

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3274 OF 2010

Deorao s/o Namdeorao Warhate,
aged about 54 years, Occ. Accountant
In the office of Divisional Manager
Forest Project Division, Yavatmal,
R/o Dhanalaxmi Nagar, Wadgaon Road,
Yavatmal.

PETITIONER

.....VERSUS.....

1. Forest Development Corporation Ltd.
through the Managing Director, Rawel Plaza,
Plot No.12, Kadbi Chouk, Kamptee Road,
Nagpur.
2. Regional Manager, W.F.P. & Afforestation Region,
Nagpur Forest Development Corporation Ltd.
Rawel Plaza, Plot No.12, Kadbi Chouk, Kamptee Road,
Nagpur.

RESPONDENTS

Shri S.A. Marathe, Advocate for the petitioner.
None for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE OF RESERVING THE JUDGMENT : AUGUST 4, 2022

DATE OF PRONOUNCEMENT OF THE JUDGMENT : SEPTEMBER 30, 2022

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

The challenge raised in this Writ Petition is to the order of penalty dated 21/11/2006 that has been passed by the Regional Manager, Forest Development Corporation of Maharashtra Limited, Nagpur thereby bringing the petitioner on his basic pay scale and further directing withholding of annual increments for a period of five years on a

permanent basis as confirmed in a Departmental Appeal which came to be dismissed on 7/11/2009 by the Managing Director of the Corporation. The principal ground of challenge as raised is that the disciplinary proceedings were initiated by an authority who was not competent to do so under the FDCM Employee's Conduct and Discipline Rules (for short "the said Rules").

2. To consider the aforesaid challenge, reference would be necessary to certain undisputed facts. On 19/9/1977, the petitioner was appointed to the post of Accounts Assistant. This order of appointment was issued by the Regional Manager of the Corporation. On 14/10/1988, the petitioner came to be promoted to the post of Accountant at the Corporation. This order of promotion was issued by the Managing Director of the Corporation. Thereafter, on 8/6/1998, the petitioner was given an additional charge of the post of Assistant Pay and Accounts Officer, Yavatmal Forest Project Division. While the petitioner was holding the post of Accountant with the additional charge of the post of Assistant Pay and Accounts Officer, disciplinary proceedings were initiated against him. On 10/4/2006, a chargesheet was issued to the petitioner by the Regional Manager. The petitioner raised an objection to the issuance of the said chargesheet by urging that since he was promoted and thus appointed on the post of Accountant by an order passed by the

Managing Director, the Regional Manager was not competent to initiate disciplinary proceedings against him. Notwithstanding the said objection, enquiry was held and on 21/11/2006, minor penalty of bringing down the petitioner on his basic pay scale and withholding five annual increments with permanent effect was passed by the Regional Manager. The petitioner challenged that order by filing an Appeal before the Managing Director. Initially, this Appeal was dismissed on 12/6/2007. Since there were no reasons assigned by the Appellate Authority, the petitioner challenged the said order in Writ Petition No. 1608/2009 which was decided on 7/8/2009. The Appellate Order was set aside and the proceedings were remanded to the Managing Director for reconsideration of the Appeal on merits and to assign necessary reasons. Thereafter, on 7/11/2009, the Managing Director decided the Appeal. He modified the order of punishment imposed on the petitioner by which the future increment that was liable to be granted to the petitioner was withheld for a period of three years having cumulative effect.

Being aggrieved, the petitioner has challenged the aforesaid orders in the present Writ Petition.

3. Shri S.A. Marathe, learned Counsel for the petitioner raised twofold contentions. Firstly, he submitted that under Rule 5 of the said Rules, the Disciplinary Authority was empowered to institute disciplinary

proceedings against any employee for any misconduct. However, where the Disciplinary Authority was not the Appointing Authority, prior approval of the Appointing Authority was required to be obtained. The petitioner having been promoted to the post of Accountant on 14/10/1988 and thereafter having been entrusted with the additional charge of the post of Assistant Pay and Accounts Officer, it was only the Managing Director who as Appointing Authority could have issued the chargesheet. However, the chargesheet in question was issued by the Regional Manager who was not his Appointing Authority. No prior approval of the Appointing Authority was taken. Since the chargesheet was issued by an authority who was not competent to do so under the said Rules, the entire proceedings were vitiated. A specific objection in that regard had been raised but the same was not duly considered. On the contrary, the Managing Director while answering Point No.1 in Appeal held that though the post of Managing Director was superior to the post of Regional Manager who had issued the chargesheet as the petitioner was holding the post of Assistant Pay and Accounts Officer, as a minor penalty had been imposed upon the petitioner there was no illegality committed by the Regional Manager by issuance of the chargesheet. Placing reliance on the decisions in i) *Krishna Kumar Vs. The Divisional Assistant Electrical Engineer, Central Railway and Others* [AIR 1979 SC 1912]; ii) *Union of India And Others Vs. Hasmukhbhai Hirabhai Rana*

[(2006) 12 SCC 373]; and iii) Union of India & Ors. Vs. B.V. Gopinath [2013 AIR SCW 5354] it was submitted that initiation of the departmental proceedings stood vitiated on this count.

The other contention raised by the learned Counsel for the petitioner was that the petitioner had been penalised without appreciating the effect of the Leave Travel Concession Rules applicable to the employees of the Corporation. Since the Leave Travel Concession was allowed to an employee once in a period of two calendar years, it could not be said that any misconduct had been committed by the petitioner for being subjected to a disciplinary action. Though the petitioner specifically raised such challenge, the authorities failed to consider the same in its proper perspective. On this ground also, the impugned action was vitiated. It was thus submitted that the impugned orders were liable to be set aside and the reliefs prayed for in the Writ Petition ought to be granted.

4. There was no appearance on behalf of the respondents when the Writ Petition was heard on 22/7/2022, 29/7/2022 and 4/8/2022. We have however perused the return filed on behalf of the respondents.

5. Coming to the first ground of challenge as raised by the petitioner, it would be necessary to refer to Rule 5 of the said Rules which

reads as under :

“5. Authority to institute proceedings : The Disciplinary Authority shall institute disciplinary proceeding against any employee for any alleged misconduct.

Provided that where Disciplinary Authority is not the Appointing Authority, prior approval of the Appointing Authority shall be obtained.”

It can be seen from the aforesaid Rule that the Disciplinary Authority is empowered to institute disciplinary proceedings against any employee for any alleged misconduct. Rule 2(b) defines “Disciplinary Authority” to mean Divisional Managers in charge of Project Divisions and all authorities above that rank. As per Rule 2(e), “Minor Punishment” includes withholding of increments of pay. It is not in dispute that the initial appointment of the petitioner to the post of Accounts Assistant was made by the Regional Manager. The petitioner was then promoted on 14/10/1988 to the post of Accountant and the order of promotion was issued by the Managing Director. On 8/6/1998, the Managing Director of the Corporation conferred additional charge of the post of Assistant Pay and Accounts Officer to the petitioner. The commencement of the disciplinary proceedings by issuance of the chargesheet is on 10/4/2006. The chargesheet has been issued by the Regional Manager.

6. Under Rule 5 of the said Rules, the Disciplinary Authority can

institute disciplinary proceedings against any employee. However, as per the proviso, if the Disciplinary Authority is not the Appointing Authority, then prior approval of the Appointing Authority has to be obtained. In the present case, since the petitioner was appointed to the post of Accountant on promotion by the Managing Director, as per the proviso to Rule 5 of the said Rules, it was necessary for the Regional Manager who acted as the Disciplinary Authority to have obtained prior approval of the Appointing Authority – the Managing Director before initiating disciplinary action. In paragraph 8 of the Writ Petition, it has been specifically averred by the petitioner that no prior approval of the Managing Director was ever obtained by the Regional Manager before issuing the chargesheet. In the return filed by the respondents, it is merely denied that such prior approval of the Managing Director was not obtained. However, there is no document placed on record to indicate grant of such prior approval by the Managing Director to the Regional Manager for initiating disciplinary proceedings. On the contrary, while considering this aspect, the Managing Director in the Appeal has specifically observed that though the post of Regional Manager was lower than the post of Managing Director who was the petitioner's Appointing Authority, as only minor penalty was imposed on the petitioner that aspect was not relevant. This line of reasoning cannot be accepted since there is no such

distinction made in the Rules that if a minor penalty is imposed, it would not be necessary for the Disciplinary Authority to seek prior approval of the Appointing Authority when the Disciplinary Authority is not the Appointing Authority. Such prior approval is necessary whenever disciplinary proceedings are instituted for any alleged misconduct. The alleged misconduct may result in imposition of either major or minor penalty. Based on the conclusion of the departmental proceedings, a stand cannot be taken that since a minor penalty was imposed on the employee, the necessity to seek prior approval of the Appointing Authority was done away with. It is thus clear from the material on record that though the Managing Director was the Appointing Authority of the petitioner on the post of Accountant as well as when he was holding the additional charge of the post of Assistant Pay and Accounts Officer, the disciplinary proceedings were initiated by the Regional Manager who was subordinate to the petitioner's Appointing Authority, the Managing Director. That a minor penalty was ultimately imposed on the petitioner is hardly relevant while considering the requirement of complying with the requirements of Rule 5 of the said Rules. The legal position as referred to the judgments relied upon by the learned Counsel for the petitioner support the said conclusion. On this premise, the first contention raised by the petitioner that the Regional Manager was not competent to initiate disciplinary proceedings against the petitioner in the absence of any prior

approval from the Managing Director deserves acceptance.

7. Having found that initiation of the disciplinary proceedings itself was flawed on account of failure to comply with the requirements of Rule 5 of the said Rules, it would not be necessary to examine the correctness of the conclusion recorded initially by the Regional Manager and thereafter as modified by the Managing Director in Appeal. Initiation of the proceedings itself being vitiated, the orders dated 21/11/2006 and 7/11/2009 cannot survive. It is therefore not necessary to examine the correctness of the said orders on merits.

8. As a result of the foregoing discussion, it is clear that the disciplinary proceedings have been initiated against the petitioner in a manner contrary to Rule 5 of the said Rules. The entire premise on which the impugned orders have been passed having been found to be illegal, the Writ Petition deserves to be allowed.

9. Accordingly, for the aforesaid reasons, the order dated 21/11/2006 passed by the Regional Manager and the order dated 7/11/2009 passed by the Managing Director in Appeal are set aside. The Corporation shall release the increments withheld by it along with all consequential benefits within a period of six weeks from the receipt of

copy of the judgment.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit