SUPREME COURT OF INDIA

Government of Andhra Pradesh

Vs.

Ch. Gandhi

C.A.No.1428-1428 of 2013

(K. S. Radhakrishnan and Dipak Misra JJ.)

19.02.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. The present appeals by special leave are directed against the judgment and order dated 14.6.2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 12177 of 2007 and the order dated 8.2.2008 passed in Review WPMP (SR) No. 126152 of 2007 arising from the said writ petition whereby the Division Bench overturned the order dated 16.5.2007 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal") in O.A. No. 923 of 2006 on the ground that the disciplinary authority had imposed two major penalties. Be it noted, the High Court granted liberty to the department to pass appropriate orders keeping in view the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "the Rules").

3. The facts which are imperative to be adumbrated are that a disciplinary proceeding under Rule 5 of the Rules was initiated against the respondent, a Senior Accountant in the Office of the Sub Treasury, Nakrekal, on the charges that while functioning as the senior most Accountant in the said office and in-charge of the strong room keys, at the time of surprise check by the Deputy Director, District Treasury, Nalgonda, he was absent and had not signed the attendance register in token of his having attended the office and also not maintained the movement register as required under the Rules; that he had failed to keep the currency chest

book in the currency chest and not endorsed every transaction; that he had passed the bills, cheques and challans in token of approval of the payment/receipts without signing them; that he had not properly maintained the strong entrants' register which was found outside the strong room and further the entries were not recorded and signed by him; that he had failed to remain present at the time of depositing money or withdrawing money from the currency chest and allowed others to operate the currency chest by using the keys of joint custodian; and that he had failed to submit the currency chest slip to R.B.I. on 15.4.2003 in respect of the currency chest transactions of 15.4.2003 and also failed to submit the daily sheets of 15.4.2003 and 16.4.2003.

4. An Enquiry Officer was appointed to enquire into the charges and he submitted the report that the charges were proven. On the basis of the enquiry report, the disciplinary authority, after following the requisite procedure, imposed the penalty of reversion to the post of Junior Accountant for two years with the stipulation that there would be postponement of future increments.

5. Aggrieved by the said punishment, the respondent approached the Tribunal in O.A. No. 923 of 2006 and raised various points assailing the validity of the initiation of the proceeding, the manner in which the enquiry was conducted and lastly, that the punishment imposed was disproportionate to the misconduct. The Tribunal referred to the Rule position and came to hold that there was no illegality or irregularity in the initiation of the disciplinary proceeding, framing of charge or conduct of the enquiry and further, regard being had to the gravity of the charge, the punishment could not be treated to be disproportionate. Being of this view, the Tribunal dismissed the original application.

6. The failure before the Tribunal compelled the respondent to invoke the jurisdiction of the High Court which, after adverting to the facts in detail and the competence of the person who had initiated the proceeding by issuing the memorandum of charges, came to hold that the findings recorded by the Tribunal on the said scores were absolutely defensible and did not warrant any interference. As far as the imposition of punishment was concerned, a contention was advanced that he had been imposed two major penalties which were not in consonance with the Rules. The High Court referred to the order of punishment, Rule 9 of the Rules that deals with major penalties and sub-Rule 27 of Rule 11 of the said Rules and came to hold that the penalty imposed by the disciplinary authority did amount to imposition of two penalties and, accordingly, set aside the punishment which had been concurred with by the tribunal and clarified that the said overturning of the

orders would not preclude the authorities to pass appropriate orders pertaining to punishment keeping in view the provisions of the Rules.

7. Calling in question the legal propriety of the said order, it is urged by Mr. G.N. Reddy, learned counsel for the State and its functionaries, that the High Court has erroneously opined that two major penalties had been issued in violation of the Rules though reversion to the lower post for a period of two years with the stipulation of postponement of future increments on restoration to higher category does not tantamount to two major penalties under Rule 9 and, under no circumstances, it contravenes sub-rule (27) to Rule 11 of the Rules. It is his submission that the said punishment, being in consonance with the Rules and further such imposition of punishment not being unknown to service jurisprudence, did not warrant interference by the High Court. The learned counsel further canvassed that the amended Rules permit imposition of such punishment but the same has not been taken note of by the High Court which makes the order absolutely vulnerable.

