

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.12013 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to quash the proceedings, dated 28.04.2008, whereby the petitioner was compulsorily retired from service and was denied retirement benefits like gratuity and leave encashment by forfeiting the same by way of punishment.

2. I have heard the submissions of *Sri Vedula Srinivas*, learned senior counsel appearing for the writ petitioner, and of Ms.G. Sudha, learned counsel representing the respondents. I have perused the material record.

3. The hub of the factual matrix as is evident from the pleadings of the parties and as per the submissions made before this Court, in brief, is as follows:

The petitioner joined the 1st respondent Company in the year 1978 as a Junior Engineer. He secured five promotions during his tenure of service. At the time of formulation of charges and imposition of punishment he was working as Deputy Manager (FM). There is a Forging Department in the 1st respondent Company. In the said department there is an open 'Die Forging Press of 1500 Tons', which was imported from Germany in 1980s. It is an open 'Die Forging Press' with a Hydraulic pressure of 350 bar being integrated with two mobile rail bound manipulators. The Glycerine filled pressure gauge is a Micro processor based system and is mounted on the manipulators with a magnetic snap action having two electrical contacts for low pressure cut off and high pressure cut off in the clamping mechanism. If the pressure gauges fail, the entire Forging process would fail resulting in serious loss of production. The pressure gauge is also being imported from Germany. Two

pressure gauges will be used at a time on the two manipulators of the Forge Press. They require replacement as and when they are worn out. As a part of official duties the petitioner has to put up a requisition for purchase of new pressure gauges and the same will be finalised by various departments like Maintenance, Purchase and Finance. The petitioner placed Material Procurement Requisition (MPR), on 16.07.2003, for purchase of two numbers of Glycerine filled pressure gauges (herein after, 'pressure gauges') as per a technical catalogue that was enclosed. The requisition was passed by the Head of the Department of the petitioner, Purchase Department and Finance Department and ultimately order was placed against M/s. E & E Enterprises, Hyderabad. The order was placed on the supplier who made the lowest offer. Subsequently, another requisition was also placed in December, 2003, for procuring one more pressure gauge and it also materialised. Similarly three more requisitions were placed on 11.11.2004, 01.03.2006 and 20.10.2006 for purchase of one piece of pressure gauge each. They also were processed and the purchases materialised. The Company purchased, in all, four pressure gauges from M/s. E & E Enterprises, Hyderabad, during the period between 2003 and 2006 at a cost of around Rs.10.00 lakhs. The purchased pressure gauges have passed through the quality test held by the Company and they were put to use in the Forge Press. While so, the petitioner was served with a charge sheet, dated 16.08.2007. The charges formulated read verbatim as follows:

1. Shri K.R. Bhosle, Dy.General Manager (Maint) intentionally and knowingly indicated in the MPRs the Type 223.50.160 Glycerine filled Pressure Gauge which is obsolete. And subsequently accepted the Type 223.50.160 Glycerine filled Pressure Gauge.

The aforesaid act of Shri K.R. Bhosle, is a misconduct in terms of clause 9(1) of Midhani Conduct, Discipline and Appeal Rules for executives.

2. Shri K.R. Bhosle, intentionally made the company to procure 5 Nos. during last 3 years when the life span of the Spare Part type 223.50.160 glycerine filled pressure gauge is around 3 years.

The aforesaid act of Shri Bhosle is a misconduct in terms of Clause 9(5) of Midhani Conduct, Discipline and Appeal Rules for Executives.

3. Shri Bhosle projected M/s. E & E Enterprises as the Authorised dealers of M/s.WIKA, Germany to procure a high price for personal gain with an understanding with the above firm which is not authorised for WIKA and whereas WIKA, Germany has got two authorised dealers in twin cities viz., (1) ANH Hydraulics Pvt.Ltd., (2) Hardware & Instruments Centre.

The aforesaid act of Shri Bhosle is a misconduct in terms of clause 9(1) of Midhani Conduct, Discipline and Appeal Rules for executives.

