V.Murugan vs The Superintendent Engineer on 13 September, 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13/09/2010

CORAM
THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.(MD)NO.7865 of 2010
and
M.P.(MD)NOS.1 AND 2 OF 2010

V.Murugan .. Petitioner

Vs.

1.The Superintendent Engineer,
Madurai Metro Electricity Distribution Circle,
K.Pudur,
Madurai-7.
2.The Chief Engineer,
Madurai Region,
K.Pudur,
Madurai-7. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records relating to the impugned order of the first respondent issued in his memo No.SE/MEDC/Metro/Adm.2/A4/F.Doc/D.No.170/2010, dated 24.4.2010, quash the same and to direct the first respondent to allow the petitioner to function as Junior Engineer Grade-I and to pay all the attendant benefits.

!For Petitioner ... Mr.K.Vellaisamy
^For Respondents ... Mr.V.Panneerselvam

- - - -

:ORDER

Heard Mr.K.Vellaisamy, learned counsel appearing for the petitioner and Mr.V.Panneerselvam, learned Standing Counsel for the Tamil Nadu Electricity Board.

2.The petitioner who was working as a Junior Engineer-Grade I in the respondent Tamil Nadu Electricity Board, has come forward to challenge the order, dated 24.4.2010 passed by the first respondent Superintendent Engineer, Madurai Metro Electricity Distribution Circle. By the impugned order, the petitioner was placed under suspension in public interest. It was noted in the said order that the petitioner who was working in Mahalipatti Section, was arrested by the Vigilance and Anti Corruption Police and a criminal case was registered in Crime No.11/2010 under Section 7 of the Prevention of Corruption Act, 1988. Since the case is under investigation, the petitioner was placed under suspension.

3.When the writ petition came up on 28.6.2010, the petitioner was directed to give notice to respondents. Accordingly, notice was granted to respondents. An interim stay was granted on 5.7.2010. Prima facie it was noted that the Superintendent Engineer (first respondent herein) though was the appointing authority, under the relevant service rules, he is not empowered to suspend the persons like petitioner. The first respondent aggrieved by the interim order has filed a vacate stay petition in M.P.(MD)No.2 of 2010 together with supporting counter affidavit, dated Nil (July, 2010).

4.It was claimed by the respondent that the petitioner was caught red- handed while demanding and accepting bribe of Rs.2500/- from one S.Krishnamurthy, a prospective consumer on 21.4.2010 and a criminal case is still pending. Under the TNEB Service Regulations as well as under the TNEB Employees (Discipline and Appeal) Regulations, a suspension can be made. Under Rule 6(a), the competent and appellate disciplinary authorities have been prescribed. With reference to Junior Engineer-Grade I, minor penalty can be imposed by the Executive Engineer and the corresponding appellate authority is the Superintendent Engineer. With reference to major penalty, it can be imposed by the Superintendent Engineer and the corresponding appellate authority is the Chief Engineer. Under Regulation 14(a)(1), the term "immediate superior officer" also mean an immediate superior officer under whom the delinquent employee is working at the time when the lapses were committed including his successor in office.

5.Further under Regulation 6(b), in case the higher authority imposed or declined to impose penalty, a lower authority will have no jurisdiction to proceed in respect of the case. Under Regulation 9(a) of the TNEB Employees (Discipline and Appeal) Rules, an employee can be placed under suspension in public interest if there is complaint against him of any criminal offence is under investigation. Under Regulation 9(b), if an employee is detained under custody whether on a criminal charge or otherwise, for a period longer than 48 hours, he shall be deemed to be under suspension. Therefore, it was claimed that there is a case for placing the petitioner under suspension, since he was not only arrested by the police and kept under custody, but also a criminal case is under investigation. Since the first respondent is the appointing authority under Regulation 93, there is no legal bar in placing the petitioner under suspension. In fact, in case where Board employee is arrested and kept under custody beyond 48 hours, then it result in automatic suspension by deemed operation of regulation.

6.However, Mr.K.Vellaisamy, learned counsel for the petitioner contended that even assuming there are grounds exist for placing the Board employee under suspension, since regulations were framed and had appointed the competent authority as well as appellate authority, the petitioner can be suspended only by the competent authority and not by any other persons including the appellate authority. He had also stated that if an Act obliges the authority to act in a particular manner, then it can be done only in that manner and not in any other manner. He had also stated that pending interim order passed by this court and on the recommendation of the Executive Engineer, the petitioner's suspension was revoked by an

order dated 9.2.2010 without prejudice to the investigation of the criminal case and was posted to work at Thalaiyuth at Dindigul Electricity Distribution Circle.

