
(2011) 11 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 9829 of 2011 (Arising out of S.L.P. (C) No. 24400 of 2007)

S. Loganathan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14

Citation : (2012) 2 AWC 1364 : (2012) 2 CHN 184 Supp : (2012) 1 CTC 672 : (2011) 13 SCALE 7 : (2012) 1 SCC 293 : (2012) 1 SLJ 186

Hon'ble Judges : R.M. Lodha, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : V. Kanagaraj, Promila and S. Thananjayan, for the Appellant; R. Venkataramani V.G. Pragasam, S.J. Aristotle and Praburamasubramanian, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. The Appellant, who was working as a Junior Clerk in the Subordinate Court at Yanam (Pondicherry), was dismissed from the service on conclusion of disciplinary proceedings by the Chief Judge, Pondicherry (for short "Chief Judge") vide order dated November 8, 2000. The Appellant challenged that order before the High Court of judicature at Madras by filing a Writ Petition. His Writ Petition came to be dismissed on June 11, 2007. It is from this order that the present appeal, by special leave, arises.

3. On April 28, 1999, the Appellant was issued a Charge Memo setting out therein that he was liable to be proceeded with the disciplinary action under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "CCS Rules"). Along with the Charge-Memo, Article of Charges was sent to the Appellant. The Article of Charges contained ten articles. An Inquiry Officer was appointed and inquiry proceeded against the Appellant. The appellant

filed his response by way of defence to the Charge Memo and Article of Charges and denied the allegations levelled against him. The Appellant, after some time, did not participate in the departmental inquiry. As a result of which, the departmental inquiry continued ex- parte. Subsequently, on his objection that he had not been provided adequate opportunity, ex-parte departmental inquiry was re-called and the inquiry started de novo. After full participation by the Appellant thereafter in the departmental inquiry, some of the charges were found fully proved while some were held partially proved by the Inquiry Officer. The Disciplinary Authority (Chief Judge), on consideration of the report submitted by the Inquiry Officer, agreed with the findings recorded in the inquiry report and awarded to the Appellant penalty of dismissal from the service.

4. The dismissal order dated November 8, 2000, as noted above, was challenged by the Appellant before the High Court of Madras by way of filing a Writ Petition but without any success.

5. Mr. V. Kanagaraj, learned senior counsel for the Appellant raised two-fold contention before us. Firstly, he contended that the Chief Judge was an appellate authority and, therefore, he could not have imposed the order of punishment as that has resulted in depriving the Appellant of his valuable right of departmental appeal against the order of punishment. In support of this contention, Mr. Kangaraj placed reliance on the two decisions of this Court; (i) Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, and (ii) 2001 (2) AWC 1293 (SC)

6. The second contention of Mr. Kangaraj is that the findings of the Inquiry Officer are vitiated inasmuch as the Inquiry Officer had taken into consideration the evidence that was recorded in the ex-parte proceedings.

7. Insofar as the second contention is concerned, it may be stated immediately that the said contention is mis- placed. The Inquiry Officer has not based his findings on the evidence that was recorded ex-parte but has referred to that only for the purposes of appreciation of the evidence of the witnesses examined by the department in de novo inquiry wherein the Appellant fully participated. The findings are based on the evidence that was recorded subsequently in the presence of the Appellant. It is true that the witnesses PW2 to PW11 examined by the department did not support the department fully but besides the evidence of PW2 to PW11, there is a evidence of PW1. The Inquiry Officer considered his evidence and relied upon the same.

8. In our considered view, the consideration of the evidence recorded in the course of the inquiry by the Inquiry Officer in the presence of the Appellant and the findings recorded by him do not suffer from any legal infirmity justifying any interference by us.

9. Coming to the first contention raised by Mr. Kanagaraj, suffice it to say that ordinarily in a case of infliction of punishment by the higher authority acting as a disciplinary authority, if delinquent is denied his right of departmental appeal or

right of review, such order of punishment may be rendered bad in law but much would depend on the relevant rules. In the case of *Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others*, while considering the provisions of *United Commercial Bank Officers (Discipline and Appeals) Regulations, 1976*, this Court held thus:

It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality.

10. The above legal position has been reiterated by this Court in 2001 (2) AWC 1293 (SC) However, the present case is little different. Vide Notification dated November 17, 1982 issued by the Government of Pondicherry, a provision has been made that the appointing authority is competent to impose all the penalties in Rule 11 of the CCS Rules and the appellate authority has to exercise the powers and perform the functions of other authorities in respect of Group 'C' and Group 'D' posts in the offices mentioned against each other in column (5) of the Table appended thereto. Second proviso that follows the first proviso and the main body of the Notification provides that where the appointment of a delinquent has been made by an authority higher than that specified in Column (2), then that authority will constitute the disciplinary authority under Column (3) of the Table in respect of major penalties and any appeal against the orders of such authority will lie to the next higher authority not below the rank of a Secretary to Government and where the appeal is against the orders of the Lieutenant Governor as the disciplinary authority, the appeal shall lie to the President.

The relevant portion of the Table is as follows:

SL.No.

Appointing Authority

Authority competent to impose all penalties specified in Rule 11.

Appellate Authority

Office/ officers relating to which the powers are to be exercised.

1

2

3

4

5

xxx

xxxx

xxxx

xxxx

xxxx

Judicial Department

Special Officer, Judicial Department

Special Officer, Judicial Department

Chief Judge, Pondicherry

District Court, including the Labour Court, Sales Tax Appellate Tribunal and Office of the Special Officer.

11. The Chief Judge has recorded in his order dated November 8, 2000 that in the case of the Appellant, he was the appointing authority. This fact has not been disputed by showing any material otherwise. We, therefore, have to accept the position that the Chief Judge was the appointing authority of the Appellant. In that event, the argument advanced on behalf of the Appellant that the appellate authority has inflicted punishment on him is devoid of any substance.

12. As a matter of fact, the second proviso in the Notification dated November 17, 1992 takes care of such situation. It provides that in cases where the appointment has been made by an authority higher than that specified in Column (2), then that authority will constitute the disciplinary authority under Column (3) of the said Table in respect of major penalties.

13. The challenge to the competence of the Chief Judge in passing the order of punishment is not meritorious and has, rightly been rejected by the High Court. By virtue of the second proviso in the Notification dated November 17, 1982, the

Appellant's right of departmental appeal was not taken away and he could have challenged that order in the departmental appeal to the higher authority. The Appellant did not avail of that opportunity and instead challenged the order in a Writ Petition before the High Court.

14. Be that as it may, the Appellant's right of appeal has not been affected by the Chief Judge in passing the order dated November 8, 2000.

15. The appeal has no merit and is dismissed accordingly with no order as to costs.