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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th December, 2018

Decided on: 15th February, 2019

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LPA 462/2016 & CM Appl.No. 29811/2016

**NATIONAL FEDERATION OF FISHERS COOPERATIVES LTD
THROUGH ITS MANAGING DIRECTOR AND ANR.... Appellants**

Through: Mr. Naushad Ahmed Khan, Senior
Standing Counsel.

Versus

RAJENDRA SINGH AND OTHERS Respondents

Through: Mr. S.K.Das, Advocate for Respondent
No.1.

Mr. Arun Bhardwaj with Mr Nikhil Bhardwaj and
Mr. Shashwat Sharma, Advocates for UOI.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal by the National Federation of Fishers Cooperatives Limited ('FISHCOPFED') and its Board of Directors (Appellants No.1 & 2 respectively) is directed against the judgment dated 22nd December, 2015 passed by the learned Single Judge allowing Writ Petition (C) No. 5304/2008 filed by the Respondent No.1. By the said impugned judgment, the learned Single Judge has set aside an order dated 18th June, 2008 passed by the Appellants dismissing the Respondent No.1 from service.

2. The background facts are that Respondent No.1 joined Appellant No.1 as Stenographer on 21st June, 1985. After earning successive promotions over the years, he was promoted as Deputy Director on 27th July, 2006. On 5th July 2007, Respondent No.1 was transferred to the Chhattisgarh Unit of Appellant No.1 with instructions to join the said unit not later than 15th July 2007. However, Respondent No.1 did not join duties there. When despite reminders dated 11th July, 2007 and 18th July, 2007 Respondent No.1 did not hand over charge to his next incumbent and join the Chhattisgarh Unit, an Office Memorandum (OM) dated 2nd August, 2007 was issued to him. Even this was not responded to by the Respondent No.1

3. Respondent No.1 attended duty only on 13th and 17th August, 2007 as was reported by the Marketing Assistant, FISHCOPFED but no signature of Respondent No.1 was available on the attendance register for any other day. On 14th September, 2007 an OM was issued calling upon the Respondent No.1 to explain his absence from the Raipur Unit and about non-maintenance of the attendance register. A reply was sent by Respondent No.1 on 27th September 2007 *inter alia* contending that It also stated that “being the Head of the Regional Office, I am not supposed to mark my attendance in the attendance register.” Another OM dated 9th October, 2007 was issued to him by Appellant No.1 asking for an explanation about his unauthorised absence. This was followed by another OM dated 29th October, 2007 asking him to submit an attendance report indicating his presence in the Raipur Office in the months of July to October, 2007. No reply was received to the said OM. Further OM's were issued to the same effect on 15th and 22nd November, 2007.

4. It is in the above circumstances that Appellant No.1 issued the Articles of Charge against Respondent No.1 for holding a departmental inquiry by issuing a memorandum dated 28th December, 2007 which was duly approved by the Board of Appellant No.1.

5. The inquiry was held against Respondent No.1 on four Articles of Charge, viz., (i) disobedience of office orders dated 5th, 9th and 15th July, 2007 (ii) unauthorised absence from duty (iii) negligence of duty and (iv) insubordination and disobedience.

6. In response to the charges, Respondent No.1 submitted his written statement of defence on 8th January, 2008 denying the allegations. On 12th February, 2008 Respondent No.1 objected to the Inquiry Officer (IO) proceeding ex-parte with the inquiry on the basis of a judgment of the Supreme Court, and expressed his inability to participate in the proceedings because of non-payment of salary from July, 2007 onwards. Respondent No.1 appeared before the Inquiry Officer on 22nd February, 2008 and asked for postponement of the proceedings. This was declined by the IO. On 11th March 2008, Respondent No.1 again appeared before the IO and asked for a response to his representations dated 12th and 22nd February, 2008 wherein some of the submissions even contained allegations about the IO himself. As a result, the representations of the Respondent No.1 were rejected and he was advised to attend the inquiry and cooperate. Under protest, Respondent No.1 did not attend the proceedings on 24th and 25th March, 2008, and instead sent a representation dated 31st March 2008 to the IO reiterating his previous submission about not being able to attend the inquiry due to non-

payment of salary. Consequently, the IO proceeded ex-parte against Respondent No.1. The IO submitted a report on 12th May, 2008 holding the charges as proved against Respondent No.1.