7.He also referred to the judgment of the Supreme Court in Surjit Ghose Vs. Chairman and Managing Director, United Commercial Bank and others reported in 1995 (2) SCC 474 for the purpose of contending that infliction of punishment by the appellate authority acting as a disciplinary authority was held to be discriminatory and such an action will also result in denial or right of appeal to the appellate authority. But, however the following passage found in paragraph 6 from the said judgment did not indicate whether the Supreme Court had laid down any such law, which is as follows:

"6..... 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. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

8.In the present context, such a contingency never arose because as against the order passed by the appointing authority i.e. the first respondent, in case of punishment, an appeal lies to the Chief Engineer (Personnel), failing which, a further appeal/memorial lies to the Board. But the Supreme Court in Surjit Ghose case (cited supra) was only concerned with the punishment

imposed in the disciplinary proceedings and not the issue relating to suspension pending enquiry.

9.Surjit Ghose case (cited supra) came to be subsequently considered by the Supreme Court in Government of Andhra Pradesh and another Vs. N.Ramanaiah reported in 2009 (7) SCC 165. In paragraphs 39 and 40, the Supreme Court observed as follows:

"39....The said decision was apparently one where the power to impose the punishment was not concurrently conferred upon both the disciplinary authority viz. the Divisional Manager/AGM (Personnel) and the Deputy General Manager under the Regulations. The said decision is therefore clearly distinguishable.

40. In the case on hand the Rules clearly empower not only the disciplinary authority but as well as the Government to impose appropriate punishment as against delinquent public servant for proven charges of misconduct. In our opinion the judgment is not relevant and in no manner supports the point urged by the learned Senior Counsel for the respondent."

10.Some of the provisions from the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations regarding appeal, review, memorial, i.e. Regulations 21 to 25, can be extracted, which are as follows: "21.Powers of an appellate authority:

An appellate authority or the Board may call for any appeal admissible under these regulations which has been withheld by a subordinate authority and may pass such orders thereon as it considers fit.

22.Review of orders in disciplinary cases:

Any order issued by an authority imposing any of the penalties specified in regulation 5 cannot be reviewed, revised or altered by that authority for any reason whatsoever, but only by the appellate authority, or any higher authority.

23.Nothing in these regulations shall operate to deprive any person of any right of appeal, which he would have had if these regulations had not been made, in respect of any order passed before they come into force. An appeal pending at the time when, or preferred after, these regulations come into force shall be deemed to be an appeal under these regulations and regulation 15 shall apply as if the appeal were against an order appealable under these regulations.

24.Memorial:

(a)Any employee (includes also an employee who was in the service of the Board) whose appeal under these regulations has been rejected by the appellate authority may address a memorial to the Board in respect of that matter. The memorial shall be submitted to the head of the office to which the employee belongs or belonged within two months from the date on which the final order passed on appeal was communicated to the employee. No such memorial shall be withheld by any authority.

(b)A memorial will be liable to summary rejection if-

(i)the memorialist has not availed himself of the remedies provided by the regulations or orders applicable to the case;

(ii)the memorial was not submitted within the time limit mentioned in clause (a) above

(iii)the memorial relates to a matter which has already been disposed of by the Board.

The authority forwarding a memorial shall state on it whether the memorialist has complied with the above requirements.

25. (1)Not withstanding anything contained in these regulations:

(i)the Board or the Chairman, at any time or,

(ii)the appellate authority, within six months of the date of the order proposed to be reviewed, may, on its/his own motion call for the records of any inquiry and review any order made under these regulations, and may confirm or enhance the penalty imposed by the order, or impose any penalty where no penalty has been imposed.

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given a reasonable opportunity of making representation against the penalty proposed, and where it is proposed to impose any of the penalties specified in clauses,

(iii), (iv)(c), (v), (vi) and (vii) of regulation 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall

be imposed except after an inquiry in the manner laid down in sub-regulation (b) of regulation 8. (2)No proceedings for review under sub-regulation (1) shall be commenced until after-

(i)the expiry of the period of limitation for any appeal, or

(ii)the disposal of the appeal, where any such appeal has been preferred, or

(iii)the disposal of the memorial where such memorial has been submitted. (3)The Board may, at any time, on its own motion, review for good and sufficient reason to be recorded in writing, an original order passed by it or an order passed by it on appeal, and the provisions of sub-regulation (1) in so far as they are applicable to review, shall apply to the review of an original order passed by it or an order passed by it on appeal."

