

CASE NO.:
Appeal (civil) 6573 of 2004

PETITIONER:
A. Sudhakar

RESPONDENT:
Post Master General, Hyderabad & Anr.

DATE OF JUDGMENT: 24/03/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J:

The Appellant was working as a Sub-Post Master Marrimandal. A departmental proceeding was initiated against him by the Superintendent of Post Offices, Hanamkonda wherefor a chargesheet was issued on 13.8.1992. An Enquiry Officer was appointed. He was found guilty of commission of the first charge and a part of third charge but he was exonerated in respect of the second charge.

Although the chargesheet was issued by the Superintendent of Post Offices although he was otherwise the disciplinary authority in respect of the Appellant, but as he was appointed to the Lower Selection Grade by the Director of Postal Services in the year 1983 prior to divisionalisation of Lower Selection Grade Cadre which took place from July, 1989, upon completion of the enquiry, the records were forwarded to the Director of Postal Services being the appointing authority. As the Director of Postal Services was both appointing and disciplinary authority in respect of the Appellant herein, he took into consideration the aforementioned report of the Enquiry Officer and by an order dated 7.3.1994 imposed a punishment of compulsory retirement of the Appellant from services. He preferred an appeal thereagainst before the Post Master General which was dismissed by an order dated 8.4.1994. An Original Application thereafter was filed by the Appellant before the Central Administrative Tribunal, which was allowed.

The contentions of the Appellant before the said Tribunal were:

- (i) The Superintendent of Post Offices being the designated disciplinary authority, the imposition of a major penalty by the Director of Postal Services was illegal.
- (ii) The enquiry report was vitiated in law as the Enquiry Officer acted in a post-haste manner in proceeding to hold the enquiry without giving proper opportunities to the Appellant to appoint an officer to assist him in the departmental enquiry as a result whereof he was gravely prejudiced.
- (iii) An additional document, a copy whereof had not been annexed with the chargesheet was taken into consideration while examining a witness.
- (iv) So far as third charge is concerned, only purported negligence on his part, having been proved, the quantum of punishment was disproportionate to the gravity of misconduct.

The Central Administrative Tribunal by an order dated 13.8.1997 allowed the said original application holding:

- (i) The disciplinary authority who passed the order of compulsory

retirement had no jurisdiction and the order passed was improper without following the procedure.

(ii) Certain documents were supplied to the Appellant during the time when one of the witnesses was being examined on behalf of the department, which was impermissible in law.

(iii) The documents on which reliance was placed contained certain anomalies as regard the names of the signatory.

The Respondent herein aggrieved by and dissatisfied therewith filed a writ petition which by reason of the impugned judgment dated 31.3.2003 has been allowed.

Dr. Kailashnath Pillai, learned counsel appearing on behalf of the Appellant would submit that the High Court committed a serious error in setting aside the well-reasoned judgment of the Tribunal. It was further submitted that as the Appellant was entitled to have the assistance of the government servant, although 10 days' time had been initially granted therefor, when the Appellant prayed for 15 days' further time, the same was refused as a result whereof the Appellant was gravely prejudiced. A copy of the additional document which was not supplied to him was taken in evidence when the main witness was being examined during the course of enquiry which was contrary to Rules 14(11) and 14(15) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the Rules'). As the identity of the lady on whose complaint the proceeding was initiated had not been conclusively determined in view the fact that the Sub-Divisional Inspector (SDI) (Posts) during a preliminary enquiry recorded a statement of a lady whose name was written as Rajavva at the top of the sheet but while noting the name of the person who had put her right hand thumb impression thereon, it was attested as that of 'Lachavva', the entire disciplinary proceedings must be held to have been vitiated.

Mr. T.S. Doabia, learned senior counsel appearing on behalf of the Respondent, on the other hand, would submit that as the Director of Postal Services, was the appointing authority, no illegality has been committed by his acting as a disciplinary authority. The learned counsel further submitted that it has not been denied or disputed by the Appellant that the Appellant had taken a sum of Rs. 5000/- from a lady which had been handed over for obtaining a Kisan Vikas Patra on 18.5.1992 but the same was deposited only when the complaint was made to the Superintendent of Post Offices on 15.7.1992 which goes to show that the Appellant defalcated the amount temporarily.

