it may still be required to hold a de novo enquiry, from the stage that it stood vitiated, i.e., after issuance of charge-sheet. The

disciplinary authority while taking such a decision must bear in mind that charges are merely technical as the loan was taken for construction of a residential premises and the said loan was used effectually to construct the premises as per sanctioned plan and only then the premises was put to commercial use.

In the event the authority takes a view, that the facts and circumstances of the case require a fresh enquiry, it may proceed accordingly and conclude the said enquiry, most expeditiously.