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Court : Andhra Pradesh

Decided On : Sep-13-2012

Judge : Ramesh Ranganathan

Appeal No. : Writ Petition No.23701 of 1999

Appellant : Dr. B. Devadas

Respondent : The Chairman-cum-managing Director, National Mineral Development Corporation Limited, Castle Hills, Masab Tank, Hyderabad

Advocate for Pet/Ap. : Sri. J. Sudheer

Judgement :

Aggrieved by the action of the respondents in imposing on him the punishment of removal from service, by proceedings dated 29.06.1999/02.07.1999 as confirmed in appeal by order dated 17.09.1999 and in revision by order dated 12.10.1999, the petitioner has invoked the jurisdiction of this Court.

Facts, in brief, are that the petitioner joined the respondent corporation as a Junior Medical Officer in January, 1980. He was promoted as a Medical Officer on 01.08.1983, and as a Senior Medical Officer on 07.01.1988. He was promoted as Deputy Chief Medical Officer on 08.01.1994 in which post he continued till he was removed from service. The petitioner was issued charge memo dated 25.11.1988

for having claimed wrong T.A. bills. The petitioner admitted his guilt, and requested that he be pardoned. It is his grievance that, instead of taking a lenient view, an enquiry officer was appointed vide proceedings dated 28.12.1998; an enquiry was held on 14.01.1999; and, even in the enquiry, he admitted his guilt. The enquiry officer, thereafter, submitted his report on 29.01.1999. A show cause notice dated 17.03.1999 was issued to the petitioner calling upon him to show cause why he should not be imposed the punishment of removal from service. The petitioner, in his reply thereto, requested that a sympathetic view be taken. However, without taking into account his request, the respondent removed the petitioner from service vide proceedings dated 29.06.1999 which, as noted hereinabove, was confirmed in appeal and then in revision. The petitioner would refer to another disciplinary proceedings, in the very same respondent organization, wherein certain officers, who faced vigilance enquiries and CBI cases, were let off with a minor penalty even after the charges leveled against them were held proved. He would refer to the names of three such officers, whose punishment details shall be referred to hereinafter.

Sri J. Sudheer, learned counsel for the petitioner, would question the order of punishment imposed on the petitioner of removal from service on the following grounds: (1) the respondent had discriminated between the petitioner and the other three officers; (2) while the misconduct committed by the petitioner was far less serious than those committed by the other officers, they were let off with merely a censure/minor penalty whereas the petitioner was imposed the punishment of removal from service; (3) the respondent had discriminated against the petitioner in the nature of punishment imposed on him; and (4) the respondent had also not acted fairly in imposing a more severe punishment on the petitioner, while letting the other three officers off with a lighter penalty.

The charge which the petitioner was found guilty of, as is evident from the material placed before this Court, is that he had submitted fraudulent travel allowance claims during the period April, 1996 to July, 1998 for Rs.64,717/-. The petitioner admitted his guilt in submitting such fraudulent money claims. The charge held established against the petitioner, in effect, was that he had falsely claimed and received money from the Corporation, for expenses which he did not incur, which

is undoubtedly a grave and serious act of misconduct.

Having regard to the gravity of the established misconduct, the punishing authority has the power and jurisdiction to impose punishment, and the penalty is not open to review by the High Court under Article 226. If the order is supported on any finding as to substantial misconduct for which punishment “**can lawfully be imposed**”, it is not for the Court to consider whether that ground alone would have weighed with the authority. (**B.C. Chaturvedi v. Union of India** ((1995) 6 SCC 749); **State of Orissav. Bidyabhushan Mohapatra** (AIR 1963 SC 779); and **Union of India v. Sardar Bahadur** ((1972) 4 SCC 618)).

The disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court, exercising jurisdiction under Article 226 of the Constitution, is not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the High Court is limited and, while exercising the power of judicial review, it cannot normally substitute its own conclusion on penalty and impose some other penalty, or set aside the punishment altogether unless it finds that there has been a substantial non-compliance with the rules of procedure or a gross violation of the rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice, or the punishment is shockingly disproportionate to the gravamen of the charge. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. (**B.C. Chaturvedi (Supra)**). The High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved. (**M.P. Electricity Board v. Jagdish Chandra Sharma** ((2005) 3 SCC 401)). The Court should not interfere with the

administrator's decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the Court, in the sense that it is in defiance of logic or moral standards. The Court would neither go into the correctness of the choice made by the administrator, nor would it substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (**Government of India v. George Phillip** (2006) 13 SCC 1); **Om Kumar v. Union of India** ((2001) 2 SCC 386)).