The charge sheet was issued with the approval of the Director (P & M), who is the Disciplinary Authority. The petitioner submitted his explanation, on 03.09.2007, denying the charges and justifying his role in procurement of the Pressure Gauges. Not being satisfied with his explanation, a Departmental Enquiry was ordered *vide* proceedings, dated 25.09.2007. The Additional General Manager (Production) who was appointed as Enquiry Officer held enquiry for two sittings. Thereafter, on 21.11.2007, the said enquiry officer was changed. After nine sittings, another enquiry officer was appointed, on 09.02.2008. He conducted three sittings. The petitioner was assisted by a Defence Assistant. During the course of enquiry, five witnesses were examined. However, the enquiry was closed without extending an opportunity to the petitioner to examine his witnesses and place his evidence on record. On 11.04.2008, the petitioner was asked to file a written brief. The Presenting Officer filed a written brief, on 19.04.2008, by serving a copy on the petitioner. The enquiry officer submitted a report finding the petitioner guilty of charges 1, 2 and 4 fully and charge no.3 in part. He exonerated the petitioner from the charge of deriving personal gain in the course of purchase of Pressure Gauges at the cost of the Company and pursuant to an understanding with the supplier. A show cause notice, dated 24.04.2008, was served on the petitioner at 3:00 PM on 25.04.2008. Third respondent signed the same stating that it was issued with the approval of the 2nd respondent. In that show cause notice, punishment of Compulsory Retirement and also

forfeiture of gratuity as well as leave encashment was proposed. The petitioner was directed to submit his explanation within three days, that is, by 28.04.2008. Petitioner submitted his explanation on 28.04.2008 at 05:00 PM. The same was received by the Additional General Manager. Within next ten minutes, the petitioner was handed over the impugned orders signed by the 3rd respondent stating that the same has the approval of the 2nd respondent. Thereafter, punishment of compulsory retirement and forfeiture of retirement benefits like gratuity and leave encashment was imposed. The petitioner was due for retirement, on 30.04.2008, that is, on completion of 60 years of age. He was denied gratuity of Rs.3,50,000/- and leave encashment of Rs.2.00 lakhs and was made to compulsorily retire from service just two days before his due date of retirement on superannuation. The purchase of four Pressure Gauges took place only after requisitions (MPRs) were routed through all the Departments and after seeking competitive quotations of available suppliers. The petitioner has not decided the entire aspect relating to purchase of the Pressure Gauges during the period between 2003 and 2006 and has not caused any loss to the Company by any means much less in a negligent manner. The requisition that was placed by the petitioner was recommended by the Senior Manager (Maintenance) and approved by the General Manager (Production). The Purchase and Finance Departments were also parties for finalising procurement of first consignment of the Pressure Gauges in 2003. The subsequent procurements were also approved by all the abovementioned officers and the Departments concerned. The petitioner recommended names of six parties at the beginning which included the name of the original supplier of the Forge Press whereas the name of the said supplier has been deleted during the course of processing the requisition by the Purchase Department. All the Departments acted in a concerted manner while procuring the material. The petitioner cannot be made a scapegoat because he initiated the procurement process by requisitions. He has 30 years of unblemished service in

the Company. The action of the Company is unwarranted and unsustainable. All through, the disciplinary authority was a party to one of the requisitions, dated 01.03.2006; and he was a party to the other requisition dated 20.10.2006, in his capacity as General Manager (Production). Being a party to the process of procurement of Pressure Gauges he cannot act as a disciplinary authority. Even the 3rd respondent was a party to the process of procurement of the materials. Hence, he cannot pass the impugned order. The entire proceedings are vitiated. The respondent Company acted in an unfair manner in changing the enquiry officers without valid reasons. The disciplinary authority in case of an Officer Grade-V would be the Divisional Head not below Grade-VIII for all minor and major punishments except removal/dismissal. While imposing the punishment of removal/dismissal on Grades I to VI officers, it is the Chairman-cum-Managing Director, who is the designated disciplinary authority. The petitioner is a Grade VI officer. The punishment imposed is in the nature of removal from service of the Company. The impugned order is liable to be quashed. On 25.04.2008, the petitioner was served with a show cause notice proposing punishment. By that show cause notice, he was directed to submit his explanation by 28.04.2008. His explanation was submitted by 05:00 PM on 28.04.2008. He was handed over the impugned order at 05:10 PM. It is impossible for the officer concerned to go through the petitioner's explanation and take orders from the disciplinary authority and to prepare the impugned order within a span of ten minutes. Therefore, it is amply clear that the impugned order was kept ready even before the petitioner's explanation was received and that the impugned order was prepared and served upon the petitioner without application of the mind of the officer concerned. In the facts and circumstances, though a departmental appeal is provided, the instant case deserves indulgence of this Court as the whole exercise is done in violation of principles of natural justice and is a colourable exercise. The forfeiture of leave encashment is not provided under

the Rules of the Company much less in the Conduct, Discipline and Appeal Rules. The forfeiture of gratuity also cannot be done as the petitioner did not cause any loss to the Company within the meaning of the provisions of the Payment of Gratuity Act. Hence, the writ petition is filed.