8. Mr. R.S. Krishnan, learned counsel appearing for the respondent, resisting the aforesaid proponements, contended that the interpretation placed by the High Court on the Rules cannot be found fault with inasmuch as the language employed in the Rules is absolutely plain, clear and unambiguous and, on a careful reading of the same, it is manifest that under the Rules, imposition of two major penalties is not permissible. It is further urged by him that when the language employed in the Rules has been differently couched and both the employer and employee are bound by the Rules, what could be jurisprudentially permissible need not be adverted to in this case. The learned counsel would further submit that the delinquent employee could not have been imposed such a punishment under Rule 9 of the Rules prior to its amendment as his case would be governed by the unamended Rules since the disciplinary proceeding was initiated prior to the amendment and, at that time, the punishment that was imposed was not envisaged.

9. In reply, the learned counsel for the State submitted that the respondent would be governed under the new Rules as clause (vii) of Rule 9 has been substituted and the term "substituted" conveys that the Rule has retrospective effect. That apart, it is propounded that even if the rules are not treated as retrospective, the appellant had no vested right to be imposed a particular punishment under the unamended Rules.

10. At the very outset, we may clearly state that we are not concerned with the delinquency of the incumbent or the findings recorded in the disciplinary proceeding that has been conducted. We are also not required to address whether the competent authority had initiated the departmental proceeding, for the respondent has not assailed the order passed by the Division Bench of the High Court and it is only the State which has come up in appeal. Thus, the only aspect that requires to be dwelled upon is whether the punishment could be imposed in accord with the amended Rules or under the unamended Rules.

11. It is apt to note here that the punishment was imposed on 1.12.2005. The relevant part of the order passed by the Director of Treasuries and Accounts is reproduced below: -

> "After a detailed examination of the inquiry report and the explanation of the charged officer, the disciplinary authority finds that the charges framed against Sri Ch. Gandhi the then Senior Accountant and incharge Sub Treasury Officer, Sub Treasury (non-banking) Nakrekal have been proved. After careful consideration of the material facts and records and explanation of the individual, in exercise of the powers conferred under Sub Rule 27(ii) of Rule 11 read with Sub Rule (vii) of rule 9 of A.P.C.S. (C.C.A) Rules, 1991 hereby awards a punishment of reversion to the lower post of junior accountant for two years with effect on postponing future increments on restoration to the higher category on Sri Ch. Gandhi, presently working as senior Accountant with immediate effect."

12. Regard being had to the nature of the punishment, it is necessary to scrutinize the Rule position. After the amendment on 6.12.2003, the relevant part of Rule 9 which provides for major penalties is as follows: -

> "Major Penalties
>
> vi) withholding of increments of pay with cumulative effect (G.O.Ms. No. 205, GA (Ser.C) Dept. dt. 5.6.98);
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> vii) (a) save as provided for a in clause (v)(b), 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 servant 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;

vii) (b) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant 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 servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(G.O.Ms. No. 373, G.A.(Ser.C) Dept., dt: 6.12.2003)

viii) compulsory retirement;

ix) removal from service which shall not be a disqualification for future employment under the Government;

x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

13. Sub-rule (27) of Rule 11 which has been relied on by the High Court reads as follows: -

"(27) Without prejudice to the foregoing provisions;

i) every Head of Department may impose on a member of the State Services under his control, the penalty specified in clause (iii) of rule 9, except in the case of each member holding a post immediately below his rank; and

ii) every Head of Department declared to be the appointing authority may impose on a member of the State Service holding a post at first level or at second level under his control, any of the penalties specified in clauses (i) to (viii) of rule 9.

(G.O.Ms. No. 428, GA (Ser.C) Dept. dt. 13.10.1999)

iii) The special Chief Secretary and Chief Commissioner of Land Administration may impose any of the penalties specified in clause (ix) and clause (x) of rule 9 on Mandal Revenue Officers.

(G.O.Ms. No. 231, GA (Ser.C) Dept. dt. 7.6.2005)"

14. The High Court, relying on sub-rule (27)(ii) of Rule 11, has expressed the view that the punishments imposed against the respondent, namely, reversion to the lower rank and at the same time stoppage of increments, come under the purview of two major penalties as contemplated in Rule 9 of the Rules which is not permissible. On a perusal of the order passed by the High Court, it is evident that the High Court has referred to the unamended Rules.

15. The Rules were amended on 6.12.2003. Under the heading 'minor penalties' after clause (v)(a), clause (v)(b) was added. Under the heading 'major penalties', clause 7 was substituted and the said clause was compartmentalized into two parts, namely, (vii)(a) and (vii)(b). The disciplinary authority, as is vivid from the aforequoted portion, has imposed the penalty under sub-rule (vii) of Rule 9 of the substituted Rule.

