

CASE NO.:  
Appeal (civil) 3071 of 2004

PETITIONER:  
M/s. Maharashtra State Seeds Corpn. Ltd

RESPONDENT:  
Haridas & Anr

DATE OF JUDGMENT: 24/02/2006

BENCH:  
S.B.Sinha & Dalveer Bhandari

JUDGMENT:  
J U D G M E N T

S.B. Sinha, J.

The appellant herein is a company incorporated and registered under the Companies Act, 1956. It deals in production and supply of seeds to the farmers. The respondent herein was appointed as an Assistant Field Officer. While he was working at Nanded, misconducts committed by him came to the notice of his superior officer. A preliminary enquiry was conducted thereabout whereafter a charge sheet was issued to him. A disciplinary proceeding was thereafter initiated against him.

The Enquiry Officer held:

"(1) It is proved that Shri H.D. Jadhao AFO has violated the instructions of D.M. Nanded for distribution of F/seeds on credit to the eligible seed growers of Deglur and Mukhed He is also responsible for non recovery of outstanding amount of Rs. 19,938.50 from the seed growers towards cost of F/seeds, Inspection fees & Application fees etc. out of this amount Shri Gorthekar is responsible for non deposition of Rs. 2675/- as per his undertaking & hence Shri Jadhao stands responsible for non recovery of net amount of Rs. 17,263.59.

For the amount of Rs. 2437/- towards shortage of F/seed Shri Jadhao as well as Shri Gorthekar stands responsible.

(2) Shri Jadhao cannot be held responsible totally for late submission of record since the persons involved in distribution of F/seeds etc. was absconding & hence some time was required to collect the information from the seed growers. Also the charge of non recovery of outstanding amount of Rs. 35,190/- from the seed growers in absence of the record cannot be proved.

(3) It cannot be proved that the amount paid to Shri Jadhao by the seed growers or their representatives has not deposited by him. However, it is concluded that the entire mesh has been created on account of negligence on the part of Shri Jadhao.

(4) It is proved beyond doubt that an amount of Rs. 26104/- collected from the seed growers have been misappropriated by Shri Jadhao.

(5) Since the 22 bags of Hy. Cotton DCH-32 have been traced out the charge of misappropriation of this stock by Shri Jadhao cannot be proved.

(6) It is also concluded that Shri Jadhao proceeded on leave without prior permission of the superior from time to time. Similarly he has not attended the weekly meetings called by D.M. without satisfactory reasons. As a result he was not aware about the instructions given by the D.M. from time to time."

The Enquiry Officer, in his report, thus, found him guilty of commission of the following misconducts : (1) He violated the instructions issued by the District Magistrate, Nanded. (2) He misappropriated a huge amount of the Corporation. (3) He remained on leave without prior approval of leave and failed to attend the meetings.

It is not in dispute that the Enquiry Officer recommended punishment of the Respondent for commission of the said misconducts in the following terms:

"(1) An amount of Rs. 17,263.50 should be recovered from Shri Jadhao in suitable instalments along with interest.

(2) It is also proposed to recover interest on an amount of Rs. 26,104/- for the period from 18.6.91 to 17.9.91.

(3) 50% cost of shortages in foundation seed i.e. Rs. 1219/- should also be recovered from Shri Jadhao.

(4) Two increments should be barred permanently.

(5) Warning letter may be issued to Shri Jadhao to be punctual in attending corporation's work in future not to leave H.Q. without prior permission of the superior and follow all the instructions scrupulously henceforth failing which stern action will be taken against him.

(6) It is further proposed that an amount of Rs. 2675/- as well as Rs. 1218/- towards 50% costs of shortages in foundation seeds should be recovered from Shri Gorthekar."

The Managing Director of the appellant company on or about 27.1.1994 issued a show cause notice as to why two increments of pay from his salary should not be directed to be withheld permanently. The 1st respondent filed his show cause thereto. However, another second show cause notice in supersession of the earlier notice, was issued on 21.3.1994 by the Managing Director of the appellant company on the ground that the charges which were proved against the 1st respondent being serious in nature and having regard to the gravity thereof, why the punishments specified therein should not be imposed, stating :

"(4) - After scrutinising the documents again I have come to the conclusion that the punishment

of freezing two increments is very mild. Therefore, I am cancelling previous Notice No. Mahabeej/Admn.,94/10893 dated 2.2.94 and I have decided that Shri Hariprasad Drupadrao Jadhav, Asst. Area Officer is a person not worth keeping in the service. And therefore, the undersigned has imposed dismissal from service on him. Similarly, due to your misappropriation the Corporation has a loss of Rs. 15234/- which is proposed to be recovered from you. The Corporation has reserved its right to recover the said amount from you through civil suit. Also the Corporation has reserved its right to file criminal case against you for the misappropriation of Corporation funds.

