

(1995) 01 MP CK 0029
In the Madhya Pradesh High Court
Case No : M.P. No. 1226 of 1989

Radhakrishna Trivedi

APPELLANT

Vs

M.P. State Warehousing Corporation and Another

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Madhya Pradesh State Warehousing Corporation Staff Regulations, 1962 — Regulation 22(1), 22(2)

Citation : (1995) J LJ 249 : (1996) 1 LLJ 557 : (1995) 1 MPJR 119 : (1995) 40 MPLJ 527 : (1995) MPLJ 527

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : S.S. Samvatsar, for the Appellant; D.S. Nagar, for the Respondent

Final Decision : Partly Allowed

Judgement

C.K. Prasad, J.

The petitioner is an employee of the M.P. State Warehousing Corporation (hereinafter referred to as "Corporation" for the sake of brevity), has filed this writ application for quashing of the order dated August 5, 1987 (Annexure P/7) by which the respondent Corporation has directed for stoppage of his two increments with cumulative effect. The appellate order passed by the respondent Corporation against the aforesaid order of withholding of two increments (Annexure P/8, dated November 4, 1987) is also impugned in the present writ-application. The petitioner further prays for quashing of the order dated March 23, 1988 (Annexure P/9) passed by the respondent Corporation whereby the petitioner was reverted to his substantive post of the Superintendent. The appellate Order dated August 26, 1989 (Annexure P/18) rejecting the appeal of the petitioner against the said order has also been impugned. The petitioner has further sought for quashing of the order dated May 25, 1989 (Annexure P/13) by which the respondent No. 2 was promoted to the post of the Regional Manager.

The facts giving rise to the present application are that the petitioner was

appointed as a Technical Assistant on April 20, 1961. It is stated by the petitioner that on May 1, 1967 he was promoted as Manager (Junior Superintendent). It is the petitioner's case that by order dated June 17, 1983 (Annexure P/1) he was promoted as Superintendent. The promotion of the petitioner as Superintendent by order dated June 17, 1983 was on probation for a period of one year and by order dated October 15, 1984 (Annexure P/2) he was appointed on substantive basis after completion of the probation period. The respondent Corporation by order dated December 4, 1985 (Annexure P/3) transferred and posted the petitioner as incharge sub-Regional Manager and directed him to function as such at the Regional Office, Sagar. The said order of transfer indicates that the petitioner shall be paid officiating allowance. By order dated March 19, 1986 it was directed that petitioner shall be entitled at 10% of the basic pay as officiating allowance. By order dated March 20, 1986 the petitioner was promoted on adhoc basis for a period of one year as Regional Manager. While the petitioner was working as Regional Manager by order dated August 5, 1987 the respondent passed the order for withholding of two increments with cumulative effect (Annexure P/7) . As stated earlier this order of withholding of two increments with cumulative effect is sought to be quashed by issuance of appropriate writ.

As stated earlier in the present writ application the petitioner has sought three reliefs (1) quashing of the order of reversion (2) quashing of the order by which the two increments were withheld with cumulative effect and (3) quashing of the promotion of the respondent No. 2. The three reliefs sought by the petitioner are different and distinct in nature and one is not dependent upon the other. As such, in my view seeking three reliefs by one writ petition was not permissible. Counsel for the petitioner submitted that he will file two more sets of Court fees and in view of the fact that the Writ Petition was admitted as back as in the year 1989, I grant permission to the petitioner to file two more sets of Court fees and entertain the writ petition.

Mr. S. S. Samvatsar, appearing on behalf of the petitioner submits that the order dated May 8, 1987 (Annexure P/7) withholding two increments with cumulative effect is a major penalty and, therefore, a full fledged enquiry was sine qua non. In paragraphs Nos. 10 and 11 of the Writ-petition the petitioner has stated that only a show-cause notice was issued to him to which the petitioner replied and thereafter without any enquiry an order of withholding of two increments was passed.

4-A. The respondent No. 1 in his reply has not disputed this factual averments made in the writ petition but has stated that the action of withholding of two increments with cumulative effect can be passed in view of regulation 22(1)(c) of the M.P. State Warehousing Corporation Staff Regulations, 1962 (hereinafter called the "the Regulation"). Counsel for the respondent has submitted that Regulation 22(1)(c) authorises the respondent Corporation to pass an order of stoppage of increments and for that there is no necessity of framing of formal

charges as provided under Regulation 22(2)(iv).

Counsel for the petitioner has placed reliance on the two judgments of Supreme Court in case of Awadh Kishore Tiwari (since deceased) by L.Rs. Vs. Damodar Valley Coporation, Calcutta and another, and in case of Kulwant Singh Gill v. State of Punjab 1991 Supp. (1) SCC 504.

In the case of Kulwant Singh Gill v. State of Punjab (supra) the Supreme Court has held as under:

"Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 3 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal."

Again in the case of Awadh Kishore Tiwari v. Damodar Valley Corporation Calcutta and Anr. (supra) the Apex Court after holding that punishment of withholding of increments with cumulative effect is a major penalty and the same is not permissible unless the employee has been given opportunity to lead evidence in support of his explanation in reply to show cause. The order of withholding increment with cumulative effect is to be passed after following the detailed procedure for holding a disciplinary enquiry.