7. A Show Cause Notice ('SCN') dated 16th May, 2008 was issued calling upon Respondent No.1 to submit a representation against the proposed penalty of dismissal from service. After considering his reply dated 5th June, 2008 the impugned order dated 18th June, 2008 was passed under the signature of the President of the Board of Directors and the Managing Director (MD) (who incidentally was impleaded separately as Respondent No.3) in the writ petition. Thereafter the Respondent No.1 filed WP(C) No. 5304/2008 in this Court which came to be allowed by the learned Single Judge by the impugned order dated 22nd December, 2015.

8. Although the Respondent No.1 urged several grounds to assail the dismissal order, the learned Single Judge picked up only one of the grounds urged namely that the penalty order was issued jointly by the MD as well as the President of the Board of Directors and this prevented Respondent No.1 from filing an appeal against the dismissal order to the next higher authority, before having to turn to the Court for relief.

9. The learned Single Judge noted that the charge sheet had been issued by the MD in exercise of the powers under Section 52 of the Multi-State Cooperative Societies Act, 2002 read with Rule 34 of the Bye-laws of Appellant No.1 and the Staff Regulations. Analysing Rule 34 of the Bye-laws, the learned Single Judge concluded that since the MD was the

Appointing Authority in respect of Respondent No.1 and therefore also the Disciplinary Authority ('DA'), the order of penalty should have been issued only by the MD "without the interference or application of mind/assistance from any of the other authority more particularly the President of the Board of the Directors as has been done in this case." The learned Single Judge further noted that:

"Even though, there are no Rules framed for holding of the disciplinary proceedings, it is expected that the appeal against the order of the Managing Director as a Disciplinary Authority would lie to a higher authority of the Board of Directors."

10. The learned Single Judge further noted that the dismissal order was approved by the Board of Directors not on an appeal filed by the Respondent No.1 but on its own and therefore this resulted in a denial of the opportunity to Respondent No.1 to file an appeal before the Board. Reference was made to the decision of the Supreme Court in *UP Power Corporation Limited v. Virendra Lal (2013) 10 SCC 39*.

11. The learned Single Judge noted that the Respondent No.1 had already reached the age of superannuation and that in separate proceedings, he was further imposed the penalty of dismissal which was the subject matter of WP (C) No.1084/2011, in which judgement was reserved at the time. The learned Single Judge accordingly set aside the penalty order dated 18th June 2008.

12. While directing notice to be issued in this appeal on 4th July 2017, this Court stayed the operation of the impugned order of the learned Single

Judge.

13. Mr. Naushad Ahmed Khan, learned counsel appearing for the Appellants, first submitted that the learned Single Judge, despite noting that there were “no rules framed for holding of disciplinary proceedings”, erroneously observed that the right of appeal ‘is a statutory right’. He pointed out that there is in fact no provision in the relevant rules governing the terms and conditions of employees of the Appellant No.1 organisation providing for any statutory appeal against an order of dismissal. He submitted that since time and again, the Respondent No.1 had made frivolous allegations against the MD as well as the IO, the dismissal order dated 18th June, 2008 was also signed by the President of the Board of Directors and this was approved/rectified by the Board of Directors by Resolution dated 2nd September, 2008.

14. Without prejudice to the above submissions, Mr. Khan submitted that even if the learned Single Judge found the penalty order to be defective for the reason set out in the impugned judgment, the matter should have been remanded to the DA for passing a fresh penalty order. Mr. Khan relied on the judgment in ***Chairman AP State Electricity Board v. M. Kurmi Naidu (2006) 8 SCC 62*** where reference was made to the decision in ***Surjit Ghosh v. Chairman and MD United Commercial Bank (1995) 2 SCC 474***. Reference is also made to the decision in ***Government of A.P v. N. Ramanaiah 2009 (8) SCALE 408***.

