

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8949 OF 2013

(Arising out of S.L.P. (C) No. 20605 of 2011)

U.P. Power Corporation Ltd. and another ...
Appellants

Versus

Virendra Lal (Dead) through L.Rs. ...Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. Calling in question the legal acceptability of the order dated 11.2.2011 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, in Writ Petition (S/B) No. 211 of 2011 whereby the Division Bench has affirmed the judgment dated 23.9.2010 passed by the State Public Service Tribunal, Lucknow, (for short “the tribunal”) in

claim petition No. 683 of 2000 wherein the tribunal had set aside the order dated 12.10.1999 passed by the U.P. State Electricity Board (UPSEB) imposing punishment of deduction of 10% amount of pension payable to the original respondent, Virendra Lal, predecessor-in-interest of the respondents herein, the U.P. Power Corporation Ltd. (for short "the Corporation") and its functionaries have preferred this appeal by special leave.

3. The expose' of facts are that late Virendra Lal was posted as Assistant Engineer in Electricity Distribution Division, Sultanpur in the year 1984 and at that time he had released electricity to one consumer, namely, M/s. Arif Cement Industries, Jagdishpur, beyond the approved estimate as a consequence of which wrongful loss was caused to UPSEB. After the authorities of the UPSEB came to know about the same, the matter was forwarded to the inquiry committee on 27.9.1994 for initiation of a disciplinary proceeding on the basis of which on 23.2.1998, the inquiry committee framed charges against him and called for an explanation. The delinquent employee filed his reply on 16.4.1998 and

thereafter the inquiry committee commenced the enquiry. On 30.6.1998, late Virendra Lal stood superannuated. On 28.1.1999 the inquiry report was served on him and he was granted opportunity to submit a representation pertaining to the inquiry report. On 21.3.1999 he filed his representation and considering the submissions put forth in the representation on 12.10.1999 the UPSEB passed the order of punishment as has been stated hereinbefore. The said order was communicated to late Virendra Lal by the Joint Secretary of the UPSEB.

4. Grieved by the aforesaid order, Virendra Lal preferred claim petition No. 683 of 2000 before the tribunal contending, inter alia, that there is no statutory provision in the UPSEB for recovery from the pension of a retired officer; that the power to deal with the report of the inquiry committee vests in the Chairman of the UPSEB in regulation 6(4) of U.P. State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 (for short "the Regulations") but as the punishment had been imposed by the UPSEB he

had been deprived of the right of appeal; that other officers with similar allegations had been exonerated but he alone was proceeded which was discriminatory in nature; and that the manner in which the proceeding was conducted was violative of the principles of natural justice and had caused serious prejudice to him. The stand and stance put forth by him was opposed by the UPSEB.

5. The tribunal advertent to the application of certain Rules, violation of principles of natural justice, the delay in commencement of the departmental proceeding and the prejudice caused to the delinquent employee set aside the order dated 12.10.1999 and directed to release the deducted amount of pension to the applicant therein with simple interest @ 8 per cent per annum from the date the amount was due to the date of the actual payment and further directed for release of the pension forthwith.

6. Being dissatisfied with the aforesaid order the Corporation preferred a writ petition before the High

Court and the Division Bench disposed of the same by passing the following order

“During the course of argument, it has been admitted by the petitioners’ counsel that under Rules, Chairman is the disciplinary authority who is competent to pass the order. Justification has been given by the petitioners’ counsel that since the claimant respondent is a retired person, power was exercised by the Board. Even if an employee is retired, the power should be exercised by the same authority who has been conferred power to work as disciplinary authority under rules. Power cannot be usurped by the higher authority in violation of the service rules. Accordingly, the impugned order passed by the tribunal does not seem to suffer from any impropriety or illegality.”

7. We have heard Mr. Shiv Kumar Tripathi, learned counsel for the appellants. Despite service of notice on the legal heirs of the original respondent, there has been no appearance.

8. Criticizing the order passed by the High Court it is submitted by Mr. Tripathi that the High Court has fallen into error by opining that even in respect of a retired employee the power should be exercised by the same authority who had been conferred power to act as the disciplinary authority under the Regulations. It is urged by him that if the higher authority initiates the

disciplinary proceeding and imposes the punishment and no prejudice is caused the order of punishment cannot be annulled on that score. It is further canvassed by him that as the High Court has only addressed to a singular issue and arrived at the conclusion, the matter deserves to be remitted to the High Court for adjudication on other issues.