16. Rule 9 of the unamended or the old Rules read as follows: -

"Rule 9: Major Penalties:

vi) withholding of increments of pay with cumulative effect.

vii) Reduction to a lower rank in the seniority list or to a lower stage in the seniority list or to a lower stage in the timescale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate;

viii) Compulsory retirement;

ix) Removal from service which shall not be a disqualification for future employment under the Government;

x) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

17. On a perusal of the unamended Rule, there can be no doubt that clause (vii) only related to reduction to a lower rank in the seniority list or to a lower time scale of pay or in the lower grade or pay not being lower than that to which he was directly recruited. It did not have the stipulation of postponement of future increment on restoration to the higher category. Thus, the seminal issue is whether the respondent could have been imposed a punishment under the amended Rules. It is necessary to state here that the amended Rules were not brought to the notice of the High Court.

18. It is useful to note here that the charge-sheet was issued on 14.11.2003. In Delhi Development Authority v. H.C. Khurana[1], a two- Judge Bench posed the question relating to the stage when it can be said that a decision has been taken to initiate the disciplinary proceeding and, in this context, opined that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge- sheet is the first step taken for holding the enquiry into the allegations on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision.

19. Be it noted, in the said case, the decision rendered in Union of India and others v. K.V. Jankiraman and others[2] was explained by stating thus: -

> "The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision."

20. In Union of India and others v. Sangram Keshari Nayak[3], it has been held that a departmental proceeding is ordinarily said to be initiated when a charge-sheet is issued. In Coal India Ltd. and others v. Saroj Kumar Mishra[4], similar view was reiterated. In view of the aforesaid pronouncements, there is not an iota of doubt that the disciplinary proceeding was initiated under the unamended Rules.

21. At this juncture, we may state with profit that the amended Rule has not been given any retrospective effect. In Tejshree Ghag and others v. Prakash Parashuram Patil and others[5], it has been ruled that the State has the power to alter the terms and conditions of service even with retrospective effect by making rules framed under the proviso appended to Article 309 of the Constitution of India, but it is also well settled that the rule so made ordinarily should state so expressly.

22. In Marripati Nagaraja and others v. Government of Andhra Pradesh and others[6], this Court has ruled that the State, in exercise of its power conferred upon it under the proviso appended to Article 309 of the Constitution of India, is entitled to make rules with retrospective effect and retroactive operation. Ordinarily, in absence of any rule and that too a rule which was expressly given a retrospective effect, the rules prevailing as on the date of the notification are to be applied. But if some rule has been given a retrospective effect which is within the domain of the State, unless the same is set aside as being unconstitutional, the consequences flowing therefrom shall ensue. In such an event, the applicable rule would not be the rule which was existing but the one which had been validly brought on the statute book from an anterior date.

23. Presently, we shall deal with the contention of the learned counsel for the State who has laid emphasis on the fact that the said Rule has been substituted by the amendment dated 16.12.2003 and, therefore, it has to be treated to have retrospective effect. At this juncture, we may fruitfully refer to a passage from Maxwell on the Interpretation of Statute, 12th edition, wherein it has been stated thus: -

> "Perhaps no rule of construction is more firmly established than thus — 'that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only'. The rule has, in fact, two aspects, for it, 'involves another and subordinate

rule, to the effect that a statute is not to be construed so as to have greater retrospective operation than its language renders necessary'."

24. In Francis Bennion's Statutory Interpretation, 2nd Edn., while emphasizing on the concept of retrospective legislation and rights, the learned author has stated thus: -

> "The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that lex prospicit non respicit (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law'."

25. In Hitendra Vishnu Thakur v. State of Maharashtra and others[7], this Court dwelled upon the ambit and sweep of the amending Act and the concept of retrospective effect and, eventually, ruled thus: -

> "(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly- defined limits.
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> (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

26. From the aforesaid analysis of law, it is graphically clear that there is a presumption against the retrospective operation of a statute, and further a greater retrospectivity cannot be conferred on a statute than the language makes it necessary.