Where an administrative decision, relating to punishment in disciplinary cases, is questioned as 'arbitrary' under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court, while reviewing punishment and if it is satisfied that Wednesbury principles are violated, should normally remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and in such extreme or rare cases can the court substitute its own view as to the quantum of punishment. (**George Phillip**⁵; **Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain** ((2005) 10 SCC 84)).

The misconduct committed by the petitioner of making fraudulent traveling allowance claims, and in enriching himself at the cost of the respondent-corporation, to a tune of Rs.64,717/- is undoubtedly grave and serious in nature. The punishment, of removal from service, imposed on him cannot, therefore, be said to be either grossly disproportionate to the act of misconduct committed by him, or to be a punishment which shocks the conscience of this Court.

The plea of discrimination is based on the disciplinary action initiated against three officers i.e., Sri A.S. Ahluwalia, Sri K.C. Mukhopadyaya, and Sri Girija Shankar. Pursuant to the directions of this Court, the respondent Corporation has placed the disciplinary proceedings in relation to two of these officers but has, however, failed to place the disciplinary proceedings relating to Sri Girija Shankar. A perusal of the memo issued to, and the order of punishment imposed on, these two officers does

support the submission of Sri J. Sudheer, learned counsel for the petitioner, that these two officers were let off with a minor punishment for very grave and serious acts of misconduct. I also find considerable force in his submission that these officers ought to have been severely dealt with, and should have been imposed a deterrent punishment. While the respondent could well have been called upon to explain why these two officers could not be imposed a more severe punishment, the difficulty this Court faces is that these two officers have not been arrayed as respondents in the Writ Petition. The plea of discrimination can be accepted only if the petitioner's claim is based on some legal right. That these three officers were illegally let off with a minor penalty does not justify this Court directing that the respondent should also have let off the petitioner with a minor punishment for an act of misconduct which, in effect, amounts to misappropriation of the funds of the respondent - Corporation for Rs.64,717/-. In **ChandigarhAdministration v. Jagjitsingh** (AIR 1995 SC. 705), the Supreme Court observed:-

“.....Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order

constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.....But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.....”

The plea of discrimination must, therefore, fail. It is no doubt true that the respondent ought to have acted fairly, and should have taken stringent action against the three officers mentioned in the affidavit filed in support of the Writ Petition. As held by the Supreme Court, in **Man Singh v. State of Haryana (2008) 12 SCC 331**), the doctrine of equality is synonymous with fairness in the concept of justice, and stands as the most accepted methodology of a governmental action; and the administrative action is to be just on the test of “**fair play**” and “**reasonableness**”. Such fairness in action does not mean that the petitioner herein who, in effect, had misappropriated funds of the respondent-corporation by submitting false and fabricated traveling allowance claims, should also be let off with a minor penalty.

Reliance placed on behalf of the petitioner, on **K. Sukhendar Reddy v. State of A.P.((1999) 6 SCC 257)**, is also misplaced. In **K. Sukhendar Reddy (Supra)**,

criminal proceedings were initiated against several officers including the appellant therein. Several other officers, senior to the appellant, were said to have been involved in the very same offence. While they were continued in service, the appellant was placed under suspension. It is in this context that the Supreme Court observed that the Government cannot be permitted to resort to selective suspension, and could not be permitted to place an officer under suspension just to exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy, would be taken. It is not as if the three officers and the petitioner herein were charged of the same offence or were involved in the same act of misconduct. The question of imposition of selective punishment would arise only if different punishments are imposed on different officers for the same act of misconduct. The misconduct, which the petitioner has admitted to have committed, is a grave and serious act of corruption and this Court, in proceedings under Article 226 of the Constitution of India, would not be justified in interfering with the punishment, imposed on him by the respondent, of removal from service. The Writ Petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.

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