15. In reply, Mr. S.K. Das, learned counsel appearing for the Respondent

No.1, sought to defend the judgment of the learned Single Judge by referring to a decision dated 30th June, 2014 of the Supreme Court in Civil Appeal Nos. 5848-49 of 2014 (*Dev Prakash Tiwari v. UP Cooperative Institutional Service Board, Lucknow*). He submitted that after the superannuation of the Respondent No.1, there was no authority vested in the Appellants to continue the disciplinary proceedings. Admittedly, Respondent No.1 had retired during the pendency of the writ petition and therefore no purpose would be served in renewing /continuing with the disciplinary proceedings. Mr. Das also placed reliance on the decision dated 20th November, 2015 of the Supreme Court in Civil Appeal No.1217 of 2011 (*Brij Bihari Singh v. Bihar State Financial Corporation*). In that case it was held on facts that the MD who was the DA in disciplinary proceedings participated in the decision taken by the Board of Directors to dismiss the Appellant from service and that procedure was held to be totally erroneous in law.

16. The above submissions have been considered. The short question that arises in the present case is whether the impugned dismissal order dated 18th June, 2008 could have been held to be bad in law only because it is jointly signed by the MD who was the DA as well as by the President of the Board of Directors? The admitted position is that there are no rules of Appellant No.1 which provide for an appeal to be filed to the Board of Directors of Appellant No.1 against an order imposing punishment and disciplinary proceedings by the DA.

17.1 The legal position was explained in *Surjit Ghosh v. Chairman & MD United Commercial Bank (1995) 2 SCC 474*:

"However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned".

17.2 On the facts of ***Surjit Ghosh*** (*supra*), it was noted that there is no provision for preferring an appeal against the order passed by the disciplinary proceedings. Therefore there was no question of any deprivation of a right of appeal.

18. The above decision was distinguished by the Supreme Court in ***Balbir Chand v. Food Corporation of India Limited*** (1997) 3 SCC 371 where, after discussing the facts in ***Surjit Ghosh*** (*supra*), it was held as under:

"It is now well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the

delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules, In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution".

19. In *Electronics Corporation of India v. G. Muralidhar* (2001) 10 SCC 43, the facts were that the order terminating the services of the Appellant was issued by the Appellate Authority instead of the Disciplinary Authority. The learned Single Judge of the High Court held that a valuable right of appeal had been denied and therefore, the order of termination was vitiated. The Division Bench of the High Court upheld the said order. In the further appeal by the employer, the Supreme Court noted that it had been conceded that under the Rules, the CMD was the appellate authority and there was no power of review/revision conferred on the Board even though it was a superior authority. Following the decision in *Surjit Ghosh* (*supra*), it was held that the termination order was vitiated. The employee was directed to be reinstated.

20. The decisions in *Surjit Ghosh* (*supra*) and *Balbir Chand* (*supra*) were considered again in *Chairman AP State Electricity Board v. M. Kurmi Naidu* (*supra*). On the facts of that case, it was noted that the Member Secretary of the Board was the DA. The penalty of compulsory retirement from service was however inflicted by the Chairman of the Board who was

the Appellate Authority. It was noted that the employee had filed before the Board a detailed petition styled as ‘mercy petition’. The Board then treated that petition as an appeal and rejected it. That order passed by the Board was not challenged and attained finality. The Supreme Court accordingly therefore held that it could not be said that the Appellant was deprived of any remedy of appeal.

21.1 Turning to the decision in ***Government of A.P. v. N. Ramanaiah*** (*supra*), Rule 14(2) of the AP Civil Services (CC & A) Rules 1991 which was considered there, itself enabled the Government concurrently along with the DA to impose penalties upon civil servants to whom the above rules were applicable. The High Court in that case had concluded that with the Government itself passing the order imposing the penalty, the charged employee was deprived of a valuable right of appeal. The Supreme Court considered the question whether in such circumstances, the order passed by the Government suffered from any jurisdictional error?

21.2 The Supreme Court in ***Government of A.P. v. N. Ramanaiah*** (*supra*) reversed the decision of the High Court, approving the reasoning of the Kerala High Court in ***K.C. Chandrashekhara v. State of Kerala AIR 1964 Kerala 87*** which implicitly recognised the power of the Government to itself impose the penalty in a case where the charged employee was a Special Forest Officer, who would have had a right to appeal to the Conservator of Forest (DA in his case) under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1957. The Supreme Court analysed Rule 14(2) of the AP Civil Services (CC & A) Rules and noted that the power of

inflicting the penalty was concurrently conferred upon the Appointing Authority as well as the authority to which the Appointing Authority was subordinate. It was held that there was nothing in the rules or the Constitution of India which debarred the Government from exercising the powers of Appointing Authority to dismiss a Government servant from service.