(5) - Shri Hariprasad Drupadrao Jadhav is given an opportunity through this memorandum to formally submit his reply to the proposal of disciplinary action to be taken against him. However, such formal reply can be made based on the evidence submitted by him during the departmental enquiry. Any formal reply against the proposed disciplinary action desired by him should be in writing which can be considered by the undersigned. The formal reply should reach the undersigned within fifteen days from receipt of this memorandum."

The respondent filed his show cause in furtherance of the said notice. Upon consideration of the said show cause the services of the 1st respondent was terminated by an order dated 27.9.1994. He questioned the legality of the said order by filing a writ petition before the Aurangabad Bench of the Bombay High Court, which was marked as WP No. 1343/95.

The High Court in the impugned judgment noticed that he committed the following misconduct:

"(i) The petitioner distributed seeds on credit to those who were not eligible.

(ii) The amount collected from seed growers towards cost of foundation seed names, whereas the same was deposited late i.e. 17.9.1989.

(iii) The petitioner prepared false documents for despatching of 21 bags and had misappropriated 22 bags of DCH 32 cotton seed.

(iv) The petitioner remained absent for weekly meeting.

(v) The petitioner was negligent in writing foundation seed delivery register in time, whereas shortages amounting to Rs. 2437/- were noticed."

By reason of the impugned judgment although the High Court held that the disciplinary proceedings had been held in accordance with law, interfered with the quantum of punishment directing his reinstatement with continuity in service and full back wages opined that 'withholding of two increments of pay permanently' should be imposed on him. The Division Bench of the High Court assigned the following reasons in support of its order:

(i) Two show cause notices, on the quantum of punishment could not have been issued;

(ii) The Managing Director of the appellant company should have

followed the rules and procedure laid down in the manual of Departmental Enquiries and in relation thereto relied on Rule 42 of the said manual which is as under:

"No order imposing on an employee any of the penalties shall be passed by the competent authority without the charge or charges being communicated to him in writing and without his having been given reasonable opportunity of defending himself against such charges or charges and/or showing cause against the action proposed to be taken against him. Procedure laid down in manual of Departmental Enquiries of Govt. of Maharashtra will be referred and the same shall be made applicable."

It was observed that if the Disciplinary Authority intended to differ with the Enquiry Officer, it was incumbent upon him to assign specific reasons therefore and the Disciplinary Authority could not thus change his mind and to take different views at different times.

It was held:

"It has come on record that amount of defalcation of Rs. 17,263.50 was to be recovered from the petitioner by way of punishment. It has also come on record that, in the meantime, respondents did file civil suit for recovery of the said amount from the petitioner. The matter was amicably settled between the parties and the respondents, thereafter, and, to that extent, the matter was compromised between the parties, out of the court. Taking into consideration all the circumstances appearing in this case, in their sequence, it appears that, the punishment of withholding two increments of pay, permanently, as proposed in the show cause notice (Exh E), is just and proper. Therefore, we are of the opinion that, such punishment, which was proposed by the enquiry officer, of withholding two increments of pay, permanently, should be accepted and confirmed."

Mr. Uday Kumar Sagar, learned counsel appearing on behalf of the appellant in assailing the judgment of the High Court submitted that the High Court was not justified in setting aside the second show cause notice on the ground that the same was not provided for under the rules although no embargo in this behalf was to be found. In any event, it was urged, the High Court was not correct in directing back wages without appreciating the totality of the facts and circumstances of the case.

Mr. Uday B. Dube, learned counsel appearing on behalf of the respondent, on the other hand, contended that the issuance of second show cause was illegal. The learned counsel further submitted that the Enquiry Officer committed an error in holding the respondent guilty of the charge of defalcation. It was furthermore brought to our notice that pursuant to the interim order of this Court dated 6.5.2004, 1/4th of the salary had already been paid to the 1st respondent and, thus, the same may not be directed to be recovered.

The High Court in its impugned judgment opined that the correctness of the report could not be doubted. Having held so, as noticed hereinbefore, it proceeded to interfere with the quantum of punishment on the premise that the second show cause notice was illegal.

It has not been shown to us, despite repeated query made in this behalf as to whether under the statutory rules, the Enquiry Officer was empowered to make any recommendation to the Disciplinary Authority as regard quantum of punishment to be imposed upon a delinquent employee. The High Court has noticed that the disciplinary proceedings are governed by the Manual of Departmental Enquiries. However, no provision therein has been pointed out to show that the Enquiry Officer was statutorily or otherwise empowered to make recommendations as regards quantum of punishment. Reference to Rule 42 of the said manual by the High court was wholly irrelevant as indisputably the procedures laid down therein for holding departmental enquiry had been complied with. It is not the case of the 1st respondent either before the High Court or before us that no charge was framed and communicated to him and he has not been given an opportunity to show cause against the action proposed to be taken against him. He admittedly participated in the departmental enquiry. It is also not his case that in the said departmental proceedings principles of natural justice had not been complied with.

The charges levelled against the 1st respondent were serious in nature. He has been found guilty of grave misconduct including defalcation of huge amount, preparation of false documents as also misappropriation of 22 bags of DCH 32 cotton seeds. It has also been proved that he has violated instructions for distribution of seeds apart from remaining absent from work.