4. The pleaded case of the respondents and the submissions made on their behalf are only in the nature of justification of the entire exercise right from the issuance of the charge sheet till the passing of the impugned orders whereby the penalty of compulsory retirement coupled with forfeiture of gratuity and earned leave payable to the petitioner was imposed.

5. I have given earnest and thoughtful consideration to the facts and submissions. I have carefully gone through the material record.

6. It is to be noted that the enquiry officer exonerated the petitioner insofar as the imputations pertaining to the personal gain at the cost of the Company covered by charge no.3 and, however, held that the charges 1,2 and 4 are proved fully and charge no.3 is proved partly.

6.1 Charge no.1 reflects that it relates to intentionally and knowingly indicating in the MPPRs the type of the Pressure Gauge as 223.50.160, which is obsolete, and subsequently accepting the type 233.50.160. The second charge relates to misconduct namely making the 1st respondent Company to procure five numbers of gauges during the last three years though the life span of each gauge of type 223.50.160 is around three years. Charge no.3 relates to projection of M/s. E & E Enterprises as the authorised dealer of M/s.WIKA, Germany, to facilitate procurement of the gauges at high prices for personal gain with an understanding with the above firm which is not authorised dealer of WIKA and whereas WIKA, Germany, has got two authorised dealers in twin cities namely ANH Hydraulics Pvt.Ltd., and Hardware & Instruments Centre. As already noted, the first part of this charge related to making personal gain with

an understanding with the supplier is held not proved; and, therefore, the other part of the charge which is held proved is confined to projecting M/s. E & E Enterprises as authorised dealer of M/s. WIKA, Germany, though it is not the authorised dealer and suppressing the fact of existence of two other dealers in twin cities as mentioned in the charge. The 4th charge relates to improper exercise of responsibility in indenting the spare part at Rs.2,47,500/- per unit on limited tender basis with M/s. E & E Enterprises as against the actual cost of Rs.32,700/- per unit price quoted by other authorised dealer, that is ANH Hydraulics Pvt., Ltd., and causing loss to the Company to a tune of Rs.8.6 lakhs for four pieces.

6.2. In view of the afore-stated contentions and the submission of the petitioner that the enquiry itself is vitiated and as the evidence brought on record requires detailed examination in juxtaposition with the factual and other allied aspects, it is necessary to first deal with the scope and ambit of the jurisdiction of this Court in a matter of this nature. Therefore, it is trite to refer to the decision in *Union of India v. P. Gunasekaran*¹ wherein the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

¹ (2015) 2 SCC 610

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

In the light of the above legal position, merits and demerits of the rival contentions need exhaustive examination.

6.3 Dealing with the principal constituents of the charges, in the first place, it is necessary to examine the MPRs as the principal submissions of the petitioner are as follows: - 'The requisitions for Pressure Gauges, that is, MPRs were passed by the Head of the Department of the petitioner, Purchase Department and Finance Department and ultimately order was placed against M/s. E & E Enterprises, Hyderabad, who made the lowest offer amongst the suppliers; and, the respondents 2 and 3, who are respectively the disciplinary authority and the officer who signed the impugned order, are also parties to the process of procurement and purchase and they cannot act as disciplinary authority or the delegated authority.' A perusal of the copies of MPRs would show that one of the MPRs with MPR.No.E306149 dated 09.01.2004 was signed by the petitioner in his capacity of Indenter and by T.K. Chandrasekhar, Deputy General Manager (Elec. & Civil). The said MPR was approved by DGM (I/ c Maint) and General Manager (Production). Finally, the MPR was also approved by the Director (Production and Marketing) and Chairman & Managing Director (see page no.171 of the material papers annexed to the writ petition). Similarly, another MPR.No.E307044, dated 16.06.2003, on a perusal discloses

