

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2017

Delivered on :28.03.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN
and

The Honourable Mr.Justice V.PARTHIBAN

W.P.No. 4971 of 2010
and M.P.No.1 of 2010

1. The Union of India, rep. by
The Additional Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Zonal Office, South Zone,
No.3-4-763 Barkatpura,
Hyderabad-500 027.
2. The Regional Provident Fund Commissioner-I,
EPF Organisation, Regional Office,
No.36, Royapettah High Road,
Chennai-600 014.
3. The Regional Provident Fund Commissioner-I,
EPF Organisation, Regional Office,
Bhavishya Nidhi Bhavan, Dr.Balasundaram Road,
Coimbatore-641 018. ... Petitioners

versus

1. The Central Administrative Tribunal,
rep. by its Registrar,
City Civil Court Buildings,
Chennai.
2. K.M.Suresh Krishna .. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorari to call for the records pertaining to the order dated 08.12.2009 O.A.No.728 of 2008 from the 1st respondent and quash the order.

For Petitioners	:	Mr.V.Vijayashankar
For Respondents	:	Mr.V.Parthiban for
R2	:	M/s.Ayyer and Iyer
R1	:	Tribunal

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal') in O.A.No.728 of 2008 dated 8.12.2009 ordering the Original Application filed by the second respondent herein, who is the applicant before the Tribunal.

2. The second respondent/applicant, who was working as Lower Division Clerk (LDC) in the Provident Fund Organization, approached the Tribunal, challenging the order of penalty of dismissal from service, passed in pursuance of disciplinary action initiated against him for certain acts of misconduct.

3. While the second respondent/applicant was working as LDC, he was issued with a charge memorandum dated 15.11.2002 framing two articles of charges imputing fraudulent character of the petitioner in the matter of his official discharge of duty. An enquiry conducted into the charges and a report was submitted on 19.4.2007 holding that both the charges were proved and after completion of the formalities in terms of service regulations, the disciplinary authority imposed penalty of dismissal from service considering the gravity of the misconduct alleged to have been committed by the second respondent herein. An appeal was filed against the order of dismissal from service passed by the Disciplinary Authority and on confirmation of the same in the appeal, the second respondent/applicant approached the Tribunal, assailing the orders of penalty.

4. Before the learned Tribunal, on behalf of the second respondent/applicant, it was contended that other Officer who was implicated along with him for the same alleged incident, namely Shri M.Aswathanarayana was exonerated of all the charges, but prosecuted only the second respondent/applicant, he being only an LDC, had in fact, no power to issue any cheque and only on approval by the immediate superior authority, the cheque was issued. According to the second respondent, he had only put the file before the Officer for taking proper decision in the matter. Moreover, there was no alleged financial loss since the money in question has been made good by the wrong recipient in the subject transaction.

5. Per contra, it was contended on behalf of the petitioner/respondent, that a full opportunity was given to the employee in the departmental enquiry and witnesses were examined in his presence and the Disciplinary Authority has given details for passing the order imposing punishment of dismissal.

6. Further, it was also contended that the charge being very serious in nature, the punishment of dismissal from service was proportionate and it cannot be said as harsh punishment.

7. After taking note of the submissions, the learned Tribunal ordered Original Application with a direction as contained in para 12 which is extracted below:

"12. Taking into account the above facts, we are of the considered opinion that the punishment of dismissal is disproportionate. We therefore, modify the order of dismissal to that of stoppage of increment for a period of three years with cumulative effect. The applicant will be reinstated to service forthwith, however, there shall be no payment of back wages for the period for which the applicant has been out of service."

8. The above said direction was issued in spite of the fact that there was a clear finding of the Tribunal stating that there was a dereliction of duty on the part of the employee and from the records, it was found that adequate opportunity was afforded to the employee to defend himself before the enquiry. The Tribunal did not also find fault in the order passed by the Disciplinary Authority and the Appellate Authority and finally held that there was no procedural irregularity to arrive at conclusion that the employee was not guilty for the charges framed against him. However, the Tribunal, notwithstanding with the above observation, thought it fit to interfere with the punishment and substitute its own punishment as one of stoppage of increment for a period of three years with cumulative effect. The present Writ Petition has been filed against the said order passed by the Tribunal.

9. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner strenuously contended that the Tribunal misdirected itself from interfering with the quantum of penalty in view of its own finding in paragraph 10 of the impugned order which is extracted below.

"10. It is an admitted fact that the applicant Shri K.M.Suresh Krishna was handling the application filed by various individuals for refund of the PF amount. At the relevant particular point of time, the cheques were prepared by him and sent to one Shri.J.Swaminathan. When the same cheques were returned, it is known why the applicant has put up the very same cheques to be signed by the competent authority to pay EPF dues to another person called Shri M.Dhandapani. It clearly shows that the applicant before us suffers from derelicts of duty by making changes in the documents without

properly verifying with the claim of Shri M.Dhandapani. Moreover from the records, we find that the applicant has been given adequate opportunity to defend himself before the Inquiry Officer. The copy of the Inquiry Report has also been received by him and he has also furnished his reply to the same. Thereafter the Disciplinary Authority has passed order wherein he has also discussed the pros and cons of the issues raised and thereafter has agreed with the findings of the Inquiry officer. The Appellate Authority has also passed the order giving reasons as to why the Order of Dismissal has been confirmed. In that view of the matter we do not find any procedural irregularity to arrive at the conclusion that the applicant is guilty of the charges framed against him."

10. Moreover, learned counsel appearing for the petitioner also contended that the same employee had been proceeded against departmentally on earlier occasion and he was imposed with a penalty. Therefore, taking into consideration of antecedents of the employee, no leniency ought to have been shown by the Tribunal in modifying the penalty as ordered by the Tribunal.

11. On the other hand, it was pleaded by the learned counsel appearing for the second respondent/applicant that he being a low rank officer, cannot be fastened with the responsibility of issuing a cheque to a wrong person when particularly and admittedly he was not empowered to sign or make out a cheque in favour of any person. The ultimate responsibility rest with the higher official who is empowered to sign the cheque and it was higher official who ought to have ensured that the cheque was issued to the proper party.

12. In the instant case, according to the learned counsel for the second respondent/applicant, the higher official had been left off the hook and only the applicant/second respondent was prosecuted and imposed with serious penalty of dismissal from service.

13. We gave our anxious consideration to the submissions made on behalf of the parties and we have also gone through the original file placed before us. In respect of the inquiry proceedings conducted into the charges, we do not find anything wrong in the finding given by the Tribunal as found in para 10 of the order which is extracted supra. At the same time, notwithstanding the clear finding against the employee, the punishment which ultimately modified, in our opinion, does not commensurate with the gravity of the misconduct alleged against the second respondent employee.

14. We are, therefore, of the view that the present punishment could not be sufficient to meet the ends of justice by maintaining the balance between good administration and checking the erring government officials in order to ultimately protect the interest of the public. In such view of the matter, we set aside the order passed by the Tribunal modifying the penalty as one of stoppage of increment for a period of three years with cumulative effect and in that place, the punishment of reduction to the minimum pay scale in the post of LDC shall be imposed on the second respondent/applicant. We propose this penalty having considered the peculiar facts and circumstances of the case and also in view of the fact that the original direction contained in the order passed by the Tribunal has been complied with by the department and the second respondent has been reinstated in service.

15. We, therefore, direct the competent authority to issue consequential order by imposing the penalty of reduction to the minimum of the time scale of pay of LDC against the petitioner with effect from the date when the order of dismissal from service was imposed, i.e. 24.5.2007. Consequent to such order being passed, the second respondent/applicant is entitled to all attendant benefits that may flow from such order, including annual increment as admissible to him and other allowances as per his entitlements.

With the above direction, the Writ Petition is disposed of.
No costs.

-s/d-
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

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The Union of India,
Employees' Provident Fund Organisation,
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Bhavishya Nidhi Bhavan, Dr.Balasundaram Road,
Coimbatore-641 018.

4. The Registrar,
The Central Administrative Tribunal,
City Civil Court Buildings,
Chennai.

+1 CC to Mrs. Aiyar & Aiyar, Advocate sr 19487

+1 Cc to Mr.V.Vijayashankar , Advocate sr 19200

W.P.No.4971 of 2010

LRS (CO)
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