11.With reference to suspension, the power provided under Regulation 9(a) and (b) is as follows:

"9.Suspension:

(a)A member of a class of service may be placed under suspension from service, where-

(i)an enquiry into grave charges against him is contemplated, or is pending, or

(ii)a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

(b)An employee who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this regulation."

12.Insofar as continuance of suspension is concerned, under Regulation 9(e), it was provided as follows:

"(e)An order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

13.Unlike the other services, the TNEB Regulations also provide an officer of superior in rank to initiate an action even on disciplinary matter as found under Regulation 8(g) which is as follows:

"8(g)Any Officer superior in rank to an employee may call for explanation of the employee for any lapse committed by him not withstanding the fact that the officer is not competent under these Regulations to impose any penalty on the employee. On receipt of the explanation, if the officer considers that imposition of any penalty is called for, he shall remit the case to the authority competent to impose penalties for awarding punishment or otherwise giving a decision thereon. If the competent authority considers that imposition of any of the penalties specified in items (iii), (v), (vi) and (vii) of Regulation 5 is called for, he shall take action as provided for in Sub- Regulation (f)(ii). If that authority is not competent to impose any of these penalties, he shall remit the case for further action to the authority who is competent to impose the penalty.

Note: In this clause, the express 'any officer superior in rank' means the officer under whom the employee was working when the lapse was committed and includes his successor in office."

14.Therefore, as per regulations, if disciplinary action itself can be initiated by an officer in superior rank, it goes without saying that the said officer can also place an employee under suspension. But, in the present case, the suspension is a deemed suspension in view of the fact that the petitioner has been kept under custody beyond 48 hours. Therefore, one need not triple with words.

15.The Supreme Court in a case of suspension in Govt. of Andhra Pradesh v. V. Sivaramanreported in (1990) 3 SCC 57, held in paragraph 4 as follows: "4. The case of the respondent before the Tribunal was that the suspension order dated March 21, 1988 was served on him on April 6, 1988 and it could be operative only for 6 months i.e. up to October 6, 1988. The government has not reviewed his suspension nor continued by a fresh order and as such he should be deemed to be in service from October 6, 1988. The Tribunal has accepted that case with an observation:

"Failure on the part of the government to review the order within six months period as required under Instruction 18 in Appendix VI to the APCS (CCA) Rules rendered the suspension order non est after six months. The government has limited powers to extend the

suspension period but that has to be done during the period of suspension being in force and any order issued subsequent to the expiry of six months cannot have retrospective effect since the rule does not permit for extending suspension with retrospective effect." Before us, counsel for the State contended and in our opinion very rightly that the view taken by the Tribunal is plainly erroneous and unsustainable. First, the government instructions on which the Tribunal rested its conclusion, do not seem to have any statutory force; second the order of suspension after a period of six months would not become non est giving an automatic right to reinstatement in service. Our attention has not been invited to any provision of law conferring such right on a government servant who has been placed under suspension pending enquiry of a case against him. Where the rules provide for suspending a civil servant and require thereof to report the matter to the government giving out reasons for not completing the investigation or enquiry within six months, it would be for the government to review the case but it does not mean that the suspension beyond six months becomes automatically invalid or non est. The only duty enjoined by such a rule is that the officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or further continuing the suspension. The order of suspension however, continues until it is revoked in accordance with the law. In the present case, on December 6, 1988, the government has made the order as follows: "Government have examined the case of Sri V. Sivaraman, Assistant Labour Officer, Nellore, who is under suspension pending finalisation of the ACB case against him and have decided that he shall continue to be under suspension in public interest.

The next review will be taken up at the end of six months from the date of issue of this memo or until the finalisation of the ACB case against him, whichever is earlier."

16.Further, the Surjit Ghose case cited by the petitioner has no relevance because of the subsequent decision of the Supreme Court in N.Ramanaiah's case (cited supra). In the present case, as the petitioner can always appeal to the higher authorities other than the first respondent or even to the first respondent by making appropriate review of suspension, but certainly for grave charges under which he was placed under suspension, he can never be restored to service pending finalisation of the criminal case registered against him.