27. In the case at hand, the notification uses the phraseology that clause (vii) shall be substituted with the amending clause. The provision which is substituted by the amending Rules, does not obliterate the rights of the parties as if they never existed. A substituted provision is the resultant factor of the amendment in the Rules and it shall guide the consequences that follow from the amended Rules. In Bhagat Ram Sharma v. Union of India and others[8], a two-Judge Bench, while dealing with the Punjab Public Service Commission (Conditions of Service) Regulations, 1958, making a distinction between two regulations, opined that in the absence of any provision giving Regulation 8(3) a retrospective operation, the same cannot prima facie bear a greater retroactive effect than intended. In this context, the Court proceeded to state as follows: -

"17. It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'. In Sutherland's Statutory Construction, 3rd Edn., Vol 1 at p. 477, the learned author makes the following statement of law:

"The distinction between repeal and amendment as these terms are used by the Courts is arbitrary. Naturally the use of these terms by the Court is based

largely on how the Legislature have developed and applied these terms in labeling their enactments. When a section is being added to an Act or a provision added to a section, the Legislatures commonly entitled the Act as an amendment..... When a provision is withdrawn from a section, the Legislatures call the Act an amendment particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by the Legislatures, amendment and repeal may differ in kind – addition as opposed to withdrawal or only in degree – abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree – addition of a provision to a section to replace a provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and they have developed separate rules of construction for each. However, they have recognized that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal – the abrogation of an existing statutory provision – and have therefore applied the term 'implied repeal' and the rules of construction applicable to repeals to such amendments."

18. Amendment is in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

19. For the sake of completeness, we wish to add that mere use of the word 'substitution' does not imply that Regn. 8(3) must relate back to November 1, 1956, the appointed day."

28. In Pyare Lal Sharma v. Managing Director and others[9], the Court was dealing with Regulation 16.14 of Jammu and Kashmir Industries Employees Service Rules and Regulations. Be it noted, the said regulation was amended on April 21, 1983. In the earlier regulations, certain grounds were provided for termination of service of a permanent employee. In the amended regulation, the ground, namely, unauthorized absence, was added apart from other grounds. The services of the appellants therein were terminated on the ground of unauthorized absence. The Court scanned the scheme of Regulation 16.14 before amendment which consisted of only clauses (a) and (b) relating to abolition of post and

unfitness on medical ground and the company, the employer therein, had no authority to terminate the services of an employee on the ground of unauthorised absence without holding disciplinary proceedings against him. The regulation was amended on 20-4-1983 and grounds (c) and (d) were added. The amended regulation could not operate retrospectively but only from the date of the amendment. Ground (c) under which action was taken came into existence only on 20-4-1983 and as such, the period of unauthorised absence which could come within the mischief of ground (c) has to be the period posterior to 20-4-1983 and not anterior to that date.

29. After analyzing the facts, the two-Judge Bench expressed as follows:- "The period of absence indicated in the show-cause notice is obviously prior to April 20, 1983. The period of absence prior to the date of amendment cannot be taken into consideration. When prior to April 20, 1983 the services of person could not be terminated on the ground of unauthorised absence from duty under Regulation 16.14 then it is wholly illegal to make the absence during that period as a ground for terminating the services of Sharma. It is basic principle of natural justice that no one can be penalised on the ground of a conduct which was not penal on the day it was committed."

[Emphasis supplied]

30. In "Principles of Statutory Interpretation" the learned author, Justice G. P. Singh, while discussing on the said decision in the context of retrospective operation pertaining to the penal statutes, has stated thus:-

> "This case shows that the rule of construction against retroactivity of penal laws is not restricted to Acts providing for criminal offences but applies also to laws which provide for other penal consequences of a severe nature, e.g. termination of service."

31. In Ritesh Agarwal and Another v. Securities and Exchange Board of India and Others[10], the issue was whether the Regulations that came into force on 25.10.1995 could apply to a case where the cause of action arose prior thereto. In the aforesaid context, it has been held that:-

> "Ex facie, a penal statute will not have any retrospective effect or retroactive operation. If commission of fraud was complete prior to the said date, the

question of invoking the penal provisions contained in the said Regulations including Regulations 3 to 6 would not arise."

32. In this context, we may refer to the observations made in Government of India and Others v. Indian Tobacco Association[11] as follows:-

> "We are not oblivious of the fact that in certain situations, the court having regard to the purport and object sought to be achieved by the legislature may construe the word "substitution" as an "amendment" having a prospective effect but such a question does not arise in the instant case."
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> We may also note that in the said case, the Court observed that the doctrine of fairness also is to be considered to be a relevant factor for construing the retrospective operation of a statute.

