

SUPREME COURT OF INDIA

H.L.Gulati

Vs.

Union of India

C.A.Nos.8224-8225 of 2011

(Jagdish Singh Khehar and Shiva Kirti Singh JJ.)

26.02.2015

JUDGMENT

JAGDISH SINGH KHEHAR, J.

1. The appellant was holding charge of the post of Senior Accounts Officer, in the office of the Controller of Defence Accounts, during the period 1992 to 1994, when it was discovered that 36 fraudulent claims came to be authorized by him, resulting in the unauthorised release of an approximate amount of Rs.42.24 lakhs.

2. The investigative process, indicated the involvement of large number of officers, including Lt. Col. Pakki Rama Shankar Rao. This led to the registration of a first information report bearing No.RC AC 11998 A0002 dated 20.05.1998 at police station CBI/SPE/ACU(I) District New Delhi. Eventually, a charge sheet bearing No.2 dated 6.9.1999 came to be filed, wherein the appellant was arrayed as accused no.1.

3. Simultaneously, with the initiation of criminal proceedings, the authorities issued a charge memo dated 7.7.1998 to the appellant, wherein he was accused of four articles of charge. The articles of charge levelled against the appellant are being extracted hereunder: "Article I That the said Shri H.L.Gulati, SAO while functioning as Sr.Accounts Officer- in-Charge `M' Section during the period 16.10.92 to 15.10.94 in the Office of CDA (HQRS.), New Delhi, failed to discharge his duties effectively as provided for in Appendix 1 to Defence Accounts Department Office Manual Part I, which led to authorization of payment against 36 fraudulent claims as listed in Encl.I. to the tune of Rs.42.24 lakhs approximately. Thus the said H.L.Gulati, SAO failed to maintain devotion to duty, conducted

himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure the integrity and devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article II That during the aforesaid period and while functioning in the aforesaid office the said H.L.Gulati, SAO failed to detect that (I) fraudulent claims had been floated against fake sanctions purported to have been issued by Ministry of Defence/DGOS, (ii) the contingent bills had not been preferred by the officers of DGOS authorized to do so and (iii) appropriate procurement procedure relevant to the value of stores procured had not been followed. Thus the said H.L.Gulati, SAO, failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed in the performance of his official duties in the exercise of powers conferred on him, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(ii) of CCS (Conduct) Rules, 1964.

Article III That during the aforesaid period and while functioning in the aforesaid office the said H.L.Gulati, SAO authorized the payments of the 36 fraudulent claims to the tune of Rs.42.24 lakhs approximately, as officer-in-charge `M' Section although the expenditure as per the fake sanctions was debitable to the Revenue Head "Ordnance stores and did not fall within the purview of `M' Section as per Chapter VIII of OM Part XII and even without getting the local purchase bills noted in Accounts Section as required vide para 437 OM Part II Vol. I. Thus the said H.L.Gulati, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure integrity and devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 33(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article IV That the said Shri H.L.Gulati, SAO while functioning as Sr.Accounts Officer-in-Charge `M' Section during the period 16.10.92 to 15.10.94 in the Office of CDS (Hqrs), New Delhi, passed 36 fraudulent claims amounting to Rs.42.24 lakhs approximately. Though the concerned bills related to Store Section, these were processed and passed for payment in the `M' Section and without following the prescribed procedures. The above act of Shri H.L.Gulati resulted in fraudulent payment to the tune of Rs.42.24 lakhs approximately to the alleged suppliers and caused pecuniary loss to the Govt. The above act indicates complicity with the alleged

suppliers and also exhibits failure on the part of Shri Gulati to maintain absolute integrity.

Thus the said H.L.Gulati, SAO failed to maintain absolute integrity and conducted in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964."

4. The appellant preferred a reply to the aforesaid charge memo on 4.9.1998. Finding the reply filed by the appellant as unsatisfactory, the punishing authority decided to hold a regular departmental enquiry, which came to be ordered against the appellant on 9.10.1998.

5. Having allowed an opportunity to the Presenting Officer, as also, to the appellant-delinquent to lead evidence, the Enquiry Officer submitted his report on 18.7.2002. The aforesaid report came to be served upon the appellant through a communication dated 5.2.2004. The appellant preferred a representation contesting the findings recorded by the Enquiry Officer on 7.3.2004. Finding the reply submitted by the appellant unacceptable, the punishing authority by an order dated 30.11.2005, punished the appellant under Rule 9 of the CCS(Pension) Rules, 1972 (hereinafter referred to as the '1972 Rules'). Rule 9 afore-mentioned is being extracted hereunder: "9.Right of President to withhold or withdraw pension (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re- employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall

be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(B) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted (4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i)in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii)in the case of civil proceedings, on the date the plaint is presented in the court."