It is not disputed that the order of punishment of withholding increments with cumulative effect was passed after show cause notice issued to the petitioner. The respondent having not held a detailed enquiry before imposing the said punishment against the petitioner, it has to be held that the action of the respondent of withholding two increments of the petitioner with cumulative effect, is absolutely illegal and in violation of the statutory rule as also principles of natural justice.

The result of the aforesaid discussion is that the order dated August 5, 1987 (Annexure P/7) and the order dated November 4, 1987 (Annexure P/8) are hereby quashed.

Now I consider the grievance of the petitioner regarding his reversion by order dated March 23, 1988 (Annexure P/9). The foundation of the order of reversion as would be evident from the order itself was that the work of the petitioner was not satisfactory and his integrity was doubtful. The order which is in Hindi reads as follows:

"UNKA KARYA SANTOSHI JANAK NAHI HONE SE TATHA UNKI NISHTA

SANDIGHDH RAHI"

Counsel for the petitioner submits that this order of reversion is per se punitive and the same having been passed without holding a departmental enquiry as provided under Regulation 22(2) (iv), the same was illegal. There is a specific averment made by the petitioner in paragraph No. 14 of the Writ Petition which reads as follows:-

"The petitioner submits that this stigmatized reversion order has been passed without following the statutory provisions of Rule 22 i.e. without formal charges being framed against him and without giving him an opportunity for tendering an explanation in writing and cross-examining the witnesses against him and of producing defence."

The fact that no enquiry was held and no formal charge was levelled against the petitioner, has not been disputed in the reply filed by the respondent. However they stated that the petitioner was promoted by order dated March 22, 1986 on adhoc basis for one year and the said promotion was not a regular promotion. As such the petitioner has no right to hold the post of Regional Manager substantively. Consequently, he had no right to the post and the action of the respondent Corporation in reverting him to his substantive post of Superintendent, was not illegal or unjustified.

Counsel for the petitioner in support of his proposition that reduction in rank of the petitioner was not permissible without holding an enquiry, placed reliance on a judgment of the Supreme Court in case of Debesh Chandra Das Vs. Union of India (UOI), . Further reliance has been placed on the judgment of the Supreme Court in case of The Regional Manager and Another Vs. Pawan Kumar Dubey,

Learned Counsel for the respondent in support of the proposition that the reversion is permissible placed reliance on the judgment of the Supreme Court in the case of S.P. Vasudeva Vs. State of Haryana and Others, and in the case of The State of Bombay Vs. F.A. Abraham,

Having considered the ratio of the judgments referred to by the learned counsel for the petitioner as also by the counsel for the respondent, I am of the view that an order of reversion of an officiating promotee without casting any stigma, is not punitive in nature and, therefore, no enquiry is necessary to be held in such cases. However, in this case the foundation of the order of reversion is stigma and is passed by way of punishment, the same has to be passed in tune with the principle of natural justice and procedure under the Service Rules. Legal position having been settled by the Apex Court I have to examine the nature of the order of reversion passed against the petitioner. The order of reversion ex facie stated that the work of the petitioner was unsatisfactory and his integrity doubtful. Counsel for the respondent submits that this doubtful integrity was in relation to his posting as a Regional Manager and this will not stand in the way of the petitioner in future promotion and, therefore, it should not be considered as a stigma.

I am afraid, the contention of counsel for the respondent is devoid of any substance. As I have stated earlier, the order of reversion in so many words state that not only the work of the petitioner was unsatisfactory but his integrity was also doubtful. Thus, unsatisfactory work as also doubtful integrity of the petitioner, led the Corporation to pass the impugned order of reversion and it is nothing but a punitive order against the petitioner. No formal enquiry was held before passing the order of reversion. The order dated March 23, 1988 (Annexure P/9) thus becomes illegal having been passed without following procedure as laid down in Regulation No. 22(2) (iv) of the Regulation or for that matter the basic requirement of principle of natural justice.

The appeal preferred by the petitioner against the order of reversion has been rejected by order dated August 26, 1989 (Annexure P/1 8). As I have held that the order of reversion itself is bad, the appellate order automatically becomes illegal in the eye of law.

For the reasons stated above the order dated March 23, 1988 (Annexure P/9) and the appellate order dated August 26, 1989 (Annexure P/1 8) are hereby-quashed.

So far as the grievance of the petitioner for quashing the order of promotion of the respondent No. 2 dated May 25, 1989 (Annexure P/13) is concerned, as the petitioner was promoted earlier than him and after promotion he has been reverted he cannot make grievance against the promotion of the respondent No. 2. The prayer of the petitioner for quashing the promotion of the Respondent No. 2 has no substance and it is rejected.

In the result, the writ petition is partly allowed. The order of withholding two increments dated August 5, 1987, (Annexure P/7) and the appellate order dated November 4, 1987 (Annexure P/8) as also the order of reversion dated March 23, 1988 (Annexure P/9) and the appellate order dated August 26, 1989 (Annexure P/1 8) are hereby quashed. There shall be no order as to costs. Security money be refunded to the petitioner after due verification.