IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7878 OF 2003

Mr. S.Rajaiah
(since deceased through
his Legal Heirs Mrs. Savanapalli
Vijayalaxmi and ors.) ...Petitioners
Versus
Union of India ...Respondents

None present for the Petitioners.
Mr. Vinod Joshi a/w. Mr. N.R. Prajapati for Respondent No.1.
Ms Priyanka Tiwari i/b Mr. Suresh Kumar for Respondent Nos.2 to 4.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 19th APRIL 2018.

<u>ORAL JUDGEMENT:</u>

1] On 12th April 2018, we made the following order:

"*1. Advocate Mr. Suresh Kumar states that he is appearing for the respondents. As none is appearing for the petitioner, as a last chance, matter is adjourned to 19th April, 2018. On the next date, if nobody appears for the petitioners, we may dispose of the petition on merits.*"

2] Today, when the matter is called out, neither the petitioners nor their advocates are present. Since this petition relates to the year 2003 and on the last occasion, we adjourned the matter, by way of last chance, in order to afford opportunity to the petitioners or their advocates to appear in the matter, we do not intend to grant any further indulgence, now.

3] With the assistance of Mr. Suresh Kumar and Mr.Vinod Joshi, learned counsel for the respondents, we have gone through the record as well as the contentions raised in the writ petition. We therefore, proceed to dispose of this petition on merits.

4] The challenge in this petition is to the judgment and order dated 30th April 2003 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 283 of 2001. O.A. No. 283 of 2001 was instituted by Mr. S.Rajaiah before the CAT. Since, he has expired, this petition is being pursued by his legal representatives, therefore, reference to the petitioners may be treated as reference to late Mr. S. Rajaiah as well.

5] Shri. S. Rajaiah was working as a Head-Clerk in the office of Regional Provident Fund Commissioner at Mumbai. He was served with a charge memorandum alleging that even after knowledge that claim papers in respect of MH/1185571 of J.B. Pathak and MH/118/5573 of B.L. Vengorlakar were not genuine, S.Rajaiah assisted imposters with opening of two bogus bank accounts with Central Bank of India and in connivance with them, embezzled and misappropriated provident fund amounts of Rs.37,107/- and Rs.38,641/- respectively from out of provident fund accounts. The chargesheet lists details the complicity of S. Rajaiah in the entire transaction. The chargesheet also notes that after, this was discovered, S.Rajaiah admitted his wrong doing and even deposited amount of Rs.75,760/- in cash, in the provident fund account.

6] In response to the charge memorandum, S.Rajaiah addressed a communication dated 12th July 1994, in which, he has stated the following

“To
The Regional Provident Fund Commissioners,
Maharashtra & Goa,
341, Bhavishya Nidhi Bhavan,
Bandra (East),
Bombay 400 051.

Respected Sir,
Please refer to your memorandum No.R.Vig.MH/PF/DC/334/151 dated 30.6.1994.

I am very sorry to state that, I admit the charges, as my moral responsibility, since under the unfortunate circumstances. I had to act in violation of the manual provisions.

During the year 1993 I was undergoing lot of mental, physical and financial strains, as my mother was suffering from cancer. There required costly medical attendance. Further my younger son was also seriously sick. Under these circumstances the wrong payments were effected by me. I sincerely regret my mistake and request you to consider my case sympathetically, as in my 20 years service spotless except these two wrong payments, I have not committed any mistake.

Sir, I am the only earning member of my family and my old father, my wife and three children are dependent on me. As I have came from poor family. My entire family will be thrown on road, if I loose my service.

I therefore once again sincerely regret my mistake and own moral responsibility and assure you that such incident will not repeat henceforth.

I humbly submits that if an opportunity of personal hearing is given to me. I shall explain my position in detail to your honour.

Thanking you,

Yours faithfully,
sd/-
(Shri. S. Rajaiah)"

7] Based upon S.Rajaiah's response, in which, he had virtually admitted the charges, the respondents issued show cause notice dated 29th July 1994 stating therein that the charges leveled against S.Rajaiah stand proved and requiring S.Rajaiah to show cause as to why he should not be dismissed from the service.

8] S.Rajaiah on 8th August 1994 filed "*mercy petition*" , in which, he stated that in the year 1993 he had lot of mental, physical and financial strains and therefore, he committed mistake.

9] This was followed by yet another "*mercy petition*" dated 21st October 1994.

10] Finally, the respondents, after due consideration of "*mercy petitions*" dismissed S. Rajaiah from the service.

11] Mr. S. Rajaiah's appeal against dismissal order was dismissed by the appellate authority, again by passing a speaking order dated 31st December 1997. The CAT, by the impugned judgment and order, has upheld the orders made by the disciplinary authority and the appellate authority.

12] In the petition, the main ground raised by Mr. S. Rajaiah is that he had only admitted "*moral responsibility*" since, he was the Head Clerk. The petitioners, now submit that admission of such moral responsibility is not the admission of guilt. In such circumstances, it was necessary for the disciplinary authority to conduct a full fledged enquiry. Since, no full fledged enquiry has been held the major penalty imposed upon Mr. S. Rajaiah is a nullity and constitutes violation of principles of natural justice.

13] In the petition, it is also alleged that the charges in the charge-sheet were quite vague and reliance is placed upon the decision of the Kerala High Court in ***State of Kerala vs. Ranganathan – 1997 II LLJ 1036,*** in which, it is stated that the charge memorandum must contain specific allegation so as to offer the delinquent officer reasonable opportunity to deny the same. Besides, relying upon the same judgment, the petitioners have alleged that there is variance between the charges set out in the charge-sheet and the charges held as proved by the enquiry officer.

14] Reliance is also placed upon ***Jagdish Prasad Saxena vs. the State of Madhya Pradesh – AIR 1961 SC 1070,*** wherein it is held that a departmental enquiry is not an empty formality and it is a serious proceedings intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry, it would not fair to strain facts against the officer and to hold that in view of the admissions made by him, the enquiry would have serve no useful purpose. There is also a ground that Rule 23 (2) of the CCS and CCA Rules was not followed.

15] Upon perusing the material on record, including in particular, letters dated 31st January 1994, 12th July 1994 and two mercy petitions dated 8th August 1994 and 21st October 1994, we are not prepared to accept that Mr. S. Rajaiah had not either understood the charges leveled against him or that he had not admitted the charges leveled against him. Though, there is reference to "*moral responsibility*", there are clear admissions that S.Rajaiah, acted in violation of manual provision and, there is absolutely no denial of the charges leveled against him in the charge-sheet.

16] There is absolutely no vagueness in the charges. The statement of imputations furnishes every possible details as regards the charges leveled. Several documents were also referred to in the charge memorandum. Mr. S.Rajaiah, not only accepted his guilt, but also deposited amount of Rs.75,760/- which was embezzled from out of provident fund account.

17] The decisions relied upon by the petitioners are, therefore, quite distinguishable and do not apply to the facts and circumstances on record in the present case. There is no breach of any service rules involved.

18] The disciplinary authority, appellate authority and the CAT, have addressed all the issues raised by and on behalf of the petitioners. There is detailed consideration even on the aspect of dis-proportionality of penalty.

19] Accordingly, we see no good ground to interfere with the impugned judgment and order. This petition is therefore, dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**