17.Further, the Supreme Court in State of Madras v. G. Sundaram reported in AIR 1965 SC 1103 dealt with a Government servant case of Tamil Nadu and held that notwithstanding the

delegation of power to subordinate authorities, the power of the Government to impose punishment is intact. In paragraphs 13 and 14, the Supreme Court had observed as follows:

"13. The Police Rules were framed by the State Government in exercise of the powers conferred by Section 10 of the Police Act and by certain other provisions including the proviso to Article 309of the Constitution. Rule 2 of the Police Rules mentions the various penalties which can be imposed among the members of the service and mentions 'compulsory retirement' in clause (g) as one such penalty. Rule 4 specifies the authority which may impose any of the penalties prescribed in Rule 2 on a member of the service specified in Column 1 of the Schedule to the Rules and states that it shall be the authority specified in the corresponding entry under Columns 2 to 8 therefore, whichever is relevant or any higher authority. According to the entry in the Schedule, the authority competent to order compulsory retirement, removal or dismissal of an Inspector of Police in the districts, is the Deputy Inspector-General of Police. The State Government is an authority higher than the Deputy Inspector-General of Police. This cannot be gainsaid. It is however urged for the respondent that the higher authority contemplated by Rule 4 is the authority higher in rank according to the provisions of the Police Act and that such an authority could be only the Inspector-General of Police. We do not agree with this contention.

14. The State Government can pass the various orders of punishment dealt with in the Schedule and this is clear from Rule 5 which describes the forum to which a member of the Service can appeal from an order imposing any of the penalties specified in Rule 2. According to clause (c), an appeal lies to the Governor if such an order imposing a penalty specified in Rule 2 is passed by the State Government. We therefore agree with the High Court that the State Government was competent to order the compulsory retirement of the appellant."

18.In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

vvk To

1.The Superintendent Engineer, Madurai Metro Electricity Distribution Circle, K.Pudur, Madurai-7.

2.The Chief Engineer, Madurai Region, K.Pudur, Madurai-7.

The Bombay High Court on Tuesday held that the second wife of a Union government employee can claim retirement benefits of the deceased husband.

A Division Bench of Chief Justice GH Waghela and Justice VK Tahilaramani was hearing the petition filed by the first wife of the deceased, working at the Ammunition Factory in Pune. He had nominated his second wife to receive all retirement benefits in January 2010, after he cancelled the nomination of his first wife after giving her a divorce.

First wife moves HC

On being aggrieved by the order passed by the Central Administrative Tribunal in September 2013, that held that the second wife would receive all the benefits, the first wife moved the High Court.
The court said, "We also have to go by the fact that the first nomination in favour of the first wife was duly cancelled and a fresh nomination was filed separately by the deceased for Death-Cum-Retirement Pension, Provident Fund and Group Insurance benefits in favour of the second wife."

'Not possible to ignore nomination'

The court noted that it was not possible to ignore the nomination made by the deceased in favour of the second wife.
The court also observed that approximately six months prior to his death, the deceased had promptly informed his office about his second marriage and about his divorce.

He had also told his office about the nomination filed in favour of the second wife relating to retirement benefits, the Bench said.

Source : http://www.thehindu.com

Revision of pension of pre 2006 pensioners – Important Clarification

September 23, 2015 by admin Leave a Comment

Revision of pension of pre 2006 pensioners – Important Clarification

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF EXPENDITURE

CENTRAL PENSION ACCOUNTING OFFICE

TRIKOOT-11, BHIKAJI CAMA PLACE,

NEW DELHl-110066

CPAO/IT &Tech/Revision Pre-2006 /2015-16/1331-1483

21.09.2015

Office Memorandum

Subject: – Revision of Pensions of Pre-2006 Pensioners.

Ref:- CP AO OM NO.CPAO/Tech/Pre-2006 Revision/2015-16/708·855 date -25.08.2015

Attention is invited to DP&.PW OM No. 38/77-A/09-P&PW(A)(Vol.II) (Pt.I) dated 18.09.2015 (copy enclosed) regarding revision of pension in respect of those pensioners who had got 100% lump sum amount in lieu of monthly pension and in whose cases 1/3rd pension has been restored. These pensioners are not covered by DP&PW OM dated 01.09.2008 and subsequent amendment OMs dated 28.1.2013 and 30.07.2015. In such cases DPPW has issued separate orders for restoration of 1/3rd pension vide their OMs dated 15.09.2008, 3.4.2013 and 11.7.2013. ·

As the proposal for revision of minimum pension with reference to the fitment table in respect of such pensioners is under consideration of Ministry of Finance. Deptt. of Expenditure, therefore, for the time being, the pension cases of such absorbee pensioners are not to be revised in terms of OM dated 30.07.2015.

Hence, All Heads of the Departments/Heads of the Offices and Pr.CCAs/CCAs/CAs/ AGs/ Administrator of UTs are requested to ensure that revision of pension in such cases of absorbee pensioners is not done in terms of DP&PW OM dated 30.07.2015 until further orders. These cases may be treated to be excluded from the list provided by the CPAO.