9. It is not in dispute that the disciplinary proceeding was initiated against the original respondent while he was in service and thereafter the proceeding continued and, eventually, the Board passed the order of punishment. Learned counsel for the appellants has drawn our attention to the Regulations. Regulation 6 deals with constitution of Committee to enquire into cases. Sub-regulation (4) of the said Regulation reads as follows: -

“(4) The Chairman shall in relation to Officers and servants upto the rank of Superintending Engineer deal with the report and recommendations of the Inquiry Committee in accordance with the relevant regulations and pass final orders. In the case of Officers above the rank of Superintending Engineer, the Chairman shall place the report of the Inquiry Committee along with its recommendations, if any, before the Board, who shall pass final orders.”

10. On a perusal of the aforequoted sub-regulation it is quite vivid that the Chairman has been empowered to deal with the report and recommendations of the Inquiry Committee in accordance with the relevant Regulations and pass final orders in respect of officers upto the rank of Superintending Engineer. The delinquent employee, Late Virendra Lal, retired from service as an Assistant Engineer which rank is lower than the Superintending Engineer. Hence, the Chairman was authorized to pass the order of punishment. As the factual matrix would reveal the order of punishment was passed on 12.10.1999 and the Board had passed that order. The said order reads as follows: -

“The Board has asked to Shri Lal to file his representation within 14 days providing him a copy of enquiry report received from enquiry committee vide letter No. 490-Shija-05d/SEB-99-7(38)-05D/96. Shri Lal has submitted his representation on 21.3.1999 and it has been found after examination thereof that Shri Virendra Lal could not clarify in his representation as to why he has installed a sub-station deviating from approved estimate. The recommendation by Enquiry Committee that Shri Lal is guilty of providing wrongful gain to consumer and wrongful loss to Board is proper and appropriate.

Therefore Shri Virendra Lal (77031) then Assistant Engineer (presently retired) has been found the guilty of misconduct and charges levelled against him, so the order hereby is passed to deduct 10% amount of the pension payable to him for 5 years with due compliance of the CCA Rules.

By the order of the Board

Sd/-
S.P. Singh
Joint Secretary
11.10.1999"

11. At this stage, it is appropriate to refer to sub-regulation (5) of Regulation 6 which reads as follows: -

“(5) An appeal or representation, as the case may be, from the orders of the Chairman passed under sub-regulation (4) shall lie to the Board.”

12. Thus, if an order is passed by the Chairman, an appeal or representation, as the case may be, lies to the Board. In any case it is subject to challenge in the hierarchical system of the UPSEB. Learned counsel has commended us to the decision in ***State of Uttar Pradesh v. Brahm Datt Sharma and another***¹. The said decision only supports the proposition that if a disciplinary proceeding against an employee of the Government is initiated in respect of a misconduct

¹ (1987) 2 SCC 179

committed by him and if he retires from service on attaining the age of superannuation before completion of the disciplinary proceedings and charges are of serious nature, then it is open to the Government to take proceedings against the Government servant in accordance with the rules for the reduction of pension and gratuity.

13. In ***Takhatray Shivadattray Mankad v. State of Gujarat***², the appellant therein was compulsorily retired on January 12, 1962 in one of the departmental proceedings. Two other proceedings were instituted in the year 1963 and that is earlier to his attaining the age of superannuation on January 14, 1964. These departmental proceedings were dropped on the ground that they had been rendered infructuous. Thereafter, the proceedings were revived and, eventually, certain punishment was imposed pertaining to determination of his pension. The learned Judges dealing with the said submission opined thus: -

“The learned counsel for the appellant strenuously contended that after the

² 1989 Supp (2) SCC 110

disciplinary inquiries had been dropped on the ground that they had become infructuous, the government was not right and justified in reducing the pension and gratuity on the same charges which were the subject matter of the enquiries. This argument of the learned counsel, in our opinion, does not merit consideration because the charges against the appellant were not made use of for awarding any punishment after his retirement from service but only for determining the quantum of the appellant's pension in accordance with the rules relating to the payment of pension and gratuity."

To arrive at the said conclusion the Court relied upon the principles stated in ***Brahm Datt Sharma*** (supra).

14. In the case at hand, we may note with profit that though the tribunal has recorded that there is no provision for continuance of such a proceeding, yet the said issue need not be addressed to as we are only concerned with the controversy, as has emerged in this appeal, whether the UPSEB could have imposed the punishment accepting the recommendations of the Inquiry Committee.

15. In this context, we may fruitfully refer to the authority in ***Surjit Ghosh v. Chairman & Managing***

Director, United Commercial Bank and others³. In the said case, the disciplinary proceeding was initiated against the delinquent employee by the Deputy General Manager of United Commercial Bank, the respondent therein. The disciplinary authority at the relevant time was the Divisional Manager/Assistant General Manager (Personnel) and an appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager a review lay to the General Manager. In this backdrop a contention was raised that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations and the same goes to the root of the dismissal order. The said contention was combatted by the employer contending, inter alia, that when the Deputy General Manager is higher in rank than the disciplinary authority and the order of punishment has been passed by the higher authority, no prejudice has been caused to the employee. A further contention was raised that in the facts and circumstances of the case it should be held that when

³ (1995) 2 SCC 474

the order of punishment is passed by higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. Repelling the said argument the Court opined that 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. Thereafter, the learned Judges proceeded to state thus:

“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.”

16. In **Balbir Chand v. Food Corporation of India Ltd. and others**⁴ the Court adverted to the relevant rule position and came to hold that in normal circumstances the Managing Director being the appellate authority should not have passed the order of punishment so as to enable the delinquent employee to avail right of appeal. The Court observed that it is a well-settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action, but there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. It is relevant to state here that the decision in **Surjit Ghosh** (supra) was pressed into service but the same was distinguished stating that in the said judgment under

⁴ (1997) 3 SCC 371

the Rules officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service and thereby, the remedy of appeal provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right pertaining to his case being considered by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. Be it noted, in the said case a right of second appeal/revision was provided to the Board and, in fact, an appeal was preferred to the Board. Regard being had to the said fact situation, this was Court declined to interfere.

17. Thus, from the aforesaid it is quite clear that in **Balbir Chand** (supra) though the Court approved the principles laid down in **Surjit Ghosh** (supra), yet distinguished the same keeping in view the rule

position. Be it noted, the Court made a distinction between the non-availability of the appellate remedy in entirety and availability of a remedy or a revision with the higher authority and preservation and non-extinction of the said right.

18. In ***Electronics Corporation of India v. G. Muralidhar***⁵ the order of termination was not passed by the disciplinary authority but by the appellate authority and on that score the High Court had quashed the order of termination and directed reinstatement with back wages. After advertng to the facts of the case the learned Judges declined to accept the submission of the appellant therein that the judgment rendered in ***Surjit Ghosh*** case (supra) should be limited to the facts of that case. The Court further took note of the fact that there was no general provision which conferred a power of review or revision on the Board against an order passed by the Chairman-cum-Managing Director who had passed the order of dismissal and, therefore, even if the Board may be a

⁵ (2001) 10 SCC 43

higher authority to the Chairman-cum-Managing Director to hold that an appeal would lie against an order of termination passed by the CMD would tantamount to a fresh legislation since there is no general provision which confers a power of review or revision on the Board against any order passed by the CMD. Being of this view, the Court on the foundation of the ratio laid down in **Surjit Ghosh** (supra) ruled that the order of punishment was vitiated.

19. In this regard reference to the principles laid down in **A. Sudhakar v. Postmaster General, Hyderabad and another**⁶ is fruitful. We may aptly quote a passage from the same: -

“18. 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. 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.”

⁶ (2006) 4 SCC 348

20. In ***S. Loganathan v. Union of India and others***⁷, a two-Judge Bench placed reliance on the decisions rendered in ***Surjit Ghosh*** (supra) and ***Electronics Corporation of India*** (supra) and, eventually, opined that as the appellant's right to appeal had not been affected by the authority passing the order, the punishment imposed could not be said to be vitiated in law.
21. From the aforesaid enunciation of law it is graphically clear that a higher authority may pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal is not taken away. That apart, if the appellate authority passes an order as the primary authority and there is provision for further appeal or revision or review it cannot be said that the said order suffers from any illegality. In the case at hand, there is no denial of the fact that the UPSEB has passed the order for deduction of 10% pension from the delinquent employee. Under the Regulations which we have reproduced hereinbefore there is a stipulation that

⁷ (2012) 1 SCC 293

an appeal or representation, as the case may be, from the order of the Chairman shall lie to the UPSEB. The Regulation clearly provides that in case of an Assistant Engineer the Chairman is the competent authority to pass the order of punishment and, therefore, by virtue of the order passed by the UPSEB remedy of appeal was denied to the delinquent employee. Under these circumstances, the view expressed by the High Court has to be regarded as flawless and, accordingly, we concur with the same.

22. Consequently, the appeal, being devoid of merit, stands dismissed without any order as to costs.

JUDGMENTJ.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
October 03, 2013.