It was contended that the Appellant had been given an opportunity to defend himself and during the course of enquiry, although a xerox copy of the document in question had been supplied to him, he had merely asked for inspection of the original document and in view of the fact that the same was not traceable, he was informed thereabout. He made no complaint that he should have been supplied a copy of the said document together with the show-cause notice

The learned counsel would contend that having regard to the facts and circumstances of this case, the quantum of punishment imposed upon the Appellant cannot be said to be excessive.

The three Articles of charges levelled against the Appellant are as under:

"Article \026 1: Sri A. Sudhakar while holding charge of office of the Marrimustial So as SPM failed to issue K.V.Ps for an amount of Rs. 5000/- after accepting the amount of Rs. 5000/- for issue of 5 year KVPs on 18.5.92 from one Smt. Laxavva, resident of Marrimustial across Marrimustial P.O. counter and thus failed to follow the provisions of Rule 8 read with Rule 7 of KVP rules 1988 and

also failed to maintain integrity and devotion to duty as prescribed in Rule 3(1)(i) & (ii) of CCS (Conduct) Rules, 1964.

Article \026 II: Sri A. Sudhakar while functioning as SPM, Cherial SO during the period 1987 to 1991 obtained a huge loan of Rs. 20,000/- from Sri B. Veereshalingam, teacher and entered into protracted correspondence about the loan and interest payment, etc., and thereby failed to manage his private affairs reasonably to a standard level and thereby contravened the provisions of Rule 17 of CCS (Conduct) Rules, 1964.

Article \026 III: Sri A. Sudhakar while functioning as SPM, Marrimustial SO on 15.7.1992 failed to take into account an amount of Rs. 5000/- credited by him on 15.7.92 vide ACG-67 receipt No. 77 dated 15.7.92 and thereby failed to maintain absolute integrity and devotion to duty as prescribed in Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964."

As noticed hereinbefore, whereas the first charge was held to have been proved beyond doubt and third charge was only partially proved; the second charge was held to be have not been proved.

The Tribunal, in arriving at a finding that the Superintendent of Post Offices being the designated authority the order of punishment could not be imposed upon the Appellant by the Director of Postal Services, relied upon a decision of the Central Administrative Tribunal in K.P. Varghese v. DPS, Calicut and others, [(1992) 19 ATC, CAT Ernakulam]. However, in that case, by reason of the action on the part of the said higher authority as a disciplinary authority, the delinquent officer was deprived of the forum of appeal. Such is not the position here. Clause (2) of Article 311 of the Constitution of India puts an embargo upon passing of an order of dismissal, removal or reduction of rank in services by an authority below the rank of the appointing authority. There does not appear to be an embargo in terms of the said provision that a higher authority would not act as a disciplinary authority. In the instant case, the Appellant has not been deprived of an opportunity of preferring an appeal against the order of the Director of Postal Services. He admittedly preferred an appeal before the Post Master General which was duly considered. In a matter of this nature, it would be obligatory on the part of the delinquent officer to show prejudice. [See Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others, (1995) 2 SCC 474 : AIR 1995 SC 1053 and Balbir Chand v. Food Corporation of India Ltd. and Others (1997) 3 SCC 371]

The Department of Posts, when a query was raised as to the effect of the changes in the rules in the year 1989 by a letter dated 5.07.1990, clarified the matter stating:

"I am directed to say that consequent upon divisionalisation of LSG cadres on the Postal and RMS side, heads of division have been vested with the powers to impose all penalties as given in Rule 11 of CCS (CCA) Rules, 1965. Prior to that, the power to impose major penalties were vested only with the DPS whereas heads of the divisions were competent to impose minor penalties as indicated at Sl. No. (i) to (iv) of Rule 11 ibid.

