
(1990) 08 GUJ CK 0009
In the Gujarat High Court

D.T. Makwana

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135J, 135J

Citation : (1992) 1 GLR 194

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioner, Ex-Mamlatdar, who has since retired with effect from 31-7-1980, has challenged the impugned order imposing penalty of stoppage of 3 increments with cumulative future effect on him.

2. At the relevant time the petitioner was working as Mamlatdar, Pardi and was chargesheeted on 5-2-1975 on an allegation that the petitioner and one Mr. Nayak, Deputy Mamlatdar, Pardi were guilty of committing gross irregularities in disposal of 15 cases under the Record of Rights Rules and thereby showing carelessness and bias in the performance of their duties. The details of the irregularities were given in the statement of imputations which are set out in the inquiry report. The gross irregularities in disposal of cases under Record of Rights Rules alleged were that no Rojams of proceedings were made; no notices were issued to the tenants; the applicant-tenants were not given opportunity to cross-examine the landlord or their witnesses; though the landlords were not staying at the village, they were not asked to produce the evidence as to how were they personally cultivating the land and the statements of landlords were recorded behind the back of tenants. The competent authority after considering the findings of the Inquiry Officer agreed with them holding that the charges against the petitioner, Mr. Nayak and one Mr. Kapadia were partly proved and imposed penalty of withholding of 3 increments with future effect on the petitioner.

3. It was contended by Mr. R.N. Shah, the learned Counsel for the petitioner that there was no misconduct proved against the petitioner and therefore no penalty

could have been levied. He further argued that joint inquiry conducted against the 3 delinquents had caused prejudice to the petitioner. He further submitted that assuming that there was misconduct, punishment of withholding 3 increments with cumulative effect was unduly harsh. He submitted that ends of justice will be met if the punishment was reduced to two increments without cumulative effect.

4. Mr. H.B. Antani, learned A.G.P. appearing for the Government contended that the punishment was inflicted on the petitioner after following proper procedure and reasons have been assigned in the impugned order. He submitted that the expression "good and sufficient reasons" occurring in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as "the said Rules") would take within its sweep even carelessness and irregularities and therefore any of the punishment enumerated in that rule could be imposed when a delinquent was found to be careless or negligent or committing irregularities. He further argued that the joint inquiry was permissible and no prejudice was shown. He finally submitted that the punishment imposed was not at all disproportionate and therefore, this Court should not interfere in the impugned order.

5. On the contention that there ought not to been a joint inquiry, it appears that no prejudice has been caused to the petitioner.

Even when the inquiry was commenced no contention that any prejudice would be caused was ever taken up by the petitioner during the proceedings. It appears from the record that the inquiry was entrusted to Special Officer for Departmental Inquiries by the Government order dated 21st April, 1975 and the Inquiry Officer submitted his report dated 20th April, 1976 holding that the charge of committing irregularities against the petitioner and two others was partially proved. The Inquiry Officer found that the statements of landlords and their witnesses were taken in absence of the tenants and the tenants were not given an opportunity to cross-examine the landlords or their witnesses. It was found that the petitioner and other delinquents had committed irregularities in not making full inquiries themselves into the question as to whether landlords were living in the villages where the land was situated. The Inquiry Officer found that nearly all adivasi witnesses had stated that they were not present nor were they informed to be present when the landlords and their witnesses were examined. It was noted in the inquiry report that the petitioner had admitted his irregularity in his written statement and that he had stated that he had signed the decisions believing that they were of the case inquired by him. The Inquiry Officer found that such irregularity of signing decisions without ascertaining as to whether the cases were inquired by him or not was a major irregularity. The Inquiry Officer did not accept the defence of the delinquent on this aspect and came to conclusion that the petitioner and other delinquent had not conducted the proceedings while disposing of cases under Record of Rights Rules in accordance with the Rules and had committed irregularities. The review

application which was filed by the petitioner was rejected by the Government holding that the negligence on the part of the petitioner in signing certain orders in which the inquiry was made by the Deputy Mamlatdar cannot be construed as a bona fide mistake.