(Subhash Chandra)

Controller of Accounts

Ph.011-26174809

No.38/77-A109-P&PW(A)(Vol.II) (Pt.I)

Government of India

Ministry of Personnel, PG & Pensions

Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhawan

Khan Market, New Delhi

Dated the 18th Sept, 2015

Office Memorandum

Sub:- Revision of pension of pre-2006 pensioners – reg.

The undersigned is directed to refer to CPAO letter No .. CPAO/Tech/Pre-2006 Revision/2016/ 13/933 dated lst September, 2015. In this connection it is informed that the cases of those pensioners who had got 100% lump sum amount in lieu of monthly pension and in whose cases 1/3rd pension has been restored are not covered by the OM dated 1.9.2008 and subsequent amendments thereto including the OM dated 28.1.2013 and 30.7.2015, In their cases, separate orders have been issued for restoration of 1/3rd pension vide OM dated 15.9.2008, 3.4.2013 and 11.7.2013. For such pensioners, the proposal for revision of minimum pension with reference to the fitment table has been referred to Ministry of Finance,

Department of Expenditure separately vide ID note No. 4/2/2015-P&PW(D) dated 12.8.2015. Department of Expenditure has also been reminded for expediting their concurrence in this regard. Until the orders in respect of such absorbees pensioners are issued after approval of Ministry of Finance, their pension is not to be revised in terms of OM dated 30.7.2015. Therefore, their cases may be excluded from the list prepared by the CPAO.

(S.K. Makkar)

Under Secretary to the Government of India

Latest Supreme Court Judgements on Service Law

1. Maj Gen HM Singh, VSM v. Union of India and ANR. [Civil appeal no. 192 of 2014 (arising of SLP (c) no. 2008 of 2010)]

Service Law- Eligible candidates have a fundamental right to be considered for promotion against the vacancy and promoted if suitable– Facts are that whether the non-consideration of Maj Gen Singh's claim would "violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India". Answering its query in affirmative, with a rider that it was subject to authorities being desirous of filling the vacancy of a Lt Gen's post when it became available on Jan 1, 2007, the court said that in the case of Maj Gen Singh, the authorities were desirous of filling up the said vacancy in the Defence Research and Development Organisation (DRDO). The court rejected the government's plea that at the time of considering Maj.Gen. Singh for promotion, he was on extension of service. Granting promotion to Maj Gen Singh as Lt. Gen. from the date due to him, the court said that he would be treated as being on service till Feb 28, 2009 when he would have attained the age of 60 years, and would be entitled to "all monetary benefits which would have been due to him, on account of his promotion to the rank of Lt Gen till his

retirement on superannuation, as also, to revised retirement benefits which would have accrued to him on account of such promotion".-The court also directed the government to release the monetary benefits to Maj Gen Singh within three months from the date of the receipt of the certified copy of its judgment.

2. Cheel Singh v. MGB Gramin Bank Pali & Ors. [Civil appeal no. 6018 of 2014 (arsing out of SLP © no. 29807 of 2012)]

Service Law- Unauthorised absence on medical negligence- Facts are such that the present appellant working with respondent bank as a clerk-cum-cashier was on leave without prior permission or medical certificate for 10 and half months. Post which he submitted his medical certificate stating his serious illness- Disciplinary authority dismissed the Appellant from his services- Single bench High Court quashed the order of dismissal and ordered re-in statement- division bench in appeal in part allowed the decision of the single bench high court, but quashed the order of reinstatement- **Held**, the Appellant had submitted his medical certificate, and no where was the validity of the certificate questioned, if the same is believed to be true the Appellant could not have been dismissed – Appeal allowed.

3. Director General ESIC & Anr. Puroshottam Malani [civil appeal no. 4611 of 2008 (Arising out of SLP (c) no. 1551 of 2007)]

Service Law- Withdrawal of voluntary retirement- In the present case the respondent working as a manager gave a voluntary retirement with a three months notice- withdrew the notice prior to last day of reliever- the authorities rejected his withdrawal of voluntary retirement- the High Court reversed the order and ordered the withdrawal of voluntary retirement should have been accepted- **Held**, that the general rule is in case the employee withdraws the voluntary retirement the same is to be entertained when given along with reasons, In this case no reasons were given secondly the respondent had received the benefits of pension etc. and had en-cashed the same – Employment with the government is not a contract and in this case without any valid reason for withdrawal the same could not have been accepted. Order of High Court quashed.

4. Rohtas Bhankhar & Others v. Union of India [Civil appeal no. 6046- 6047 of 2004]

Service law- Regarding lowering of qualifying marks lowering the standard for evaluation for SC/ST candidates for reservation in promotion to be declared as legal– **Held,** that the principle of allowing lowering of qualifying marks for SC/ST candidates is is a sound principle and the same not be changed- Results of the candidates be calculated again after allowing them the benefit.

