

(2001) 02 DEL CK 0089
In the Delhi High Court
Case No : C.W.P No. 2578 of 2000

Mr. Uttam Kumar

APPELLANT

Vs

Delhi Jal Board and Another

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : (2001) 4 AD 166

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. R.K. Saini, for the Appellant;

Judgement

Vikramajit Sen, J.—This Writ Petition is directed against the Order dated 13.10.1999 passed by the Presiding Officer, Labour Court II, Delhi. The Petitioner was issued a Charge Sheet and after a Department Enquiry was duly conducted, the penalty of the withholding of five increments with cumulative effect was imposed on the Petitioner by the Disciplinary Authority. These proceedings and the punishment are not under challenge. The contention of Mr. R.K. Saini, Learned Counsel for the Petitioner, is that the five increments should be released in favor of the Petitioner, now that the period of five years has elapsed. It is contended that the penalty of the cumulative withholding of increments is not envisaged by law; and that the period for which the increment is withheld is required to be clearly and precisely stated by the Disciplinary Authority and has not been so done. I see no merit in the Writ Petition and the arguments raised before me. The impugned Order is refreshingly succinct and correctly implements the law.

2. The Labour Court has ably analysed the decision of the Division Bench in C. Veera Chowdaih vs. State of Mysore and another 1973 (1) S.L.R. 241. Although the penalty was struck down for the violation of natural justice in that the official was not given an opportunity to make a representation, the distinction between cumulative and non-cumulative withholding of increments was clearly drawn, even though this nomenclature and terminology was not employed. The Bench

approved the simile, that "in substance, so far as the service of the Petitioner is concerned, the hand of the clock is put back by two years as though he was not in service for two years for the purpose of computation of increments." The dichotomy in the penalty of withholding of increments was also in contemplation in the decision rendered in *Alakendu Sarkar vs. State of West Bengal and Others* 1981 (2) SLR 33. This decision was heavily relied upon by Mr. R.K. Saini, but the distinction is in the Rules which are to be construed. This is what the Learned Single Judge opined in the case:

"Paragraph 8 of the West Bengal Rules lays down the penalties which may be imposed on a Government servant. Sub-rule (ii) of the said Rules provides "withholding of increments or promotion". Nowhere in Rule 8 is there such a penalty as withholding of increments with cumulative effect. That withholding of increments simplicities and withholding of increment with cumulative effect have different meanings and implications would be apparent on a reference to Rule 16(1-A) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 which provide both for withholding of increment of pay for a period exceeding three years or withholding of increment of pay with cumulative effect for any period. As such I am of the view that the Regional Manager by imposing the penalty of stoppage of five increments with cumulative effect on the petitioner acted beyond the powers given to him by the West Bengal Rules. As such, the said order, copy being annexure D to the petition, and the appellate order passed subsequent thereto, have to be set aside."

3. In *Punjab State vs. Ram Lubhaya*, 1983 (2) SLR 410, the distinction between a postponement of the increments and its permanent loss was also accepted. The Learned Judge opined as follows:

"Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpliciter, i.e. without cumulative effect, and with cumulative effect. For example if an employee is getting Rs.100 at the time of imposition of penalty of withholding of increments, and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs.5, then in that case for two years he will continue to get Rs.100 per month but after the expiry of two years, he will get at the time of next increment, Rs.115 including the increments for the past two years during which period they remained withheld. In case of withholding of increments for two years with cumulative effect, the employee will get Rs.100 for two years and at the third increment, he would get Rs.105 and not Rs.115. While in the first case there will be a loss of increments for two years only and no further loss thereafter till retirement, but in the second eventuality due to loss of two increments there will be loss of pay for whole of the remaining tenure of the employee which will affect his pension on his retirement. Therefore, two penalties would be clearly distinct having different consequences."

4. The second argument of Mr. R.K. Saini is that the impugned Order ought to have clearly spelt out the period for which the increment is intended to be lost.

The penalty in the present case is "withholding of five increments with cumulative effect." Mr. Saini did not dispute that the increments are annual. This pedantic submission cannot be acceded to since it is clear to all concerned that the punishment had a currency of five years. Learned Counsel's reliance on the following passage from Chaudhri's Compilation of the Civil Service Regulations is misplaced and cannot be appreciated. It will also be relevant to mention that the penalty of cumulative loss of increments is itself envisaged in the passage:

"(1) As the postponement of all future increment is a very severe cumulative penalty, the Government of India have decided that when the authority passing orders to withhold an increment fails to specify clearly for what period the officer is to be deprived of his increments, the deprivation should be held to cease on the expiry of the period during which the officer would have drawn the increment withheld. For example, if on the 1st July, 1919 an officer already drawing a pay of Rs.110 in a grade of Rs.100-10-150 and in ordinary course entitled to an increment to which he would otherwise have been entitled on that date, he will in the absence of special orders to the contrary, be entitled on the 1st July, 1920 to draw Rs. 130 and not Rs.120 only.

In the case of increments granted in advance, it is usually the intention that the officer should be entitled to increments in the same manner as if he had reached his position in the scale in the ordinary course and in the absence of special order to the contrary, he should be placed on exactly the same footing as regards future increments as an officer who has risen."

5. Mr. Saini had traversed the extant Rules 6 and 8 of Delhi Water Supply and Sewage Disposal Undertaking (Control and Appeal) Regulations 1982, which read as follows:

"Nature of penalties: The following penalties may, for good and sufficient reasons and as hereinafter provide, be imposed on an officer or other employee of the Undertaking namely:

Minor Penalties:

- (i) Censure.
- (ii) With-holding of increments or promotion.
- (iii) Recovery of the whole or part of any pecuniary loss caused to the Undertaking by negligence or misconduct:

Provided that the penalty of stoppage of more than in three increments without future effect or the penalty of stoppage of increment with future effect shall be imposed in the manner laid down in Regulation 8.