6. Mr. R.N. Shah, learned Counsel for the petitioner fairly submitted that in view of the decision in the case of P.P. Parekh Vs. State of Gujarat, it was not open to the petitioner to contend that a departmental inquiry cannot be held in respect of irregularities committed while discharging quasi-judicial powers. It will be noticed that the competent authority has agreed with the findings of the Inquiry Officer that the petitioner and the other delinquents have committed irregularities. It was observed by the Inquiry Officer that their wrong action may not have been intentional and they might have committed irregularities through mistake. It was in view of these observations of the Inquiry Officer that Mr. Shah contended that there was no misconduct committed by the petitioner and therefore no punishment could be imposed under Rule 6 of the said Rules. It will be noticed that these are mere inferential observations of the Inquiry Officer. The finding of the Inquiry Officer was that the petitioner and other delinquents had committed irregularities and the competent authority agreed with the same and held that the charges were partly proved. The words "may not be intentional" and "might have committed irregularities through mistake" would suggest that these were only conjectures of the Inquiry Officer. The fact remains that the irregularities were committed by the petitioner and others. The petitioner in fact admitted having signed the order without even verifying it whether the inquiry was done by him or the Deputy Mamlatdar. The punishment which has been imposed, viz., stoppage of 3 increments with future cumulative effect would be a minor penalty under Rule 6, item (2) which enumerates withholding of increments or promotion as one of the minor penalties. The words "withholding of increments" are not circumscribed and there is no reason to infer that minor penalty of withholding of increment should be for a particular period. On the contrary, since the expression "withholding of increments" is not hedged by prescribing any period, the obvious meaning would be that withholding of increment would have future effect unless for good and sufficient reasons the competent authority may limit its effect for a particular period. Similar Rule came to be considered by Punjab & Haryana High Court in the case of Punjab State v. Ram Lubhaya, (reported in 1983 (2) SLR 410) and while considering the question whether withholding of increments with cumulative effect was a minor penalty covered by Sub-rule (4) the High Court held that it appeared from Sub-rule (4) that the framers only wanted to provide imposition of minor penalty of withholding of increments without cumulative effect so that there is a temporary loss to the employee not having a permanent effect on his increments. The High Court observed that under Sub-rule (5) which enumerated the major penalty of reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction, provided for making a permanent loss in the increments. On this

process of reasoning the High Court came to the conclusion that withholding of increment with cumulative effect would not be covered by Sub-rule (4) which enumerated minor penalty of "withholding of increments of pay", and therefore would be a major penalty. With respect I am unable to agree with this reasoning of the Punjab & Haryana High Court. As observed above, there are no words to limit the expression "withholding of increments of pay" and therefore the expression should be given its full play which would necessarily mean that an order of stoppage of increment was intended to have a permanent effect unless the competent authority wanted to impose that penalty with lesser rigour by prescribing the period during which such order would have its effect.

7. The question whether withholding of increments with cumulative effect was a minor penalty came to be considered by this High Court in the case of *B.R. Acharya v. State of Gujarat*, reported in 85 (2) SLR 773 : (1985 (2) GLR 685 and the Court repelled the contention that there was no provision to withhold the increment of a Government servant with future effect. I find myself in respectful agreement with this conclusion.

8. Reliance was placed by Mr. R.N. Shah on the judgment of Supreme Court in the case of *Union of India (UOI) and Others Vs. J. Ahmed*, in support of his contention that such irregularities cannot give any ground for holding departmental inquiry or imposing any penalty. Mr. Shah submitted that it is essential that there was some misconduct alleged and found to be proved against the delinquent before any penalty can be imposed on him under Rule 6. In the instant case, he submitted, there was no finding of any misconduct and the only finding arrived at by the competent authority was of irregularity and finding of irregularity cannot be made a base for imposing any penalty. Mr. Antani, on the other hand, submitted that the words to the effect that penalties enumerated in Rule 6 may "for good and sufficient reasons" be imposed would imply that not only misconduct, but even irregularities and other conduct can be made a ground for exercising powers under Rule 6. The contention canvassed by Mr. Antani does not appear to be convincing because, Rule 6 only enumerates the penalties and it is while imposing such penalties that the question as to whether there is good and sufficient reason has to be examined. In other words, the phrase, "for good and sufficient reasons" is used in the context of penalties which are being imposed when a delinquent is found guilty. This rule is not intended to enumerate the nature of conduct for which penalties may be imposed, but is framed in order to lay down the types of penalties which can be imposed and it is at the stage when penalties are being imposed that the existence of good and sufficient reasons for imposing such penalties would be the relevant criteria. Before such penalties are imposed, procedure has to be undergone for coming to the conclusion that the delinquent is guilty. The procedure has been elaborately laid down in Part IV of the said Rules. It will be noticed that when inquiry is held, the disciplinary authority is required to inquire into "the truth of any imputation of misconduct or misbehaviour or of any culpable act or omission" against a Government servant. The statement of "imputations of misconduct or