5. V.S Ram v. Bangalore Metropolitan Transport Corpn. [Civil Appeal no. 412 of 2015 (arising out of SLP (c) no. 5236/ 2014]

Service Law- Once the labour court has exercised its discretion judiciously the High court can interfere with the award only if it is satisfied that the award of the labour court has any fundamental flaw– Appellant driver was charged with misconduct for false transfer certificate after 5 years of service- Enquiry was held and the Appellant was found guilty- dismissed from service- Labour court ordered the re-instatement of the Appellant- High court reversed the order of the Labour Court- **Held,** that the order of the Labour court was sound and judicious and the High Court should avoid interference with the award of the labour court – Ordered re-instatment of the appellant as he was of 45 years of age and could not have looked for alternative employment also that a time of 14 years had lapsed while the enquiry was being conducted and lastly on the ground that other employees with similar misconduct were given punishment of a lesser degree.

Also See:

10 Latest Supreme Court Judgments on Criminal Law January 2015

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Divya -

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PRESENTING OFFICER MAY BE A WITNESS IN A DOMESTIC INQUIRY

By: Mr. M. GOVINDARAJAN

June 17, 2015

Article

The requisite of a valid domestic inquiry are as follows:

- The employee proceeded against has been informed clearly of all the charges framed against him;
- The witnesses are examined – ordinarily in the presence of employee in support of the charges;
- The employee is given an opportunity to cross examine the management's witnesses;
- The employee is given a fair opportunity to examine his witnesses including himself in his defence if he so wishes on any relevant matter; and
- The Inquiry Officer records his findings with reasons for the same in his report.

The object of holding an inquiry proceeding is to give the delinquent employee a reasonable opportunity to prove his answers and to defend himself against the charges leveled against him. A domestic inquiry must be in conformity with the rules of natural justice. The rules of natural justice which are at present confined to the procedural side of law are a body of uncodified moral principles intended to supplement the existing law and not supplant it. The details of the procedure that are to be followed by the Inquiry Officer in a domestic inquiry are not prescribed in any rules framed under any statute. The Inquiry Officer may evolve his own procedure in the absence of any guidelines but the procedure must be fair, free from arbitrariness and in conformity with the principles of natural justice.

In a domestic inquiry the management has the right to present its case against the delinquent employee. This is done through the Presenting Officer. His job is to adduce evidence in support of the charges. Generally, he is not a witness. In this article the issue to be discussed is whether the

Presenting Officer could be a witness to prove the charges of the delinquent official in the domestic inquiry with reference to decided case laws.

In **'S.V.S. Marwari Hospital V. State of West Bengal and others' – 2015 (6) TMI 476 - CALCUTTA HIGH COURT**the Government of West Bengal has referred an industrial dispute between the appellant and the Government to the Industrial Tribunal. The Dispute arose as the said employee was dismissed from service after a domestic inquiry. The Tribunal set aside the dismissal order on the plea that the participation of the Presenting Officer as a witness in the domestic inquiry rendered the inquiry as well as the entire proceeding inoperative and without jurisdiction. In this regard the Tribunal relied on the judgments of Kolkata High Court as detailed below:

- Sarajit Coomer Mazumdar V. Calcutta Dock Labor Board and others, Calcutta' – LT 1998 (I) HC 431;
- Mohamed Miya V. State of West Bengal and others' – 2000 (5) TMI 1064 - CALCUTTA HIGH COURT.

in which the Calcutta High Court Division Bench held that as the Presenting Officer appeared as a witness in the domestic inquiry, the principle of natural justice was violated and therefore, finding of the Inquiry Officer was liable to be set aside and the order of punishment of dismissal imposed on the employee should be quashed.

Against the order of the Tribunal the appellant filed the present appeal. The employee relied on the decision in**'Coking Coal Limited V. Surendra Pratap Narayan Singh' – 2003 (9) TMI 764 - CALCUTTA HIGH COURT** in which the Court observed that the Presenting Officer acted a s witness in the enquiry proceedings was an abnormal feature in the conduct of the Inquiry. Normally the Presenting Officer has to present the case of a management and he cannot appear as a witness, but peculiarly, in this case the Presenting Officer appeared as a witness and what was submitted by him was taken as Examination-in-Chief and the delinquent was asked to cross examine him. This was a peculiar method adopted by the authorities in conducting the inquiry which was unknown in law.

