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(2006) 02 MP CK 0051

In the Madhya Pradesh High Court

Ram Niwas Verma APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Citation : (2007) 2 SLJ 340

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—Petitioner retired as Forester on 30th April, 1995. During his service period he was posted in the fuel depot at Rewa, from 1977 to 1983. The fuel wood used to be brought from different forest areas in the depot which was required to be taken on record by the petitioner. The fuel wood was obtained after felling of trees in the forest area where the fuel wood used to be kept on stock in the form of stacks in the size of 2 mt. x 1 mt. x 1 mt. The stock in the depot used to be kept on the basis of actual weight recorded on the weigh bridge whereas the accounting of despatch of fuel wood from the forest areas was being kept in the number of fuel stacks despatched from the particular forest area. In the transport challans the particulars of the number of stacks used to be mentioned.

2. A show cause notice was issued to the petitioner under Rule 10 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred as ''CCA Rules''), vide Annexure A-2 dated 24.1.1991, as to why recovery of Rs. 76,010.37, as the loss caused to the Stale Government, be not made from him. It was mentioned in the notice that a shortage of 4343.45 quintal fuel wood was found in the record pertaining to the years from 1977 to 1983 and this loss was caused by the petitioner. Again another show cause notice contained in Annexure A-3, dated 24.9.1991 was issued, as to why recovery of Rs. 23,829.09 be not made from him on account of loss caused by him to the Government, due to shortage of fuel wood. The petitioner refuted the allegation

vide Annexure A-4, dated 15.4.1995 and demanded the relevant papers to enable him to submit a reply. Thereafter, no action seems to have been taken against the petitioner until his superannuation on 30th April, 1995 vide Annexure A-l.

3. It is important to note that the Chief Conservator of Forest, vide his letter dated 9th June, 1999, contained in Annexure A-7, found that the record pertaining to the show cause notice issued to the petitioner was not available. He was informed that the same was destroyed due to flood entering into the office. The Chief Conservator of Forest, further their asked the reason for withholding of the pension case of the petitioner who was also superannuated by then.

4. Thereafter, the petitioner was served with a show cause notice dated 10.4.2000, contained in Annexure A-8. The petitioner was accused of causing loss to the State Government to the tune of Rs. 76,010.37 on account of shortage of fuel wood. The petitioner was asked to submit an explanation within three days. Another show cause notice dated 10.4.2000, contained at page No. 33, was also issued to the petitioner with respect to the loss to the tune of Rupees 23,829.90, allegedly caused by the petitioner on account of shortage of fuel wood. The petitioner submitted his reply to both the aforesaid show cause notices vide Annexure A-9. He refuted the allegations about causing any shortage as well as causing loss to the Government. He further mentioned that on account of his superannuation on 30th April, 1995, no departmental proceedings can be initiated against him. The Divisional Forest Officer, Rewa vide orders Annexures A-10 and A-l 1, both dated 28.4.2000, found that the petitioner is guilty of causing loss as stated in the notices contained in Annexure P-8 and passed an order for recovery of Rs. 76,010.37 and Rs. 23,828.09 respectively, vide the aforesaid impugned two orders contained in Annexures A-10 and A-l 1. Petitioner has challenged the aforesaid orders on the ground that they are illegal and are issued without jurisdiction. It is stated by the petitioner that the same are contrary to the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as ''Pension Rules''). Accordingly, the petitioner prayed for quashment and also for release of all retiral benefits with interest. Fixation of pension has also been prayed for.

5. Respondents submitted their joint return and denied the claim of the petitioner. The respondent inter alia contended that the proceedings were initiated before the superannuation of the petitioner and the recovery has been rightly ordered against the petitioner.

6. Rejoinder and additional return have also been filed by the parties.

7. Mr. R.C. Tiwari, learned Counsel for the petitioner submitted that the petitioner having been superannuated in the year 1995, the departmental proceeding could not have been instituted in respect of the events which took place more than 4 years before such institution. Relying upon Rule 9 of the Pension Rules, he submitted that the departmental proceedings were not

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instituted while the petitioner was in service. Obviously, the matter relates to the alleged shortage of fuel wood caused during the period from 1977 to 1983. The petitioner has been admittedly superannuated on 30th April, 1995. Thus, according to learned Counsel for the petitioner, the show cause notices contained in Annexure A-8, as well as orders passed thereon, are without jurisdiction, being in contravention of the Pension Rules.

8. Mr. Ashok Agrawal, learned Government Advocate countered the submissions of the petitioner on the basis of Rule 10 of CCA Rules. He submitted that the penalty of recovery falls within the category of minor penalties and the same is justified even without an enquiry, since the same is based on the official record. Learned Government Advocate further submitted that the impugned orders contained in Annexures A-10 and A-l1 are passed in pursuance of show cause notices contained in Annexures A-2 and A-3, which were issued when the petitioner was in service. Thus, he submitted that the impugned orders are not. passed in violation of any provision of law and the same are not liable to be interfered with.