21.3 Under Rule 33 of the A.P. Civil Services (CC & A) Rules, 1991, right of appeal was indeed provided against the order of a penalty whether made by the DA or by an Appellate Authority or Revising Authority to the Appellate Authorities. Rule 34 specified the Appellate Authorities. After analysing the said rules, the Supreme Court in ***Government of A.P. v. N. Ramanaiah*** (*supra*) held as under:

“There is no difficulty to hold that had the appointing authority, who, in this case was the Engineer- in-chief passed the order of penalty the respondent would have had a right of appeal to the Government. Rule 32 of the Rules says that notwithstanding anything contained therein no appeal shall lie against any order made by the Governor; in the present case the impugned order of dismissal was made by the Government in the name of Governor, therefore there is no right of appeal as such against the impugned order of dismissal made by the Government. It is well said and needs no restatement at our hands that a right of appeal no doubt is a substantive one but not inherent or fundamental right. No appeal lies to the higher authority as a matter of right unless provided for by the law.”

21.4 On the facts of that case, it was noted that against the order passed by the Government dismissing a Government servant from service, a remedy by way of review was provided under Rule 38 of the Rules but it was noted that

the employee in question had failed to avail that remedy.

22. The decision in *Dev Prakash Tiwari v. UP Cooperative Institutional Service Board, Lucknow* (*supra*) is on the proposition that once the employee retired from service, in the absence of an authority vested in the employer to continue the disciplinary proceedings, the enquiry should be deemed to have lapsed. However, in the present case, no such issue appears to have been raised before or considered by the learned Single Judge. Only one issue as discussed hereinbefore was examined. In *Brij Bihari Singh* (*supra*), the Board of Directors was recognised as the Appellate Authority in terms of the concerned Regulations. Regulation 40 of the Bihar State Financial Corporation (Staff Regulations 1965) expressly provided for an appeal. It was in those circumstances that it was held that the DA could not have participated in the deliberations of the Board while issuing the dismissal order.

23. The legal position that emerges from the above decisions can be summarised thus:

- a. Where the relevant Rule(s)/Regulation(s) provide for an appeal against the decision of the disciplinary authority, *and* there is no second-appellate authority; the appellate authority cannot pass an order of punishment.
- b. Where there is a second-appellate/review/revisionary authority, the appellate authority can pass an order of punishment.
- c. In the event that there is no provision for appeal, the appellate authority can pass an order of punishment. There is no inherent right

to appeal, and an order passed in such circumstances would not suffer from any infirmity.

24. It is also well-settled there is no inherent right of an appeal against an order of dismissal in civil proceedings particularly when the rules in question do not provide for it. Where the rules provided for an appeal and the Appellate Authority exercises the power of a disciplinary authority to pass an order to impose the penalty, then it could be said that the charged officer is deprived of a right of appeal. When the rules are silent and do not expressly provide for an appeal, it cannot be said that the dismissed employee would be deprived of such right of appeal.

25. In the present case, the Rules did not provide for any appeal to be filed against an order passed by the DA in disciplinary proceedings. The mere fact therefore that the President of the Board of Directors of Appellant No.1 signed the order of dismissal along with MD, who happened to be the DA, would not vitiate the dismissal order. There is no question of Respondent No.1 being deprived of a right of appeal in the facts and circumstances of the case.

26. This Court, therefore, sets aside the impugned order of the learned Single Judge. Since the writ petition was decided only on one issue by the learned Single Judge and the other grounds urged by the Respondent No.1 in the writ petition were not examined, this Court, while setting aside the impugned order of the learned Single Judge restores WP (C) No.5304 of 2008 to the file of the learned Single Judge. The writ petition will now be

decided on merits on all other grounds urged by Respondent No.1 i.e. the grounds other than the one which has now been decided against Respondent No.1 by this Court.

27. WP (C) No.5304 of 2008 be placed for directions before the Roster Bench of the learned Single Judge on 1st March 2019.

28. The appeal is allowed in the above terms but in the circumstances with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA J.

FEBRUARY 15, 2019

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