The appellant relied on the judgment of Calcutta High Court in**'Life Insurance Corporation of India Limited V. Presiding Officer, Central Labor Court' – 2007 (7) TMI 619 - CALCUTTA HIGH COURT.** In this case the High Court held that the employer being a corporate body was to act through individuals. The Presenting Officer deposed before the Inquiry Officer. The delinquent had an opportunity to cross examine him. The Court was unable to find out any law by which the Presenting Officer was precluded from giving any evidence. In the instant case the Presenting Officer was an employee of the appellant. He was representing the appellant before the Inquiry Officer. Hence he was entitled to examine himself. The High Court did not find anything wrong on that score.

Since there is a direct conflict between the judgments relied by both parties, the High Court referred

the matter to the Larger Bench as below-

"As to whether mere participation of the Presenting Officer as a witness in the domestic inquiry is contrary to the principles of natural justice and renders the enquiry and the entire proceedings ineffective and without jurisdiction even in the absence of proof of prejudice to the employee concerned".

The Larger Bench referred to some judgments. In **'Management of Glaxo India Limited V. Presiding Officer, Labor Court, Guntur' – 1992 (2) TMI 365 - ANDHRA PRADESH HIGH COURT,** the High Court held that there was nothing wrong or irregular in the Presenting Officer going to the box as a witness for the management. In**'N.N. Rao V. Greaves Cotton and Company' – 1971 (3) TMI 117 - BOMBAY HIGH COURT** the High Court observed that Shri G.G. Naik has not only given evidence as a witness but has acted as the prosecutor. The High Court did not find anything strange in this conduct nor any failure to observe any rule of natural justice. Shri G.G. Naik is in the position of a complainant and since in a domestic inquiry no counsel can be engaged. G.G. Naik was bound to conduct the inquiry before the Inquiry Officer. Since K.G. Naik had come and explained to him in the first instance, G.G. Naik had gone into the witness box in support of his complaint and thereafter he continued to examine the witnesses in support of his complaint. This is normally done where legal assistance is not available and we can see nothing wrong in principle in the Inquiry Officer allowing G.G. Naik to continue the proceedings although he was himself a witness.

The Larger Bench was of the view, the fact that the complainant acted as the Presenting Officer by itself will not vitiate a domestic inquiry if no other question of prejudice is there. There is no principle of natural justice which requires that a person who has lodged a complaint cannot be a Presenting Officer and a prosecutor in a domestic inquiry. An inquiry does not get vitiated merely on the ground that the Presenting Officer examined himself as a witness for proving the charges. If the Presenting Officer appears as a witness on behalf of the management, he has to be offered for cross examination by the delinquent employee. The inquiry will stand vitiated if the delinquent is not allowed to cross examine him.

The Larger Bench was of the view that bias of a Presenting Officer in a departmental inquiry is not very relevant because the control of the proceedings is primarily with the Inquiry Officer and it is he who has to guard the interest of the delinquent also. The Larger Bench held that if the delinquent employee has suffered any prejudice by reason of the Presenting Officer acting as a witness on behalf of the management, the inquiry proceeding will possibly be held to be vitiated. The prejudice must be real prejudice is opposed to formal prejudice, affecting some substantial legal right of the employee. Naturally, the burden is on the employee to establish such prejudice.

On considering the above the Larger Bench answered to the query as – mere participation of the Presenting Officer as a witness in a domestic inquiry is not contrary to the principles of natural justice and does not render an inquiry or the entire proceedings inoperative or without jurisdiction in the

absence of proof of prejudice to the concern employee. The Larger Bench directed to dispose the appeal in the light of the opinion rendered by the Larger Bench.

By: Mr. M. GOVINDARAJAN - June 17, 2015

Suspension order not to extend beyond 3 months if charge-sheet is not served, says Supreme Court

*By **Dr. Ashok Dhamija** -*

Feb 19, 2015

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In a landmark judgment, the Supreme Court has directed that the suspension of a Government servant shall not be extended beyond a period of three months, if within this period the Memorandum of Charges / charge-sheet is not served on the delinquent officer / employee. Extending the principle of right to a speedy trial in a criminal case to the issue of suspension in service law jurisprudence, a two-judge bench of the Supreme Court comprising of Justice Vikramjit Sen and Justice C. Nagappan laid down this important principle of law in the case of *Ajay Kumar Choudhary*, who was posted as Defence Estate Officer under the Central Government [read the judgment, here]. This decision will have far-reaching consequences since it may be applicable to millions of Government employees, many of whom face suspension for prolonged periods which is kept on being extended from time to time. For example, I had handled a case about 12 years back wherein a senior Government officer was under continuous suspension for about 22 years. In another case handled by me, another senior officer was under suspension for about 13 years and he retired under suspension itself. Many of such employees may now get the benefit of this Supreme Court decision.