Major penalties:

- (iv) Reduction in rank including reduction to a lower post, or to a lower time scale or to a lower stage in a time scale.

(v) Compulsory retirement.

(vi) Removal from service which shall not be a disqualification for future employment.

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment.

Explanations :- The following shall not amount to a penalty within the meaning of this regulations:

(a) reversion to his permanent post of an officer or other employee of the Undertaking appointed on probation to another post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation:

(b) replacement of the services of an officer or other employees of the Undertaking whose services have been borrowed from the Central Govt. or a State Govt. or any local or statutory authority, at the disposal of the authority which had lent his services;

(c) compulsory retirement of an officer or other employee of the Undertaking in accordance with the provisions relating to his superannuation or retirement; and

(d) termination of the services:-

(i) of an officer or other employee of the Undertaking appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing probation, or

(ii) of a temporary officer or other employee of the Undertaking in accordance with provisions of sub-rule(1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 as applied to such officers or employees of the Undertaking.

(iii) of an officer or other employee of the Undertaking employed under an agreement, in accordance with the terms such agreement.

"8. (1) Procedure for imposing penalties:- Subject to the provisions of sub-section (2) of section 95 of the D.M.C. Act, 1957, no order imposing on an officer or other employee of the Undertaking, any of the penalties specified in clauses (iv) to (vii) of regulation 6 shall be passed, except after an inquiry is held, as far as may be, in the manner hereinafter provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the officer or other employee of the Undertaking and he shall be required to submit within such time as may be specified by the Disciplinary Authority, a written statement of his defense and also to state whether he desires to be heard in person.

(3) The officer or other employee of the Undertaking shall, for the purpose of preparing his defense, be permitted to inspect and take extracts from such official records as he may specify.

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority, such records are not relevant for the purpose or it is against public interest to allow him access thereto.

(4) On receipt of the written statement of defense, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a Board of Inquiry or an Enquiry Officer (hereinafter in this regulation referred to as the Inquiring Authority) for the purpose.

(5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the Inquiring Authority. The officer or other employee of the Undertaking may present his case with the assistance of any other officer or employee of the Undertaking approved by the Disciplinary Authority, but shall not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having agreed to the circumstances of the case, so permits.

(6) The Inquiring Authority shall in the course of the Inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The officer or other employee of the Undertaking shall be entitled to cross examine witnesses examined in support of the charges and to give evidence to person. The person presenting the case in support of the charges shall be entitled to cross examine the officer or other employee of the Undertaking and the witnesses examined in his defense. If the Inquiring Authority declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reason in writing.

(7) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry recording its finding on each of charges together with reasons therefore. If in the opinion of such authority, the proceedings of inquiry establish charges different from those originally framed, it may record findings on such charges.

Provided that findings in such charges shall not be recorded unless the officer or other employee of the Undertaking has admitted the facts Constituting them or has had an opportunity of defending himself against them.

(8) The record of the inquiry shall include:-

(i) The charges framed against the officer or other employee of the Undertaking and the statement of allegations furnished to him under clause (2) above.

(ii) his written statement of defense, if any;

- (iii) the oral evidence taken in the course of the inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and
- (vi) a report setting out the findings on each charges and the reasons therefore.

(9) The Disciplinary Authority shall, if it is not the inquiring Authority, consider the record of inquiry and record its findings on each charge.

(10) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in regulation 6 should be imposed, it shall pass orders accordingly.

(11) Orders passed by the Disciplinary Authority shall be communicated to the officer or other employee of the Undertaking who shall also be supplied with a copy of the report of the Inquiry Authority and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings, together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority, unless they have already been supplied to him.

(1):-8-A No order imposing on an officer or that employee of the Undertaking, any of the penalties specified in clause (i) to (iii) of regulation 6 shall be made except after:-

(a) informing the officer or the employee of the Undertaking in writing of the action proposed to be taken and of the imputations forming the basis thereof and giving him a reasonable opportunity of showing cause against the proposed action;

(b) taking the representation, if any, submitted by the officer or the employee of the Undertaking under clause (a) and after holding such enquiry as may be considered necessary in the presence of that officer or the employee of the undertaking after notice to him or in his absence if he fails to attend;

(c) recording a finding on each imputation or negligence, misconduct or misbehavior.

(d) holding an enquiry in the manner laid down in regulation 8 in every case in which the disciplinary authority is of the opinion that such enquiry is necessary.

(2) The record of proceedings in such cases shall include:-

(i) a copy of the intimation to the officer or employee of the Undertaking of the proposed action.

(ii) a copy of the statement of imputations of negligence, misconduct or misbehavior forming basis of the purposed action.

(iii) representation, if any.

(iv) the notice issued and evidence, if any, produced during the enquiry.

(v) the findings on each imputation of negligence, misconduct or misbehavior;
and

(vi) the orders of the case together with the reasons therefore."

6. Does a reading of the above, and the fact that the word "cumulative" has not been employed, make any appreciable difference. I think not. The permanent postponement of the increment clearly means that it is with cumulative effect. It is evident that it is precisely for this reason that all concerned were aware that the penalty proposed to be inflicted on the Petitioner was a major penalty, hence necessitating the holding of an Enquiry.

7. In this analysis, it is evident that loss of increments can be either with cumulative or non-cumulative effect. In the former case, it is logically a major penalty, thus necessitating the precondition of the holding of a Department Enquiry. This distinction was obvious to all concerned, since such an enquiry was duly held. I see no infirmity with the impugned Order. Ordinarily, Costs should have been imposed. However, as there is no precedent of this Court on the issue, I shall desist from so doing.

8. The Petition is dismissed.

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