33. In view of the aforesaid, we have no hesitation in mind that the amended Rule despite having been substituted has no retrospective effect. That apart, the notification uses the phraseology "shall be substituted" which clearly indicates the fact that the amended Rule is prospective.

34. The controversy does not rest there. The learned counsel for the State has urged that even if the Rule is not retrospective, the decision having been taken after the Rules have come into force, it is the amended Rule which would be applicable. It is propounded by him that there could be alteration of service conditions by framing the subsequent rule or regulation and, hence, the date of the decision is the relevant date to attract the applicability of the rule. It is also highlighted that the respondent, in the obtaining circumstances, had no vested right to be imposed a particular punishment under the unamended Rules.

35. To appreciate the aforesaid stand, we think it apposite to survey certain authorities in the field.In Roshan Lal Tandon v. Union of India and another[12], the Constitution Bench was dealing with the contention of the petitioner therein that he had a contractual right as regards the condition of service applicable to him at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. Repelling the contention, the Bench held thus: -

> "It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office

the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

Thereafter, their Lordships referred to a passage from Salmond and Williams on Contracts and, eventually, ruled thus: -

"We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."

36. In Raj Kumar v. Union of India and others[13], the larger Bench overruled the decision in Senior Superintendent, R.M.S. Cochin and another v. K.V. Gopinath, Sorter[14] and observed that the rules made under the proviso to Article 309 of the Constitution are legislative in character and, therefore, can be given effect to retrospectively.

37. In Ex-Capt. K.C. Arora and another v. State of Haryana and others[15], a notification was issued on August 19, 1976 amending the definition clause of 'military service' in Rule 2 of the Rules. The notification was issued with retrospective effect from November 1, 1966 and it restricted the benefits of military service upto January 10, 1968. A question arose whether the vested rights which had accrued to the petitioner therein in 1969, 1970 and 1971 had been taken away. Dealing with the controversy, the three-Judge Bench referred to the Constitution Bench decision in State of Gujarat v. Raman Lal Keshav Lal Soni[16] and, eventually, pronounced thus: -

"In view of this latest pronouncement by the Constitution Bench of this Court, the law appears to be well settled and the Haryana Government cannot take away the accrued rights of the petitioners and the appellants by making amendment of the rules with retrospective effect."

38. In Raman Lal Keshav Lal Soni (supra), the Court had observed that the amending Act which has been made retrospective to navigate around the obstacles of Article 311 and Article 14 of the Constitution to bring about an artificial situation could not be allowed to stand. The Constitution Bench had posed a question whether a law could be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years before and answered it in the negative. It may be noted with profit that in the said case, the Constitution Bench has ruled thus: -

> "The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no right, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years."
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> From the aforesaid Constitution Bench decision, it is graphically clear that a vested right cannot be impaired by bringing a law as that is likely to contravene the Constitutional Rights. As stated there, the law is required to satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The Bench has emphasized that a legislature cannot legislate today with reference to a situation that obtained 20 years before and ignore the march of events and the constitutional rights accrued in the course of two decades. Thus, vested and accrued rights are not to be impaired.

39. To understand what is precisely meant by vested right in the context of a service rule, it is necessary to understand and appreciate how this Court has viewed the said right in that conspectus. The Constitution Bench in Chairman, Railway Board and others v. C.R. Rangadhamaiah and others[17] was dealing with the validity of the notification dated 5.12.1988 issued by the Railway Administration under the proviso to Article 309 of the Constitution whereby Rule 2544 of the

Indian Railway Establishment Code, Volume II (Fifth Reprint) had been amended with retrospective effect. By virtue of the amendment, the quantum of percentage of the running allowance for the purpose of retirement and other benefits was reduced with effect from 1.1.1973. The notification was challenged before the Delhi High Court which transferred it to the Central Administrative Tribunal after coming into force of the Administrative Tribunals Act, 1985. The Tribunal treated the said notification as an executive instruction and opined that the same could not be accepted to be a statutory amendment of the existing rules governing the running allowance. The said order was not challenged by the Railway Administration. However, a notification was issued on 5.12.1988, the validity of which was challenged in some pending petitions. As various Benches of the Tribunal rendered conflicting decisions, the matter was referred to a larger Bench and the Full Bench of the Tribunal opined that though under the proviso to Article 309 of the Constitution the President has power to promulgate rules with retrospective effect, yet it is subject to the condition that the rules do not offend any constitutional rights or deprive an employee of his valuable vested right like pension after retirement as such deprivation of vested right is violative of Article 14 of the Constitution being unreasonable and arbitrary. A three-Judge Bench of this Court referred the matter to the larger Bench by passing the following order: -