It may be pertinent to point out that service rules of various Governments give power to the competent authorities to suspend a Government employee. For example, the Central Civil Services (Classification, Control and Appeal) Rules, 1965, govern employees belonging to the

Central Civil Services and Rule 10(1) of these Rules gives the power of suspension in the following matters:

"**10. Suspension**

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial: …".

Moreover, Rule 10(2) of the aforesaid CCS (CCA) Rules deals with "deemed suspension" when a Government servant is detained in custody for a period exceeding 48 hours.

Rule 10(5)(a) of the said Rules further provides for continuation of the suspension until it is modified or revoked by the authority competent to do so. However, Rule 10(6) provides that an order of suspension shall be reviewed by the competent authority competent before expiry of 90 days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. This Rule further lays down that subsequent reviews shall be made before expiry of the extended period of suspension. It also lays down that extension of suspension shall not be for a period exceeding 180 days at a time.

Thus, in effect, Rule 10 of the CCS (CCA) Rules lays down that the suspension order can be issued initially for a period of 90 days, during which period it has to be reviewed by the authority and thereafter it can be extended indefinitely for a period of 180 days at a time subject to further review within such extended period. This means that the suspension can be continued for indefinite periods of time subject to a periodical review.

Similar provisions exist in All India Services (Discipline and Appeal) Rules, 1969, which govern IAS (Indian Administrative Service), IPS (Indian Police Service) and IFS (Indian Forest Service) officers.

In the aforesaid decision delivered on 16 February 2015, the Supreme Court has come down heavily on this type of provisions which allow the competent authorities to extend the period of suspension for indefinite periods after periodical reviews. In the said case, Ajay Kumar Choudhary, the appellant had initially been suspended by the Suspension Order dated 30.9.2011. This suspension was extended on 28.12.2011 for a further period of 180 days. Then, with effect from 26.6.2012 the suspension was extended for another period of 180 days. Thereafter, the third extension of his suspension was ordered on 21.12.2012, but for a period of 90 days. It came to be followed by the fourth suspension for yet another period of 90 days with effect from 22.3.2013. Thus, he continued to be under suspension continuously from 30.09.2011.

The Supreme Court observed as under:

"Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay."

The Supreme Court further observed as under:

"Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement."

The Supreme Court referred to its earlier decisions wherein the right to speedy trial in criminal cases was recognized. It observed that "(t)he legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions."

Thus, the Supreme Court extended the benefit of the right of a speedy trial in criminal cases to the issue of suspension in service law jurisprudence. The Supreme Court specifically referred to the decision of a Constitution Bench in the case of ***Abdul Rehman Antulay v. R.S. Nayak*, 1992 (1) SCC 225**, wherein it had been held that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution and in which detailed directions were issued in this regard. The Supreme Court applied the legal principle evolved in the aforesaid ***Antulay*** case in service law jurisprudence and held that the impugned decision of the Delhi High Court in the present case setting aside the decision of CAT which had directed that the appellant's suspension would not be extended beyond 90 days from 19.3.2013, could not be sustained in view of the pronouncement of the Constitution Bench in the aforesaid ***Antulay*** case.

The Supreme Court also referred to the provision contained in the Proviso to Section 167(2) of the Criminal Procedure Code, 1973, which has the effect of circumscribing the power of the Magistrate in criminal cases to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. The Supreme Court extrapolated the quintessence of the Proviso of Section 167(2) of the Cr.P.C., 1973, to moderate Suspension Orders in cases of departmental / disciplinary inquiries also. The Supreme Court held as under:

"It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal."

Accordingly, the Supreme Court issued the following important directions in the matter of suspension of an employee:

"We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

It is thus really a landmark judgment in as much as the principle of right to speedy trial in a criminal case has now been extended to the service law matters and the suspension of a Government servant cannot be continued beyond 90 days if charge sheet (for a departmental enquiry) is not given on time. Moreover, the Supreme Court has directed that even where the charge-sheet is served on time and the suspension is required to be extended by the competent authority, a reasoned order must be passed for the extension of the suspension.

This judgment of the Supreme Court is expected to benefit a large number of Government employees. In fact, the legal principle laid down in this case may also be applicable to employees of public sector undertakings (PSUs) and Government banks, etc.

Read the full judgment in above case: Ajay Kumar Choudhary v. Union Of India Through Its Secretary, Supreme Court Judgment, 16 February 2015.

Also read the following related question on Tilak Marg Forum (which allows you to ask your questions and discuss legal issues): Will Supreme Court direction- suspension not to exceed 3 months applicable where it is due to criminal case?

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