However, references have been received from some of the officers seeking clarifications about the competency of the officers for

imposition of major penalties against the LSG officials who were appointed prior to divisionalisation of LSG cadre and after that. In this regard, it is clarified that the LSG staff appointed by the DPS prior to divisionalisation of the cadre can be proceeded against under Rule 14 only by the DPS and LSG staff appointed by the divisional Superintendent after the divisionalisation of the cadre can be proceeded against by the Heads of the Divisions. In other words, the revised schedule of appointing/ disciplinary/ appellate authorities as circulated vide this office letter No. 12/8/87-Vig. III dated September, 1989 still holds good but those officials who were appointed by an authority higher than that indicated in the above referred schedule, their cases for imposition of major penalty will have to be referred to the authorities who actually appointed them."

Before us, the Respondents have categorically stated in the counter affidavit that prior to 1989 the Director of Postal Services was the appointing authority. As the Appellant was appointed in the year 1983, he was appointed by the Director of Postal Services. It has not been denied or disputed that he was appointed by the Director of Postal Services, but a contention has merely been raised to the effect that as he was promoted when the Lower Selection Cadre was divisionalised, the Superintendent of Post Offices must be held to be the designated authority. The Respondents have placed before us a notification dated 7.7.1989 to show that the Director of Postal Services was the appointing/ disciplinary authority in respect of the officials who were promoted to the Lower Selection Grade Cadre prior to divisionalisation of Lower Selection Grade Cadre. We, therefore, have no hesitation in holding that the Director of Postal Services was the appointing authority. In any event, as the Appellant has in no manner been prejudiced thereby, the impugned judgment cannot be faulted on that count.

Dr. Pillai has, however, relied upon Black's Law Dictionary, page 447 to show what the terms 'Designate' and 'Designatio unius est exclusion alterius, et expressum facit cessare tacitum' would mean which are given in the following terms:

"Designate. To indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command. To mark out and make known; to point out; to name; indicate. *New Haven Federation of Teachers v. New Haven Bd. Of Ed.*, 27 Conn. Sup. 298, 237 A.2d 373, 380.

Designatio unius est exclusion alterius, et expressum facit cessare tacitum. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease. (The appointment or designation of one is the exclusion of the other; and that which is expressed prevails over that which is implied.)"

He furthermore relied upon the decisions of this Court in *A. Sanjeevi Naidu, Etc. v. State of Madras and Another* [(1970) 1 SCC 443] and *Hemalatha Gargya v. Commissioner of Income Tax, A.P. and Another* [(2003) 9 SCC 510].

We, in this case, are not concerned, as regard the concept of the designated authority. If an authority has been designated by a statute

enjoining him to perform statutory duties indisputably it is he who has to do the same but in a case of this nature where clause (2) of Article 311 of the Constitution of India envisages that a delinquent officer should not be imposed with major penalties save and except an order passed by the appointing authority, the latter becomes the designated authority.

It is now trite that an authority higher than the appointing authority would also be the designated authority for the purpose of Article 311 of the Constitution of India. Even the appellate authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right. However, if such right of appeal is not embellished, an authority higher than the appointing authority may also act as a disciplinary authority.

Sanjeevi Naidu (supra) was a case under Section 68(C) of Motor Vehicles Act, 1939. In that case the State Government was a designated authority and in that view of the matter it was held that the statutory functions could not be delegated to any other authority.

In Hemalatha Gargya (supra), this Court was concerned with a case under Voluntary Disclosure of Income Scheme, 1997. A designated authority was created under a statute. The question which has been raised herein did not arise for consideration therein.

Before the High Court, it appears, the records of the disciplinary authorities had been produced upon perusing the same. The High Court perused the same. It came to the conclusion:

"The other ground urged before us and the Tribunal is that the lady who had given the complaint had given a different name than the name she gave when she was examined before the Enquiry Officer. It is admitted that the lady, who gave the complaint was an illiterate woman, had not the complaint written by someone-else and it is not known under what circumstances a different name was shown at her thumb impression in the complaint than the name she gave when she was being examined before the Enquiry Officer. This was known to the delinquent official. Had he got any doubts about the identity of the witness, he could have cross-examined her. In any case, the lady who had appeared before the Enquiry Officer categorically stated that on 18.5.1992 she had given a sum of Rs. 5,000/- to respondent No. 1/ delinquent for issuing Kisan Vikas Patras but the delinquent had failed to give the said certificate or even return back the money she had given to him even after two months from the date of receipt of money from her. In any case, we are not going to interfere with the finding of the Tribunal on question of such fact. The allegation that sufficient time was not given to peruse certain documents is not borne by record. The documents were given well in advance and as a matter of fact the respondent had not expressed any grievance before the Enquiry Officer that he had not sufficient time to peruse the documents on which the department had relied."