The aforesaid Rule came to be invoked on account of the fact that the appellant had attained the age of retirement, and had superannuated from service with effect from 30.06.2002. While invoking Rule 9 of the 1972 Rules, the punishing authority ordered the withholding of 50% of the appellant's pension permanently, and also, the withholding of 50% of the appellant's gratuity.

6. Dissatisfied with the punishment order dated 30.11.2005, the appellant preferred a review petition on 4.7.2006. Submissions advanced by the appellant in the review petition were considered by the punishing authority, whereupon, by an order dated 1.8.2007 the review petition came to be rejected.

7. Whilst the criminal proceedings were pending consideration, the aforesaid departmental proceedings attained finality. Insofar as the criminal proceedings are concerned, it is sufficient to notice, that the Special Judge, Delhi, while adjudicating upon the controversy vide his order dated 8.7.2005, found the appellant not guilty of any criminal accountability. The trial Court, in the criminal case, arrived at the conclusion, that the complicity of the appellant in the fraud, was not substantiated, nor was there any intentional culpability proved. Accordingly, the appellant came to be discharged from the criminal case.

8. Aggrieved by the punishment order dated 30.11.2005, and the rejection of the review petition vide order dated 1.8.2007, the appellant approached the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the 'Administrative Tribunal') by filing Original Application No. 1675 of 2008. The Administrative Tribunal vide its order dated 13.4.2009 arrived at the conclusion, that the enquiry report submitted by the Enquiry Officer on 18.7.2002, did not record any finding of grave misconduct . In the above view of the matter, the Administrative Tribunal, while interpreting Rule 9 of the 1972 Rules, held that the punishment inflicted upon the appellant on 30.11.2005 (as also the review order passed against the appellant on 1.8.2007) were not sustainable.

9. The order passed by the Administrative Tribunal on 13.4.2009, came to be assailed by the Union of India, before the High Court of Delhi (hereinafter referred to as the 'High Court') through Writ Petition(C) No.13664 of 2009. The High Court accepted the writ petition, and set aside the order passed by the Administrative Tribunal on 31.8.2010. The appellant before this Court, also preferred review petition No.428 of 2010 before the High Court. The said review petition was, however, rejected by an order dated 26.11.2010.

10. The orders passed by the Delhi High Court on 31.08.2010 and 26.11.2010, were assailed by the appellant by preferring Special Leave Petition(C) Nos.3365-3366 of 2011. Leave in the matters came to be granted on 23.09.2011. It is therefore, that the instant appeals have matured for consideration, at our hands.

11. Before venturing to determine the culpability of the appellant insofar as the articles of charge, that came to be levelled against him, it would be imperative for us to examine the determination of the Enquiry Officer, in his report dated 18.7.2002, on each of the articles of charge. We shall accordingly, summarily deal with the findings recorded by the Enquiry Officer hereunder:

i) Insofar as Article I of the charge memo dated 7.7.1998 is concerned, the Enquiry Officer arrived at the conclusion, that the responsibility of the Senior Accounts Officer in respect of the verification of the specimen signature was not only to be his own verification, but he was also to ensure that where verification was done, it would be so indicated, in the voucher. As per the determination of the Enquiry Officer, the aforesaid obligation would imply that the Senior Accounts Officer, was not only to record an endorsement on the voucher, he would also have to ensure that the auditors and the Assistant Accounts Officer also record such endorsements on vouchers, when they dealt with the issue of specimen verification. A categorical finding was recorded by the Enquiry Officer to the effect, that the bills which authorized the payment of the 36 fraudulent claims, did not show any such endorsements, and therefore concluded, that the appellant had failed to put his own endorsement, and had also failed to ensure endorsements by the auditors/Assistant Accounts Officer, about verification of the specimen signature on the bills, leaving a doubt whether the auditors/AAOs had verified the specimen signature. Having so recorded, the Enquiry Officer accepted that Article I of the charge with reference to the appellant (who was working in the 'M' section during the period 16.10.1992 to 15.10.1994 in the office of CDA(HQ), New Delhi) to the extent, that had failed to discharge his duties effectively as provided for in Appendix 1 to

OM Pt.1. The Enquiry Officer accordingly inferred, that authorization of the payment of the 36 fraudulent claims, to the tune of Rs.42.24 lakhs, stood marginally proved.

ii) Insofar as Article II of the memo of charge dated 7.7.1998 is concerned, the Enquiry Officer arrived at the conclusion, that the appellant had failed to detect, that the fraudulent claims had been floated against fake sanctions purported to have been issued by the Ministry of Defence, was correct. As such the Enquiry Officer accepted, that the charge stood proved. On Article II, the Enquiry Officer recorded the following conclusion:

"1) fraudulent claims have been floated against fake sanctions purported to have been issued by Min. of Defence partially proved.