that it was signed by the petitioner as Indenter & the shop-in-charge and was approved by the General Manager. It contains an endorsement of the stores manager also indicating that the stock position on date of requisition is NIL. In fact, the other MPR.No.E506198, dated 01.03.2006, was signed by the subordinate of the petitioner, that is, Assistant Manager (Elect) as Indenter. It was also signed by the petitioner in his capacity as DGM(Ele), and was signed and approved by AGM (FM), AGM (Maint), General Manager (D & M) and finally by GM (O), since General Manager (P & M) was on leave on the relevant date. A further perusal of the MPRs discloses that in the MPRs, the estimated value of the Pressure Gauge and even the life span of Pressure Gauges are stated. The acceptance criteria are stated to be as per the specifications mentioned. After the justification for the procurement as noted in the MPR was approved, the process attained finality. Therefore, the question of misleading the superior officers does not arise for consideration and the respondents cannot be heard to say that the petitioner is responsible for any illegalities or irregularities as the contents of the documents themselves disclose that the petitioner signed the MPRs as Indenter or as superior officer of the Indenter and each MPR underwent the due process and was signed by three or more superior officers including the approving authorities before the proposals for procurement and purchase are finalised. In any view of the matter, the responsibility is, therefore, a collective responsibility of all the officers. Thus, the material record makes it manifest that the petitioner only initiated the purchase of the required Pressure Gauges at different times by signing the MPR form as an Indenter. As noted one such MPR was signed by him in his capacity of a superior officer of the Indenter. All the MPRs were signed by the Head of the Department and also the superior officers and were finally approved by the higher officers. In some cases, the AGM (Maintenance) and General Manager concerned signed and approved the MPRs. One of the MPRs was approved by the Director (Production & Marketing) and Chairman & Managing Director, who

acted as the disciplinary authority as well. Thus, even the disciplinary authority and the 3rd respondent, who signed the impugned order, are also parties to the purchase process and are signatories to some of the MPRs. Thus, the respondents 2 and 3, who are the competent authority and/ or Disciplinary Authority and the Delegated Authority, were very much parties to the purchases in respect of which the charges are formulated only against the petitioner. The said factual aspects are evident from the copies of MPRs filed along with the material papers and are undisputed. For reasons best known, no disciplinary action was initiated against the said officers though they have processed the MPRs and approved them being the superior most officers. Therefore, when it is a collective responsibility, initiation of action against the petitioner alone is unjust and unfair. If the 1st respondent Company intended to proceed for any misconduct in the matter of purchase of Pressure Gauges, it ought to have initiated disciplinary action against all the persons who signed the MPRs, particularly, the senior officers who approved the indented purchases. Further, the officers who are responsible for processing purchases and approved the purchases eventually acted as competent authority & disciplinary authority and as delegated authority, which itself is a gross violation of principles of natural justice. The contention of the respondents that since the petitioner was the indenter for purchase of four Pressure Gauges and that the role of second and third respondents is only as approving and recommending authorities respectively, the petitioner is alone responsible as the onus is on the indenter only cannot be countenanced for the reason that the respondents 2 and 3, who are superior and responsible officers, are also enjoined with a duty to verify correctness of all the particulars in the MPRs before approving and recommending the purchases as stated in the MPRs. Having failed in their duties and responsibilities, they cannot single out the petitioner simply because the petitioner is an Indenter and haul him up for the alleged misconduct more particularly by taking upon themselves the roles of

competent authority/ disciplinary authority and delegated authority and by exonerating themselves and by throwing the whole blame on the petitioner alone for the alleged misconduct. For all the above reasons, this Court finds there is a clear violation of principles of natural justice in initiating and conducting the enquiry and issuing the impugned proceedings and that the actions of the competent authority and/or disciplinary authority and the delegated authority cannot be termed as just and fair in view of their participation in the purchase procedures and as they have disabled themselves to act in the said capacities being involved in the whole process, that is, indenting, approving and finalising the purchase of the gauges, which is the principal constituent of the subject charges. It is impermissible for the persons who participated in the said purchase process to act as competent authority and/or disciplinary authority and the delegated authority in the matter of initiation of disciplinary action against the petitioner. As a result, this Court finds that the enquiry was not initiated and conducted in accordance with law and, therefore, the impugned proceedings warrant interference.