It is not disputed that a complaint petition was filed by a lady. SDI (Posts) visited the village for the purpose of conducting an enquiry. It has furthermore not been disputed that the Appellant had deposited the amount

on 15.7.1992, i.e., after the complaint was lodged. The complainant was examined by the Enquiry Officer. She was also cross-examined by the Appellant.

From the proceeding sheet in the departmental enquiry dated 11.11.92, it appears that the Appellant was asked to furnish the list of additional documents and witnesses to be examined by way of defence, if any. He had prayed for 15 days' time. He was directed to submit the same within 10 days. He, however, again prayed for 15 days' time for nominating his AGS. It appears that 10 days' time had already been given to him on 20th October, 1992 and he had furthermore been granted 10 days' further time. From the proceeding sheet dated 20.03.1993, it appears that the officer who was assisting in the disciplinary enquiry was present. The said proceeding sheet reads, thus:

"During the last sitting the additional documents of Sl. 3 and Sl. 4 i.e. original promissory notes and letters dated 13.02.90, 27.01.92, 30.01.92, 18.02.92 and 19.02.92 were asked to be produced to the P.O. The SP is expressed his inability to produce the original vide his letter No. F7-1/92-93 dated 09.02.93 that they are not available. Since the charge sheet was issued and cited documents shown in the annexure \026 III of charge sheet, are Xerox copies the inquiry will be held with the Xerox copies only Re. G.S. requests with the I.O. that the (illegible) \026 1 is the day finding inquiry, as such are dire needed for the impose of words the fair inquiry and on the other side providing the reasonable opportunity the G.S. to defend himself in a proper way in the said enquiry."

It is, therefore, evident that the Appellant merely asked for a copy of the original document. He had made no grievance that no copy of the said document has been supplied to him as a result whereof he was prejudiced. There could not have been any confusion about the identity of the lady as the same was a matter of record in view of the fact that a lady who had paid him a sum of Rs. 5000/- for issuance of Kisan Vikas Patra, the name of buyer whereof was borne out from the records. Only because the SDI (Posts) in his report had made a mistake in spelling the name of the complainant, the same by itself would not mean that the identity of the complainant was in dispute. Even if the same was in dispute it was open to the Appellant to cross-examine the witnesses in that behalf. It is not the case of the Appellant that such cross-examination was effected.

In terms of Article 311 (2) of the Constitution of India, the procedural requirements which were required to be followed were as under:

- (i) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told that what the charges against him are and the allegations on which such charges are based;
- (ii) he must be given a reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf; and
- (iii) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him.

It is well-settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution of India in view of the decision of this Court in *Khem Chand v.*

Union of India [(1958) SCR 1081] are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance of the procedure, the court may not interfere. [See State of Uttar Pradesh v. Om Prakash Gupta, (1969) 3 SCC 775 and Kuldeep Singh v. Commissioner of Police and Others, (1999) 2 SCC 10]

Contention of Dr. Pillai relating to quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the Appellant and in that view of the matter, the question that the third charge had been partially proved takes a back seat.

In Hombe Gowda Educational Trust and Another v. State of Karnataka and Others [(2006) 1 SCC 430], this Bench opined:

"The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience.

A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court."

[See also State of U.P. v. Sheo Shanker Lal Srivastava & Ors., JT 2006 (3) SC 48, The Workmen of Bhurkunda Colliery of M/s. Central Coalfields Ltd. v. The Management of Bhurkunda Colliery of M/s. Central Coalfields Ltd., JT 2006 (2) SC 1, Syndicate Bank & Ors. v. Venkatesh Gururao Kurati, JT 2006 (2) SC 73, L.K. Verma v. H.M.T. Ltd. & Anr., JT

2006 (2) SC 99 and The Commissioner of Police & Ors. v. Syed Hussain, JT
2006 (2) SC 332]

For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDIS