

\214YIN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3198 OF 2016

(ARISING OUT OF SLP(C) NO. 10478/2010 )

IQBAL NATH SHARMA (D) BY LRS.

APPELLANT(S)

VERSUS

UNION OF INDIA AND ANR.

RESPONDENT(S)

O R D E R

Leave granted.

Heard Ms. Mahalakshmi Pavani, learned senior counsel appearing for the appellants and Mr. Nikhil Majithia, learned counsel appearing for the respondents.

Iqbal Nath Sharma (hereinafter referred to as the deceased appellant), who was an ex serviceman from the Armed Forces, after his retirement from the Army on 31.7.1986 was re-employed as Senior Field Assistant in the Cabinet Secretariat in the Motor Transport Department on and from 23.8.1986. He was issued a charge memo dated 7.4.2004, wherein as many as ten charges were levelled against him. Nine charges related to forged acknowledgment receipts of medical bills claimed to have been

1

submitted with the Department for reimbursement and the tenth charge related to production of false medical claim for treatment under an ENT Specialist by name, Dr. V.P. Aggarwal.

At the very outset, it must be noted that the deceased appellant did not gain any monetary benefit based on the above claims, inasmuch as even before sanctioning of the reimbursement, the above alleged false claim came to be noted by the Department. Initially, an inquiry was held and a Report was submitted by the Inquiry Officer on 3.7.2004 finding the deceased appellant guilty of all the charges. However, the Disciplinary Authority invoked Rule 15 of the CCS (CCA) Rules, (for short, the Rules) and decided to hold a de novo inquiry by appointing a new Inquiry Officer on the ground that the inquiry conducted was not in accordance with the procedure laid down under Rule 14 of the Rules. In the second inquiry also a Report came to be submitted holding that all the charges were found proved.

The said Report was dated 12.6.2006. The deceased appellant was removed from service by

2

order dated 17.11.2006. The order of removal was also confirmed by the Appellate Authority by order dated 12.3.2007.

When the deceased appellant approached the Central Administrative Tribunal by way of O.A. No.912 of 2007, the Tribunal in its order dated 24.1.2008 partly allowed the application and held that Rule 15 was not followed in letter and spirit and that the punishment for the acts of misconduct found proved against the deceased appellant was disproportionate. Subsequently, the Appellate Authority passed the second order on 25.4.2008 reiterating its earlier conclusion and held that there was no violation of Rule 15 and that the punishment was not disproportionate. When the deceased appellant approached the Tribunal again on the second

time, the Tribunal in its order dated 3.12.2008 passed in O.A. No.1690 of 2008 confirmed the order of the Appellate Authority and the Division Bench also having declined to interfere with the said order of the Tribunal, the appellants who are the legal representatives of the deceased employee are

3

before us.

Mrs. Mahalakshmi Pavani, learned senior counsel appearing for the appellants contended that the respondents failed to comply with the earlier order of the Tribunal dated 24.01.2008 in the proper perspective, inasmuch as there was gross violation of Rule 15 when the Disciplinary Authority decided to hold a de novo inquiry without assigning any reason and that even the order directing to hold a de novo inquiry was not permissible under Rule 15. Learned senior counsel then contended that the proportionality of the punishment was not duly addressed by the Appellate Authority after the earlier order of remand passed by the Tribunal.

As against the above submission, Mr. Nikhil Majithia, learned counsel appearing for the respondents pointed out that the Disciplinary Authority was well justified in invoking Rule 15 while ordering for de novo inquiry, inasmuch as the procedure followed by the Inquiry Officer was not in accordance with Rule 14, that the respondent was not duly notified about the holding of the inquiry on

4

various dates and that the appointment of second Inquiry Officer was necessitated, inasmuch as the previous Inquiry Officer retired from service. As regards the proportionality of the punishment, learned counsel submitted that though the deceased appellant did not gain any monetary advantage based on a false claim if the falsity in the submission of bills had gone unnoticed it would have resulted in a huge monetary loss of approximately Rs.4,82,894/- towards reimbursement of medical bills apart from the treatment claim of Rs.1,50,487.40. The learned counsel, therefore, submitted that the Appellate Authority was well justified in its subsequent order passed after remand made by the Tribunal.

Having considered the respective submissions, insofar as violation of Rule 15 is concerned, we find that the appellants did not raise the said point before the Division Bench. A perusal of the impugned order disclose that the only point which was contended before the Division Bench pertains to the proportionality

5

of the punishment based on the charges found proved against the deceased appellant. In fact, when the Tribunal passed its earlier order on 24.1.2008 in O.A. No.912 of 2007, the case was remitted back to the Appellate Authority to consider the questions relating to violation of Rule 15 and the proportionality of the punishment based on 35 years of service

i.e. the service put in by the deceased appellant in the Army as well as in the Cabinet Secretariat. The said order of the Tribunal was not challenged by the appellants. Therefore, the appellants cannot now be permitted to raise any ground as regards the proof or otherwise of the misconduct alleged against the deceased appellant.

The only other question left open for consideration was relating to violation of Rule 15 and the proportionality of the punishment by taking into account the period of service as 35 years. As noted above earlier, the violation of Rule 15 was not a point in issue before the Division Bench. We, therefore, do not propose to deal with the same in this appeal. We,

6

therefore, confine our consideration only to the question of proportionality of the punishment. It was not brought to our notice relating to any Rule or condition of service to state that the service put in by the deceased appellant in the Army can be tagged along with the service after his re-employment in the Cabinet Secretariat. In the said circumstances, it will have to be held that the service can be counted only from the date of his re-employment, namely, 27.8.1986 and the date of his removal from service i.e. on 17.11.2006, namely, twenty years and three months. The misconduct found proved was the alleged forged acknowledgments for having submitted the medical bills and false claim for having availed treatment for a value of more than Rs.1.5 lacs. It is not in dispute that though such claims were made by the deceased appellant, the same was not sanctioned, since even before that the respondent decided to take action against the deceased appellant.

Taking into account the said factors, we are of the view that though the act of

7

misconduct found proved cannot be dealt with lightly, the punishment of removal may not be warranted while the other major punishment of compulsory retirement would meet the ends of justice. Therefore, we are convinced that the punishment of compulsory retirement, which is also one of the major punishments under Rule 11 (vii) can be imposed instead of removal from service taking into account the long service of twenty years put in by the deceased appellant. With the said modification in the matter of punishment, the impugned order of the High Court stands confirmed. Based on the said modified punishment of compulsory retirement whatever terminal benefits as well as family pension payable to the dependents of the deceased appellant shall be processed and wherever it needs to be granted, the same may be granted by passing appropriate orders. Since it is stated that Iqbal Nath Sharma (deceased appellant) died on 15.3.2012, it will be appreciated if the respondents pass such orders within three months from the date of receipt of copy of this order.

8