7. Before proceeding further, there are a few more aspects which warrant an appropriate mention and consideration. As per the Conduct, Disciplinary and Appeal Rules governing the executives like the petitioner, the enquiry officer is expected to examine the witnesses in chief and then offer them for cross examination by the petitioner and thereafter afford an opportunity to the petitioner to examine himself and adduce evidence, if any, on his side. But, a perusal of the material record discloses that the enquiry, as rightly contended by the learned senior counsel for the petitioner, was conducted as if it is a group discussion for opinion collection. All the witnesses for the management were made to sit along with the enquiry officer at one point of time and they were posed questions relevantly and irrelevantly one after the other some times and simultaneously at some times and what transpired during the course of such discussions appears to have been recorded and what was thus recorded

was considered as the evidence. No witness was examined in chief in a systematic manner and no opportunity was afforded to the petitioner to cross examine such witness on the points stated in the examination in chief. Enquiry was not conducted in accordance with Rules is manifest from the material borne out by the record. Even the enquiry officer did not discuss the charges in seriatim and also the gist of evidence related to each charge and failed to record his findings on appreciation of evidence related to each charge. Though one of the charges reflects that there is a price variation and that the Pressure Gauge of actual cost of Rs.32,700/- each was indented at Rs.2,47,500/- and that it resulted in a loss of Rs.8.6 lakhs in all for the four pieces indented, no evidence was brought before the enquiry officer as to at what rates such gauges were purchased earlier by the 1st respondent Company to establish the astronomical price difference mentioned in the charge. It was also not established as to from which supplier or agency such Pressure Gauges were purchased earlier to the disputed period.

8. Another important aspect of the matter which needs advertence to is that the petitioner was to retire on 30.04.2008 on attaining 60 years of age, which is the age of superannuation. Just a few months before his retirement, a charge sheet, dated 16.08.2007, was issued for the alleged misconduct pertaining to purchases of the Pressure Gauges during the years 2003-2006. As the petitioner is a senior executive and Grade VI officer, the disciplinary authority in his case is the Chairman & Managing Director. After the enquiry officer submitted a report, which is undated, instead of the Disciplinary Authority issuing a show cause notice with the proposed penalty, the General Manager issued the show cause notice, dated 24.04.2008, stating that the said show cause notice was issued with the approval of the competent authority/disciplinary authority. There is no reference in the show cause notice to any written approval of the competent authority, that is, the Disciplinary Authority, by which the approval was communicated to the General

Manager for issuing the show cause notice. When the matter relates to a serious imputation concerning financial loss caused to the Company, the disciplinary authority is supposed to personally look into the matter and is not supposed to delegate its power to a subordinate officer. In the show cause notice, which was dated 24.04.2008 and which was served on the petitioner, on 25.04.2008, a time of three days was given to submit the petitioner's explanation. The petitioner submitted his explanation, in detail, on 28.04.2008 at 05:00 PM. The impugned order was again issued by the General Manager stating that the said order was issued with the approval of the competent authority, that is, the Disciplinary Authority. The order does not disclose as to when the approval in writing, if any, was given by the competent/ disciplinary authority. The impugned order was served on the petitioner on the same day, that is, 28.04.2008 at 17.10 hours, that is, 05:10 PM., that is, within ten minutes after the petitioner submitting his explanation to the show cause notice. By the said order, a penalty of compulsory retirement coupled with forfeiture of earned leave encashment and gratuity was imposed. These facts by themselves clearly indicate that there is no application of mind of the competent/ disciplinary authority to the facts of the case before the order impugned was passed. These circumstances clearly indicate that the contention of the petitioner that even before the petitioner submitted his explanation, the order impugned was made ready and was served upon the petitioner within ten minutes of his submitting his explanation merits consideration. This shows the vindictive nature of the 1st respondent Company and its officers concerned and their predetermination to single out the petitioner and make him a scapegoat to somehow exonerate the other officers, even without initiating any disciplinary proceedings against them even though they are more responsible being the recommending and approving authorities for procurement and purchase of the gauges. The respondents 2 and 3, who are the recommending and approving authorities for procurement and purchase

of the Pressure Gauges as per the MPPRs assumed the roles of competent/disciplinary authority and delegated authority respectively and thus, the said officers who can be termed as delinquents themselves acted as prosecutors and judges in their own case by making the petitioner a scapegoat.

9. On the above analysis, this Court finds that the entire exercise right from the inception, that is, the formulation of charges till the imposition of penalty by the impugned proceedings against the petitioner is vitiated and resultantly the petitioner is entitled to succeed.

10. In the result, the Writ Petition is allowed as prayed for.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

01.06.2017

Note: LR copy to be marked.

(B/o)

Vjl



JUSTICE M. SEETHARAMA MURTI