> "Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by rules made under the proviso to Article 309 or by an Act made under that article, and which of them and to what extent.
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> We find that the Constitution Bench decisions in Roshan Lal Tandon v. Union of India[18], B.S. Vadera v. Union of India[19] and State of Gujarat v. Raman Lal Keshav Lal Soni[20] have been sought to be explained by two three-Judge Bench decisions in K.C. Arora v. State of Haryana[21] and K. Nagaraj v. State of A.P.[22] in addition to the two-Judge Bench decisions in P.D. Aggarwal v. State of U.P.[23] and K. Narayanan v. State of Karnataka[24]. Prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as a three-Judge Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges."

> The Constitution Bench analysed the decisions which have been mentioned in the referral order and observed as follows: - "24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni."

40. After so stating, the Constitution Bench stated that in the said case, the Court was concerned with the pension payable to the employees after their retirement. It took note of the fact that the respondents were no longer in service on the date of issuance of the impugned notification and the amendments in the rules were not restricted in their application in futuro. It was further observed that the amendments applied to employees who had already retired and are no longer in service on the date when the notifications were issued. After referring to the pronouncements in Deokinandan Prasad v. State of Bihar[25], D.S. Nakara v. Union of India[26] and Indian Ex-Services League v. Union of India[27], it has been ruled thus: -

> "33. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement."

41. We have referred to the aforesaid verdict in detail as it deals with the vested and accrued right in service jurisprudence and how the same cannot be affected by retrospective amendments. We have already opined that the amendment to the rules is not retrospective. Therefore, the fulcrum of the controversy is whether the respondent had a vested or accrued right to be visited with a particular punishment engrafted under Rules 9 of the unamended Rules. As has been held earlier, the disciplinary proceeding had been initiated under the unamended rules. Under the unamended rule 9(vii), the punishment provided was reduction to a lower rank in the seniority list or to a lower stage in the seniority list or to a lower stage in the timescale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited. After the amendment, Rule 9(vii) has been bifurcated into two parts. Under Rule 9(vii)(a), the punishment that is provided is 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 servant would earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction would or would not have the effect of postponing the future increments of his pay. Rule 9(vii)(b) deals with reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar for promotion with or without further direction regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service. When both the rules are read in juxtaposition, it is luculent that though the earlier Rule 9(vii) provided for reduction to lower grade or post, yet it did not stipulate imposition of condition on restoration as regards his seniority and pay to the original grade or post. It is noticeable that after the amendment, Rule 9(vii)(a) only provides reduction to a lower stage in the time scale of pay for a specified period and empowers the disciplinary authority to issue a direction, if necessary, whether the delinquent would earn increment of pay during the period of such reduction and whether such reduction will or will not have the effect of postponement in future increments of pay. Rule 9(vii)(b) deals with reduction to lower timescale of pay and other reductions which we have already stated. There is a distinction between reduction to a lower stage in the time scale of pay and reduction to a lower time scale of pay. Needless to say, in clause (vii)(a), there is no provision for reduction to a lower rank or lower grade or post. That is separately provided in clause (vii)(b). Whenever there is a reduction to a lower scale in the timescale of pay for a specified period, the employee remains in the said post and cadre but the scale of pay is reduced to a lower stage. Reduction to a lower time scale of pay has more serious impact than the reduction in the stage of pay itself. Reduction to a lower

post has a severe consequence. Similarly, reduction in lower rank in the seniority has a different concept.

42. Bestowing our thoughtful considerations we find that as far as the major penalty under Rule 9(vii) is concerned, the rule making authority, under the amended rule, has bifurcated/compartmentalized the punishment into two compartments – one slightly lesser than the other. Under the old rule, there was a singular punishment and there was no stipulation as regards the earning of increments or imposition of conditions on restoration to the grade or post or service concerned. It is worth noting that under the unamended rule, there were three other categories of punishments, namely, compulsory retirement, removal from service and dismissal from service. The said punishments have been maintained in the new rules. In the case at hand, the disciplinary proceeding was initiated by serving a charge- sheet for the purpose of imposition of a major penalty and, therefore, the maximum punishment of dismissal could have been imposed on the respondent.

43. The thrust of the matter is whether the respondent could have been imposed punishment under Rule 9(vii) of the unamended rules and no other punishment. The rules have been framed under Article 309 of the Constitution. There can be no cavil that by amending the rule, a punishment cannot be imposed in respect of a misconduct or delinquency which was not a misconduct or a ground to proceed in a departmental enquiry before the amended rules came into force. Further, a person cannot be subjected to a penalty greater than which might have been inflicted under the rule in force at the time of commission of delinquency or misconduct.

44. We have already referred to the decision in Pyare Lal Sharma (supra) wherein this Court had opined that no one can be penalised on the ground of a conduct which was not penal on the date it was committed. We have also referred to the view of the learned author, Justice G.P. Singh, in the book, "Principles of Statutory Interpretation", wherein he has stated that the case of Pyare Lal Sharma (supra) shows that the rule of construction against retroactivity of penal laws is not restricted to Acts providing for criminal offences but applies also to laws which provide for other penal consequences of a severe nature, namely, termination of service. In the said case, unauthorized absence was not a condition for passing an order of termination. The same was incorporated later on. In that backdrop, the view was expressed by this Court in Pyare Lal Sharma (supra).

45. Before we proceed to scan the rule position, we would like to refer to certain authorities rendered in the context of clause (1) of Article 20 of the Constitution.

We are absolutely conscious that there are certain authorities of this Court wherein it has been laid down that Article 20(1) of the Constitution is not applicable to civil consequences but only to criminal offences. However, by way of analogy, we will be referring to certain authorities for the purpose of understanding what constitutes retrospective penal consequence in its conceptual essentiality.

46. In K. Satwant Singh v. The State of Punjab[28], the question arose with regard to the penalty imposed under Section 420 of the Indian Penal Code. At the time of occurrence, Section 420 of the Indian Penal Code did not provide for minimum sentence of fine. By virtue of an amendment, imposition of minimum fine became compulsory. The Constitution Bench, dealing with the said facet, opined thus: -

> "In the present case a sentence of imprisonment was, in fact, imposed and the total of fines imposed, whether described as "ordinary" or "compulsory", was not less than the amount of money procured by the appellant by means of his offence. Under S. 420 of the Indian Penal Code an unlimited amount of fine could be imposed. Article 20(1) of the Constitution is in two parts. The first part prohibits a conviction of any person for any offence except for violation of law in force at the time of the commission of the act charged as an offence. The latter part of the Article prohibited the imposing of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The offence with which the appellant had been charged was cheating punishable under S. 420 of the Indian Penal Code which was certainly a law in force at the time of the commission of the offence. The sentence of imprisonment which was imposed upon the appellant was certainly not greater than that permitted by S. 420. The sentence of fine also was not greater than that which might have been inflicted under the law which had been in force at the time of the commission of the offence, as a fine unlimited in extent could be imposed under the section."

47. In Smt. Maya Rani Punj v. Commissioner of Income-tax, Delhi[29], a three-Judge Bench was dealing with the provisions of imposition of penalty under the Income-tax Act, 1961. The question before the Court was that under Section 28 of the Income-tax Act, 1922, the upper limit of penalty was provided and there was no prescription of any particular rate as confined under Section 271(1)(a) of the 1961 Act. The Court observed that the penalty contemplated in the respective sections of the two Acts is quasi-criminal in character. Reference was made to Article 20(1) of the Constitution and it was opined that under the said Article, no

person is to be subjected to a penalty greater than which might have been inflicted under the law in force at the time of commission of the offence. The contention that the penalty should have been levied in accordance with Section 28 of the 1922 Act and not under Section 271(1)(a) of the 1961 Act was not accepted by the Court. The three-Judge Bench referred to the pronouncement in K. Satwant Singh (supra) and, eventually, after quoting a passage from there, observed as follows: - "It is conceded that under section 28 of the 1922 Act in the facts of the case a fine of more than Rs.4,060 (being within the limit of 1½ times of the tax amount) could have been levied. While conceding to that extent, Mr. Dholakia submits that the decision of the Constitution Bench of this Court in Satwant Singh's case requires reconsideration as it has not taken into account the ratio of an important decision of the United States Supreme Court in the case of Elbert B. Lindsay v. State of Washington, (1937) 81 Law Ed 1182. We are bound by the decision of the Constitution Bench. It has held the field for a quarter of a century without challenge and non-consideration of an American decision which apparently was not than cited before this Court does not at all justify the submission at the Bar for a reconsideration of the decision of this Court in Satwant Singh's case (AIR 1960 SC 266)."

48. In Tiwari Kanhaiyalal etc. v. The Commissioner of Income-tax, Delhi[30], while dealing with a penal provision under the Income-tax Act, 1922 and Income-tax Act, 1961 in the backdrop of clause (1) of Article 20 of the Constitution, this Court opined that the punishment provided under the 1961 Act being greater than the one engrafted under the provisions under the 1922 Act, the appellant therein was not entitled to press into the service the second part of clause (1) of Article 20 of the Constitution.

49. At this juncture, we may state that an ex post facto law may be retrospective, if it is ameliorative. But in the present context, delineation on the said score is not warranted. We confine our analysis pertaining to the vested or accrued right and imposition of higher punishment that was not permissible at the time of initiation of departmental proceeding.

50. In the case at hand, under the unamended rule, there were, apart from stoppage of increment with cumulative effect and reduction in rank, grade, post or service, three major punishments, namely, compulsory retirement, removal and dismissal from service by which there was severance of service. The maximum punishment that could have been imposed on an employee after conducting due departmental enquiry was dismissal from service. The rule making authority, by way of

amendment, has bifurcated the rule 9(vii) into two parts, namely, 9(vii)(a) and 9(vii)(b). As is evincible, the charge-sheet only referred to the imposition of major penalty or to be dealt with under the said rules relating to major penalty. In this backdrop, it would be difficult to say that the employee had the vested right to be imposed a particular punishment as envisaged under the unamended rules. Once the charges have been proven, he could have been imposed the punishment of compulsory retirement or removal from service or dismissal from service. The rule making authority thought it apposite to amend the rules to introduce a different kind of punishment which is lesser than the maximum punishment or, for that matter, lesser punishment than that of compulsory retirement from service. The order of compulsory retirement is a lesser punishment than dismissal or removal as the pension of a compulsorily retired employee, if eligible to get pension under the Pension Rules, is not affected. Rule 9(vii) was only dealing with reduction or reversion but issuance of any other direction was not a part of it. It has come by way of amendment. The same being a lesser punishment than the maximum, in our considered opinion, is imposable and the disciplinary authority has not committed any error by imposing the said punishment, regard being had to the nature of charges. It can be looked from another angle. The rule making authority has splitted Rule 9(vii) into two parts – one is harsher than the other, but, both are less severe than the other punishments, namely, compulsory retirement, removal from service or dismissal. The reason behind it, as we perceive, is not to let off one with simple reduction but to give a direction about the condition of pay on restoration and also not to impose a harsher punishment which may not be proportionate. In our view, the same really does not affect any vested or accrued right. It also does not violate any Constitutional protection.

51. In view of the aforesaid analysis, the order passed by the High Court that a double punishment has been imposed does not withstand scrutiny.

52. Consequently, the appeals are allowed. The orders passed by the High Court are set aside and the order of punishment imposed by the disciplinary authority is restored. In the facts and circumstances of the case, there shall be no order as to costs.

[1] (1993) 3 SCC 196
[2] (1991) 4 SCC 109
[3] (2007) 6 SCC 704
[4] (2007) 9 SCC 625
[5] (2007) 6 SCC 220

[6] (2007) 11 SCC 522
[7] (1994) 4 SCC 602
[8] AIR 1988 SC 740
[9] (1989) 3 SCC 448
[10] (2008) 8 SCC 205
[11] (2005) 7 SCC 396
[12] AIR 1967 SC 1889
[13] AIR 1975 SC 1116
[14] AIR 1972 SC 1487
[15] (1984) 3 SCC 281
[16] (1983) 2 SCC 33
[17] (1997) 6 SCC 623
[18] AIR 1967 SC 1889
[19] AIR 1969 SC 118
[20] (1983) 2 SCC 33
[21] (1984) 3 SCC 281
[22] (1985) 1 SCC 523
[23] (1987) 3 SCC 622
[24] 1994 Supp (1) SCC 44
[25] (1971) 2 SCC 330
[26] (1983) 1 SCC 305
[27] (1991) 2 SCC 104
[28] AIR 1960 SC 266
[29] AIR 1986 SC 293
[30] AIR 1975 SC 902