It is not a case, with respect to the High Court, where the disciplinary authority had differed with the findings of the Enquiry Officer. The question of differing with the findings of the Enquiry Officer by the disciplinary authority would arise only when the delinquent officer is exonerated either wholly or in part of the charges levelled against him whereas the disciplinary authority forms a different opinion. Most of the charges have been found proved and the Disciplinary Authority to that extent did not differ with the report of the Enquiry Officer. So far as the quantum of punishment proposed by the Enquiry Officer is concerned, if in terms of the rules, he had no authority to do so, the Managing Director was entitled to apply his own mind and could come to a conclusion as regard the quantum of punishment which should be imposed on the delinquent officer. He in that view of the matter was not obligated to assign any far less sufficient and cogent reason as it was not the requirement of law. In any view of the matter, from the second notice dated 22.3.1994 issued by the Managing Director of the Corporation it is evident that sufficient and cogent reasons have been assigned therein.

A departmental proceeding *stricto sensu* is not a judicial proceeding.

There is nothing in the rules to show that the disciplinary authority cannot consider the materials on record with a view to form an independent opinion as regard quantum of punishment to be imposed upon the delinquent employee. He might have committed a mistake in issuing the first show cause notice but by reason thereof he cannot be held to be wholly precluded from issuing the second show cause notice as thereby he intended to rectify the mistake committed by him.

In *Indian Council of Agricultural Research and Another v. T.K. Suryanarayan and Others* [(1997) 6 SCC 766] a promotion granted by a mistake in ignorance of the service rules was held to be capable of being rectified stating:

"\005Incorrect promotion either given erroneously by the Department by misreading the said Service

Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1-10-1975 should not be adhered to because in some cases erroneous promotions had been given\005"

In Poothundu Plantations Pvt. Ltd. v. Agricultural Income Tax Officer, Chittoor, Kerala State and others [(1996) 9 SCC 499], it was stated:

"4. There can be no doubt that only an apparent error of fact or law can be rectified by an officer. If the mistake of law has to be established by construing the words of a section to find its proper meaning, then such an error cannot normally be a rectifiable error under Section 36. If two views are possible, then obviously the error will not be an error apparent from the record."

As the Enquiry Officer had no jurisdiction to recommend any punishment to be imposed on the respondent by the disciplinary authority, he although acted thereupon at the first instance, could have corrected his mistake as the same was apparent on the face of the record. He, therefore, did not commit any illegality in issuing the second show cause notice as Enquiry Officer had no jurisdiction in that behalf. See M.Ahmedkutty Haji V. Tahsildar, Kozhikode, Kerala & Ors. [(2005) 3 SCC 351]. Mistake furthermore, may either be of law or fact. By reason of mistake on the part of the Enquiry Officer, the respondent could not have been inflicted with a minor penalty although he deserved a major penalty. If in law the quantum of punishment to be imposed upon a delinquent officer is within the exclusive domain of the disciplinary authority, unless otherwise delegated to any other authority, he alone could exercise the said jurisdiction and determine the same having regard to the nature and gravity of the misconduct on the part of the delinquent officer as the Enquiry Officer or any other authority had no jurisdiction in relation thereto. The matter might have been different if prior to the imposition of penalty of dismissal from service against the 1st respondent, no opportunity of hearing had been given to him. Admittedly the second show cause notice was issued to him and he showed cause. It is also not contended that the order passed by the disciplinary authority suffers from the vice of non-application of mind. The principles of natural justice admittedly have been complied with.

The High Court proceeded on the basis that in absence of the specific provision the second show cause notice was impermissible. It failed to consider that there was no statutory interdict in this behalf. An administrative order can be recalled. A mistake can be rectified. The Managing Director of the Corporation as a disciplinary authority, it has not been shown to us, lacked inherent jurisdiction in relation thereto.

The 1st respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. He not only defalcated a huge amount but also misappropriated some bags of seeds. It was in the aforementioned situation improper for the High Court to interfere with the quantum of punishment. It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power. [See Govt. of A.P. & Ors. V. Mohad. Nasrullah Khan [ JT 2006 (2) SC 82], L. K. Verma V. H.M.T. Ltd. & Anr. [JT 2006 (2) SC 99], Karnataka Bank Ltd. V. A.L. Mohan Rao [(2006) 1 SCC 63] and Hombe Gowda Educational Trust & Anr. V. Sate of Karnataka & Ors. [(2006) 1 SCC 430].

The grounds for judicial review are limited. In Damoh Panna Sagar

Rural Regional Bank & anr. V. Munna Lal Jain [(2005) 10 SCC 84] this Court held that when the High Court intends to interfere with the quantum of punishment on the ground that the same is shockingly disproportionate, it must record reasons for coming to such a conclusion.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The Appeal is allowed. However, any amount paid to the 1st respondent pursuant to the order of this Court may not be recovered.

In the facts and circumstances of the case, there shall be no order as to costs.

JUDIS