2) the contingent bills have not been preferred by officers of DGOS authorized to do so is not proved.

3) The appropriate procurement procedure relevant to the value of stores procured has not been followed is proved."

iii) Insofar as Article III of the charge memo dated 7.7.1998 is concerned, it was alleged against the appellant, that the bills which were routed through the accounts section for noting, bore the endorsement of the accounts section, to the effect that the bills had been noted in the accounts section. However, on the basis of exhibits P/1/1 to P/1/36, the Enquiry Officer arrived at the conclusion, that no such endorsements were there on these bills. According to the finding recorded by the Enquiry Officer, although these bills were required to be routed through the accounts section for noting, they had not been so routed. Based on paragraph 154 of Chapter 13 of Defence Account Code, which lists items which are under locally controlled heads, according to which, payment of stores and miscellaneous claims would come under the purview of locally controlled heads, i.e., heads susceptible to control against budget provision by the various administrative and executive authorities subordinate to the Government of India, and para 437 OM Pt. II Vol. I (Miscellaneous Section) which provided that bills in respect of charges which were debitible to locally controlled heads, would have to be sent to the accounts section before payment, for obtaining a certificate regarding the availability of funds, and further para 514 of Chapter VII Stores Contract Section of OM Pt.II Vol.I which provides that bills relating to locally controlled heads or centrally controlled

heads for which specific allotment existed, the bills had to be forwarded to the accounts section, for noting and furnishing a certificate of availability of funds. Hence, whether or not the bills were processed in 'M' section or Stores Contract Section, according to the Enquiry Officer, the bills were required to be sent to the accounts section, for obtaining a certificate regarding the availability of funds as according to Para 47(a) of Defence Audit Code. One of the main objectives of audit of expenditure was to ensure, that there is a provision of funds for the expenditure duly authorized by the competent authority. On perusal of the bills, the Enquiry Officer found, that there were no endorsements thereon, of the accounts section. Therefore, the Enquiry Officer arrived at the conclusion, that the second part of Article III of the charge memo, that the bills were passed without even getting the bills noted in accounts section, stood substantiated against the appellant. Having so concluded, the Enquiry Officer held that Article III of the memo of charge dated 7.7.1998 to be partially proved.

iv) Insofar as Article IV of the charge memo dated 7.7.1998 is concerned, the Enquiry Officer arrived at the conclusion, that the same was not proved against the appellant.

12. The punishing authority accepted the findings recorded by the Enquiry Officer. Thereupon, a copy of the enquiry report was served upon the appellant. The appellant submitted a representation in response thereto, on 7.3.2004. The punishment order dated 30.11.2005 was passed after the Punishing Authority considered the reply filed by the appellant. The said punishment order was reiterated, upon the disposal of the review petition filed by the appellant, vide order dated 1.8.2007.

13. The first contention advanced by the learned counsel for the appellant was premised on the interpretation of Rule 9 of the 1972 Rules in the same fashion as the same had been interpreted by the Administrative Tribunal. In sum and substance, the contention of the learned counsel for the appellant was, that it was the Enquiry Officer who ought to have recorded a finding of "grave misconduct" or "grave negligence", whereupon the punishing authority could have invoked Rule 9 of the 1972 Rules, to inflict an appropriate punishment upon the appellant.

14. Having perused Rule 9 of the 1972 Rules, it is not possible for us to accept the first contention advanced by the learned counsel for the appellant. The responsibility vested on an enquiry officer is limited to the determination of the innocence or guilt of a delinquent employee, with reference to charges levelled

against him. It is on the establishment of the charges (if any), that the punishing authority will record a finding, whether the conclusions lead to the further inference, that the delinquent has committed acts of "grave misconduct" or "grave negligence". It is on such determination by the punishing authority that Rule 9 of the 1972 Rules can be invoked, in case the delinquent employee has, in the meantime, retired on attaining the age of superannuation. It is not a matter of dispute that when the punishment was inflicted upon the appellant by an order dated 30.11.2005, the appellant had already retired from service having superannuated on 30.06.2002. We therefore find no merit in the first contention advanced at the hands of the learned counsel for the appellant.

15. The only other contention advanced at the hands of the appellant was, that the Enquiry Officer had recorded findings on the first three articles, that the charges against the appellant were partly/marginally proved. Having invited our attention to the conclusion drawn by the Enquiry Officer, learned counsel for the appellant, also drew, our attention to the impugned punishment order dated 30.11.2005/1.8.2007, and contended, that the findings recorded by the Enquiry Officer were fully endorsed by the punishing authority. Based on the aforesaid, it was the vehement submission of the learned counsel for the appellant, that the Enquiry Officer cannot be stated to have recorded any conclusion, which would lead to the inference that the appellant was guilty of "grave misconduct".

16. The details of the findings recorded by the Enquiry Officer have been noticed by us hereinabove. We find merit in the instant contention of the learned counsel for the appellant. What was sought to be proved against the appellant was negligence in the discharge of his duties as Senior Accounts Officer, which resulted in the unauthorised payment of 36 fraudulent claims, and thereby, the unauthorised dispersal of approximately Rs.42.24 lakhs. Additionally, it was sought to be emphasised by the learned counsel for the appellant, that the charge of ill-motive was levelled against the appellant in Article IV of the memo of charges dated 7.7.1998. But insofar as Article IV of the memo of charges is concerned, the appellant was found innocent thereof by the Enquiry Officer. The submissions sought to be put forward was, that it had come to be established, that there was no ill- motive at the hands of the appellant, insofar as his involvement in the release of payments of the 36 fraudulent claims is concerned. Additionally, it was the contention of the learned counsel for the appellant, that even in the course of the criminal prosecution, initiated against the appellant, his complicity in the fraud was not proved, nor was it found that there was any intentional culpability of the appellant, insofar as the release of the fraudulent claims are concerned. In the above view of the matter, it was the assertion of the learned counsel for the

appellant, that there was no express ill-intention at the hands of the appellant. In other words, the issue substantiated against the appellant was of mere negligence.

17. We affirm the aforesaid submission advanced at the hands of the appellant, inasmuch as, it is not possible for us to accept, that the appellant was blameworthy/guilty of any "grave misconduct" because the enquiry report dated 18.7.2002 only found that the appellant was negligent in the discharge of his duties. Insofar as Article IV of the memo of charges dated 7.7.1998 is concerned, he was accused of complicity with the alleged suppliers, and also, responsible for having failed to maintain absolute integrity. But then, Article IV of the charge memo was held to be not proved in the Enquiry Report dated 18.7.2002. Equally important is the fact, that the appellant was discharged from the criminal prosecution initiated against him with reference to the same sequence of facts. We are accordingly satisfied to conclude, that the appellant may have been negligent in the discharge of his duties, but it is not possible to conclude, that the appellant was guilty of "grave misconduct".

18. Having so concluded, it emerges that the findings against the appellant could certainly not have been of "grave misconduct". Be that as it may, the punishing authority, while passing the impugned punishment order dated 30.11.2005 recorded the following conclusion: "9. AND WHEREAS, the President in the light of the above observation and findings and after taking into account all relevant aspects as contained in record of the case, is satisfied that the charges which were established against Shri H.L. Gulati, SAO(Retd.) constitutes a grave misconduct. Therefore, the President considers that ends of justice would be met if 50% of the pension admissible to Shri H.L. Gulati, SAO (Retd.) is withheld on permanent basis and 50% of gratuity is withheld."

(emphasis is ours)

19. Based on the conclusion, which had been recorded by the punishing authority in the order dated 30.11.2005(extracted above), namely, that the delinquency levelled against the appellant in the charge memo dated 7.7.1998 which stood established constituted "grave misconduct". A review petition filed by the appellant to assail the order of punishment was rejected on 1.8.2007.

20. We are satisfied, that it was open to the punishing authority to have passed the punishment order, in terms of the mandate contained in Rule 9 of the 1972 Rules. We are further satisfied, that the punishing authority could have passed such an order after arriving at the conclusion that the appellant/delinquent was either guilty

of "grave negligence" or of "grave misconduct". The punishing authority recorded, while passing the punishment order, that the appellant was found to have committed acts of "grave misconduct". Having perused the charges proved against the appellant, we have already concluded above, that the delinquency established against appellant was of negligence, and not of misconduct. Therefore, the finding recorded in the impugned order that the appellant had committed acts of "grave misconduct" cannot be accepted. The above conclusion, in the impugned order being unacceptable, is hereby set aside. In the absence of the conclusion of "grave negligence", the punishment order is liable to be set aside, and is accordingly set aside.

21. Since the delinquency relates to the years 1992 to 1994, it would not be in the fitness of the matter, to require the punishing authority to reconsider a lesser punishment, in view of the conclusion recorded by us hereinabove. We would therefore exercise our jurisdiction under Article 142 of the Constitution of India, to inflict an appropriate punishment upon the appellant. Keeping in mind the delinquency proved and established against the appellant in the enquiry report dated 18.7.2002, which was accepted by the punishing authority, we are satisfied that ends of justice would be met if the punishment of withholding 50% of his gratuity is maintained/sustained. Insofar as the permanent withholding of 50% of the appellant's pension is concerned, we are of the view that it would be just and appropriate to sustain the same till the end of the current month, and to order the release of 100% of the appellant's pension with effect from 01.03.2015. Ordered accordingly.

The instant appeals stand disposed of in the aforesaid terms.