misbehaviour or of any culpable act or omission" is to be delivered to the delinquent along with the articles of charge. Even the procedure for imposing minor penalties which is laid down in Rule 11 clearly provides that no order imposing on a Government servant any of the penalties specified any Items 1 to 3 of Rule 6 shall be passed except after informing the Government servant in writing of the proposal to take action against him and of the imputation of misconduct or misbehaviour or of any culpable act or omission on which it is proposed to be taken and recording a finding on each imputation of misconduct or misbehaviour or any culpable act or omission. Thus, for the type of conduct for which penalties can be imposed under Rule 6 one has to refer to Rules 9 and 11 and not to Rule 6 which only enumerates penalties which may be imposed for good and sufficient reasons. The question, therefore, is whether or not the petitioner had committed misconduct, or whether he had committed any culpable act or omission or misbehaviour. It is the actual act or omission which constitutes the imputation and not merely the label whether it is misconduct or misbehaviour or irregularity. A gross irregularity may amount to culpable act or omission. The words "culpable act or omission" are of wide amplitude and would take colour from the context in which they are used while making imputations. As observed by the Supreme Court in *Union of India v. J. Aired* (supra), there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but that would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. The Supreme Court observed: "carelessness can often be productive of more harm than deliberate wickedness or malevolence". The Supreme Court disagreeing with the opinion of the High Court that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mens rea held that gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

9. The irregularity which the petitioner was found to have committed was of not allowing the Adivasis-tenants to cross-examine the landlords in the Record of Rights Proceedings. The petitioner had in fact signed orders passed by the Deputy Mamlatdar thinking that the inquiries were made by him. This was found to be a major irregularity. The Records of Rights entries have far reaching effect u/s 135-J of the Bombay Land Revenue Code, 1879. According to this section an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be correct until the contrary is proved or a new entry is lawfully substituted therefore. Thus the consequences directly attributable to the irregularities of this nature would seriously affect the rights of the parties and in the instant case they affected the rights of the adivasis-tenants and therefore the degree of culpability was higher. It, therefore, cannot be said that the facts which

have been found against the petitioner did not warrant holding of any inquiry or imposition of a minor penalty.

10. The only question that now remains to be considered is whether the punishment imposed on the petitioner of stoppage of 3 increments with future effect can be said to be harsh. There is no dispute about the proposition that if the Court finds the punishment to be disproportionate or harsh it can interfere with it in exercise of its writ jurisdiction. In the case of *B.R. Acharya v. State of Gujarat* (supra) the only fault which was found with the delinquent was that he did not shift his headquarters or place of residence from Bhavnagar to Savarkundla when he was transferred, and the penalty which was imposed on him of withholding of promotion for 5 years was reduced by the appellate authority to the penalty of withholding of 2 increments with future effect. This High Court found that withholding of increments with future effect in case of that type would lead to a harsh burden on the delinquent and was not justified on the facts of the case and on the finding of the guilt as arrived at by the departmental authorities. The High Court found that the order of penalty was too harsh on the facts and circumstances of the case and did not logically follow the finding recorded against the delinquent. This Court, therefore, reduced the penalty and the impugned order was modified to the extent that stoppage of increments should not be for indefinite period but would be only for a period of four years. This decision is a clear authority on the aspect that even stoppage of increment with future effect can amount to a harsh and disproportionate punishment in a given case. There is no dispute about the fact that the petitioner has retired from 31st July, 1980. Therefore the cumulative effect of withholding three increments would not only be taking away that amount from his regular salary, but would be taking away that amount from the meagre amount of pension which the petitioner would be getting. The authorities do not seem to have taken this aspect into account while imposing penalty under Rule 6 which requires good and sufficient reasons to be borne in mind while imposing the penalty of withholding increment. It was essential for the authorities to consider the fact that the petitioner was about to retire and that such order of penalty with future effect would take away a sizeable sum from his pension amount which is far less than the regular salary. Therefore the pinch which would be felt by the delinquent after retirement due to the cumulative effect of withholding of increments for all time to come will be much more than suffered while in service and getting regular salary. Furthermore, it was the finding of the disciplinary authority that the charges of irregularity were only partly proved and that other delinquents who were subordinate to the petitioner were also involved and the petitioner had signed the orders without himself verifying all the details. It would, therefore, appear that the petitioner placed undue reliance on his subordinates. Therefore the cumulative effect which is given to the order of withholding increments would amount to a harsh punishment disproportionate to the guilt of the petitioner and not justified on the facts of the case and on the finding of the guilt.

11. There would be no point in sending the matter back to the disciplinary authority because the petitioner has already retired and therefore it would be proper to modify the order of penalty in this proceeding. It would, therefore, be appropriate to reduce the penalty imposed on the petitioner by limiting its operation. The punishment of stoppage of 3 increments as imposed by the Disciplinary Authority under the impugned order is, therefore, modified to the extent that stoppage of 3 increments shall not operate beyond the date on which he retired, i.e., 31-7-1980. In other words, the stoppage of 3 increments of the petitioner will not have any future effect beyond 31-7-1980. Rule is made absolute accordingly with no order as to costs.