9. Considered the rival submissions and perused the record.

10. As regards the first submission of the learned Government Advocate, it may be seen that minor penalties are described in Rule 10 of the CCA Rules, which are as under:

(i) Censure;

(ii) Withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

(iv) withholding of increments of pay or stagnation allowance;

Item No. (iii) speaks about recovery from pay of the Government servant. Since the petitioner had already been superannuated on 30th April, 1995 and the impugned orders were passed on 28.4.2000, the recovery could not have been made from the pay of the petitioner. In view of this the penalty imposed upon the petitioner cannot be said to be a penalty of recovery from the pay of the petitioner. The authorities while passing the impugned order on 28.4.2000 were not in a position to make an order of recovery from the pay of the petitioner, since the petitioner was already retired on 30th April, 1995. Thus, the penalty imposed vide Annexures A-10 and A-11 cannot be said to be a minor penalty within the meaning of Rule 10 of the CCA Rules.

11. For the sake of arguments, even if it is treated as minor penalty, the contention of the learned Government Advocate that no departmental enquiry was needed in the case of minor penalty, is misconceived. The Hon''ble Supreme Court in the case of D.K. Bhardwaj v. Union of India 2002 SCC 188, has held:

The High Court has recorded its opinion on two questions: (i) that the

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punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a junior penalty; (ii) in the case of minor penalties; "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty"; a detailed departmental enquiry is also not contemplated in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

Thus, the contention of the learned Government Advocate that the penalty of recovery could be imposed even without an enquiry is highly misconceived.

12. Coming to the second question, it may be seen from Annexures A-10 and A-11 that the earlier charge-sheet against the petitioner was cancelled vide office order No. 498 dated 24.9.1991, as observed in Annexures A-10 and A-11. Thus, although the show cause notices contained in Annexures A-I and A-2 were issued, while the petitioner was in service, no further action seems to have been taken on the basis of these show cause notices. Since the petitioner vide his reply contained in Annexure A-4, had not admitted the accusations made against him, it was obligatory on the part of the respondents to hold an enquiry, as held by the Hon''ble Supreme Court in the case of D.K. Bhardwaj (supra). Sub-rule (6)(a) of Rule 9 of Pension Rules, clearly lays down that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. In the present case, admittedly, the petitioner was not placed under suspension for the alleged loss caused by him to the Government. There is a specific mention in Annexures A-10 and A-11 that the earlier charge-sheet was withdrawn/cancelled vide office order No. 498 dated 24.9.1991. No material has been placed on record to show that any statement of charges was issued to the petitioner while he was in service. Thus, it is clear from the record that the department proceedings were of instituted against the petitioner while he was in service. Sub-rule (2)(b) of Rule 9 of the Pension Rules is also liable to be invoked which provides that the departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Governor;

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(ii) shall not be in respect of any event which took place more than four years before such institution.

Respondents have not placed on record any document to show that any sanction of the Governor was taken before issuing the notices contained in Annexure A-8. It is admitted that the alleged shortage related to the period from 1977 to 1983, whereas the impugned notices contained in Annexure A-8 were issued in April, 2000. Thus, the notices contained in Annexure A-8 were obviously, in respect of the events which took place more than four years before issuance of Annexure A-8 and the same were clearly in contravention of the provision of Sub-rule (2)(b) of Rule 9 of the Pension Rules.

Sub-rule (1) of Rule 9 of the Pension Rules'' empowers the Governor to reserve to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the present case the Hon''ble Governor is not shown to have passed any order in exercise of the powers conferred under Sub-rule (1) of Rule 9 of the Pension Rules.

13. Contention of the learned Govt. Advocate that departmental proceedings were initiated vide Annexures A-2 and A-3, while the petitioner was in service, may also be now considered. Sub-rule (2)(a) of Rule 9 of the Pension Rules lays down that the departmental proceedings if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be mentioned and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service. However, there is a proviso to this sub-rule which required that where such departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submits report regarding its findings to the Governor. Thus Hon''ble Governor alone, after receiving such a report, may pass an order of recovery in exercise of the right conferred on him by virtue of Sub-rule (1) of Rule 9 of the Pension Rules. Mr. Ashok Agrawal, learned Govt. Advocate fairly admitted that the Hon''ble Governor does not appear to have received any such report and have passed an order of recovery against the petitioner.

14. The impugned notices contained in Annexure A-8 were issued in April, 2000, whereas the petitioner was already superannuated in April, 1995. The Hon''ble Supreme Court in the case of State of Bihar and others Vs. Mohd. Idris Ansari, , while dealing with an identical case held that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is therefore, apparent that no departmental proceedings could have been initiated in 1993, in connection with the alleged misconduct which is stated to have taken place in 1986-87.

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15. Likewise, in the present case, the alleged misconduct is with respect to the period from 1977 to October, 1983, whereas the notices as contained in Annexure A-8, were issued after more than 16 years. Accordingly, notices contained in Annexure A-8 are clearly in violation of Sub-rule (2)(b) of Rule 9 of the Pension Rules. Thus, the Divisional Forest Officer, Rewa had no jurisdiction to institute the departmental proceedings vide Annexure A-8 and the same is found to be without jurisdiction. Consequently, the impugned orders contained in Annexures A-10 and A-11 are also without jurisdiction and the same are hereby quashed.

16. As regards the retiral benefits the respondents are directed to make the fixation of the pension of the petitioner and pay all the retiral benefits. The amount of retiral dues withheld by the respondents due to the impugned orders shall attract interest @ 6% per annum.

17. Accordingly, the petition stands allowed in the aforesaid manner with cost quantified at Rs. 2,000/-.

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