

(2013) 01 JH CK 0060
In the Jharkhand High Court
Case No : L.P.A. No. 519 of 2003

Coal Mines Provident Fund Organization and Others

APPELLANT

Vs

Ram Pravesh Sharma and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 3 AJR 383

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Deepak Roshan and Ratnesh Kumar, for the Appellant; V. Shivnath and Birendra Kumar, for the Respondent

Judgement

1. Heard the learned counsel for the parties. The appellant is aggrieved against the judgment dated 8.7.2003 passed in Civil Writ Petition No. 261 of 1997(R), whereby the learned single Judge quashed the order dated 15.6.1995 passed by the Chairman, Board of Trustees, rejecting the appeal confirming the order of compulsory retirement passed on 4-11th August, 1993 of compulsory retirement of the delinquent respondent. The order of the compulsory retirement as well as the appellate order were set aside on the ground of lack of competence of the officer to initiate the departmental proceedings relying upon Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and held that since the officer who initiated the disciplinary proceedings was not holding the post of the Commissioner who was merely looking after the work of the office of the Commissioner as only in officiating arrangement which did not entitle him to draw the salary of higher post with condition that he shall continue to draw the salary in his pay of scale which was applicable to the lower post which he was holding substantively as Joint Commissioner, Coal Mines Provident Fund Organization. Assailing the judgment, learned counsel for the appellant, relying upon the judgment of the Hon'ble Supreme Court delivered in the case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, wherein it has been held that initiation of the departmental proceedings by an officer lower than

the appointing authority but passing of the order by the appointing authority of punishment is legal.

2. Learned counsel for the respondent submitted that in three Judges bench decision of the Hon'ble Supreme Court in the case of Mahesh Prasad Vs. The State of Uttar Pradesh, as well as in the case of Ramratan Balchand Vs. The State of Madhya Pradesh and Others, , it has been held that the dismissal or removal order can be passed only by the competent authority i.e. appointing authority. Learned counsel for the respondent drew our attention to the Regulation 8(2) to show that the appointing authority for the respondent was the Commissioner and as per Clauses 4 & 5 of the Regulation 14, only appointing authority was authorized to terminate the services of the employee. As per the Regulation 27, employees are governed by the Rules regarding services of the Central Government employee which may be laid down by the Central Government from time to time. As per the Clause (v) of the Regulation 31, a punishment of compulsory retirement can be imposed but that can be imposed only by the disciplinary authority as provided under sub-clauses 2 and 3 of the Regulation 32. It is submitted by the counsel for the respondent that in this case, the departmental proceeding was initiated by one officer Shri S.A. Moiz, who was Joint Commissioner in the Coal Mines Provident Fund Organization and was not the Commissioner and not only this, but, he was authorized by the Central Government to officiate as Commissioner, Coal Mines Provident Fund Organization, Dhanbad, and that was in addition to his own duties of Joint Commissioner with condition that the said arrangement shall be till such time as the regular incumbent is appointed to the aforesaid post or until further order whichever is earlier. It has been made specifically clear that the said arrangement is not the promotion, but only an officiating arrangement and as such, the said officer Shri S.A. Moiz shall not be entitled to draw the salary of the post of Commissioner and he will continue to draw his salary in the scale of pay of Joint Commissioner which is apparent from the Government order dated 16.10.1989 (Annexure-5).

3. We have considered the submissions of the learned counsel for the parties and perused the reasons given by the learned single Judge in the impugned judgment dated 8.7.2003. Since no other point has been pressed, therefore, we have to consider only issue that whether the departmental proceeding in the facts of this case could have been initiated by an officer holding the lower post than the appointing authority/disciplinary authority. Learned single Judge has relied upon the Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which provides, as under:--

13. Authority to institute proceedings--

(1) The President or any other authority empowered by him by general or special order may:

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these Rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these Rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the latter penalties.

4. With the help of this, it has been argued that in view of the specific Rule even the proceedings could have been initiated only by the Commissioner in the Organization and not by the person holding the charge. The post of Joint Commissioner in the organization is a subordinate post to the post of the Commissioner. Undisputedly, the said officer Shri S.A. Moiz while officiating the post of Commissioner by holding the post of Joint Commissioner, initiated the disciplinary proceeding against the delinquent officer. The judgment cited by the learned counsel for the appellant delivered in the case of Mahesh Prasad (*supra*) as well as in the case of Ram Ratan Baichand (*supra*) have decided the question only to the effect that the order of punishment can be passed by the appointing authority and are not the judgments on the point, who can initiate the departmental proceeding. In spite of having specific provisions under the Rules providing who can impose the punishment, the Hon"ble Supreme Court in the case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, specifically held, that initiation of departmental proceeding by an officer subordinate to the disciplinary authority is not objectionable provided the punishment order is passed by the appointing authority. It appears that Rule 13 may have influenced the learned single Judge, which is a Rule providing for procedure for initiation of the disciplinary proceeding, but at the same time, it has not been noticed that the disciplinary authority, if is competent to impose any of the penalties, one of which has been imposed upon the delinquent, then, there is no contrary Rule which prohibits a sub-ordinate officer to that authority to initiate the departmental proceeding. Therefore, in view of the similar legal issue decided by the Supreme Court in the case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, we are of the view that the learned single Judge has committed error or law in setting aside the orders passed by the disciplinary authority dated 4/11th August, 1993 and 15.6.1995. In view of the above reasons, this L.P.A. is allowed and the impugned judgment dated 8.7.2003 is set aside and the writ petition of the petitioner is dismissed.