

CASE NO.:
Appeal (civil) 4638 of 2006

PETITIONER:
State of U.P. & Ors.

RESPONDENT:
Harihar Bhole Nath

DATE OF JUDGMENT: 01/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No.2980/2006)

S.B. Sinha, J.

Leave granted.

Interpretation and application of Regulation 351-A of the Civil Service Regulations falls for consideration in this appeal which arises out of a judgment and order dated 29.3.2005 passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow allowing the Writ Petition No.435 of 2002 filed by Respondent herein. The basic fact of the matter is not in dispute. Respondent was appointed as a Clerk. He rose up to the position of Deputy Inspector General of Registration. He was charged with commission of misconduct involving gross irregularities while he was posted at Faizabad on preliminary enquiry by the then Inspector General of Registration, pursuant where to and in furtherance where of a charge-sheet dated 22.3.1993 was served on him on 24.3.1993, and an Enquiry Officer was appointed, stating :

"O.M.No.S.R.1605/11-93-312(58)/93 dtd.24th March, 1993 issued by the Special Secretary to the Government of Uttar Pradesh

Government of Uttar Pradesh Finance (Stamp and Registration), Section No.S.R.1605/11-93-312(58)/93

Lucknow : The 24th of March, 1993 (Issued on 24.3.1993)

Office Memorandum

Whereas on the charge of dereliction of duty indulging in irregularity and causing financial loss to the (Government) revenue, an enquiry against Shri Harihar Bhole Nath Misra, Deputy Inspector General of Registration, Faizabad Division and whereas Shri Harihar Bholenath Mishra is expected that he will submit his written explanation, in his defence, to the charge/charges.

2. Now, therefore, his Excellency the Governor is pleased to appoint the Inspector General of Registration as Enquiry Officer, for conducting the enquiry against Shri Harihar Bholenath Misra.

3. The aforesaid officer Shri Harihar Bholenath Misra will submit his written explanation, in his defence, to the Enquiry Officer, within the period prescribed by the

said Enquiry Officer.

4. The Enquiry Officer will conduct an open enquiry wherein the delinquent/charged officer. Will, if he so desires, be afforded an opportunity for his hearing in person, and the delinquent/charged officer will be given an opportunity to cross-examine the witnesses examined in support of the charge and also to produce witnesses in his defence. In this regard, the procedure contained in Rule 55 of the Civil Service (Classification, Control and Appeal) Rules and the procedure notified by two Government of Uttar Pradesh, will be followed.

5. On the completion of the enquiring, the Enquiry Officer, shall improve the enquiry report under aforesaid Rule 55.

6. The enquiry officer will complete the enquiry Report as expeditiously as possible and submit the same.

7. Shri Harihar Bholenath Mishra is hereby informed that he will appear in person, before the Enquiry Officer on the date prescribed or the hearing and comply with the directions given in respect of the said enquiry and submit his any prayer in respect of the enquiry before the enquiry officer and the enquiry officer shall dispose of the same in accordance with the rules.

By the order of the Governor
Sd/-
Sushil Chand Tripathi
Secretary"

He was placed under suspension by on or about 24.3.1993 under the orders of the Governor.

On a writ petition filed by Respondent questioning the legality of the said order of suspension, the High Court by its order dated 30.3.1993 stayed the operation thereof. During pendency of the said writ petition, Respondent retired from services on 31.3.1993. Departmental Enquiry, however, was commenced on 4.1.1997. A report was submitted by the Enquiry Officer, pursuant whereto or in furtherance whereof the competent Authority issued the second show cause notice on 19.11.1998. Respondent, however, instead of submitting his reply, demanded certain documents at that stage. As he did not submit any reply, a decision was taken by the competent Authority on 11.11.1999 in consultation with the U.P. Public Service Commission (UPPSC) to recover the amount of the monetary loss caused to the Government Exchequer by reason of various acts of omissions and commissions on his part, wherefor a punishment of recovery of a sum of Rs.7,02,279.50p. was awarded on 7.1.2000. The said amount was directed to be recovered from the amount of gratuity and pension payable to him as also from the moveable and immovable assets of Respondent.

A writ petition came to be filed by Respondent questioning the said order of recovery dated 7.1.2000, which was dismissed by an order dated 19.7.2000 on the ground of availability of an alternative remedy. He filed an original application before the U.P. State Public Services Tribunal, which by reason of an order dated 18.1.2002 was dismissed. A writ petition questioning the said order of the Tribunal was filed by Respondent in the High Court of Judicature at Allahabad in March 2002, which was registered as Writ Petition No.435/2002. The respondent made the following prayers therein :

a) To issue a writ, order or direction in the nature of

certiorari quashing the impugned order dtd. 7.01.2000 passed by the Opp-party 2, contained in Annexure-8 to the writ petition.

b) To issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 18.01.2002 passed by the learned State Public Services Tribunal, the true copy of which is contained as Annexure-1 to the writ petition.

c) To issue a writ, order or direction in the nature of mandamus commanding the opp-parties to release the pension of the petitioner, commutation of pension, gratuity, leave encashment of 10 months, 10% amount of O.P. Funds, salary for the month of February and March, 1993 and pension for the month of April, 1993 alongwith the 18% compound interest on all above mentioned arrears of amount."

In its counter affidavit, Appellants contended that the order dated 7.1.2000 impugned therein was passed after obtaining prior approval of the Governor of Uttar Pradesh as also the U.P. Public Service Commission following the normal practice prevalent in the State and in terms of the Conduct of Business Rules.

By reason of the impugned judgment and order, the High Court allowed the writ petition of Respondent holding that before a departmental proceeding against a Government servant after his retirement is initiated, it was obligatory on the part of Appellants to obtain sanction of the Governor. Requirement to obtain such sanction, it was opined, was also necessary for continuance of the disciplinary proceedings after superannuation of an employee even in a case where such proceedings had been initiated prior to his superannuation.

Appellants are, thus, before us.

A departmental proceeding can be initiated for recovery of amount suffered by the State Exchequer owing to the acts of omission or commission of a delinquent employee in three different situations :

- i) When a disciplinary proceeding is initiated and concluded against a delinquent employee before he reaches his age of superannuation;
- ii) When a proceeding is initiated before the delinquent officer reached his age of superannuation but the same has not been concluded and despite superannuation of the employee, an order of recovery of the amount from the pension and gratuity is passed; and
- iii) An enquiry is initiated after the delinquent employee reaches his age of superannuation.

Civil Service Regulations are framed in terms of the proviso appended to Article 309 of the Constitution of India. Regulations 351-A and 470 of the Civil Service Regulations take care of the situation leading to recovery of the amount suffered by the Government from the amount of pension and gratuity payable to a delinquent employee when he is found guilty of commission of misconduct or negligence causing pecuniary loss to the Government. The said provisions read as under :

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to

Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that \027

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment \026

i) shall not be instituted save with the sanction of the Governor.

ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause(ii) of clause (a); and

(c) The Public Service commission, UP shall be consulted before final orders are passed.

(Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.)

Explanation \026 For the purpose of this article \026

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil Court."

"470. (a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved (See Appendix 9)

(b) If the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Note: For the purpose of this Article 'appointing authority' shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires."

It is not in dispute that Respondent was placed under suspension before he reached his age of superannuation. A departmental proceeding was not only initiated against him, but an Enquiry Officer was also

appointed. The order of suspension, however, remained stayed by a judicial order. But the same paled into insignificance once the employee reached the age of superannuation. By reason of the same, however, the legal fiction created in regard to the point of time when the enquiry proceeding would be deemed to have commenced was not effaced.

Thus, only because the enquiry proceeding was actually started after superannuation of Respondent, the same would not mean the enquiry proceeding had not been initiated. The right to initiate proceedings which would include a right to continue the proceedings was with the Governor. Sanction of the Governor is required to be obtained when proceedings are initiated by an Authority other than the Governor.

The proceedings for recovery of the amount from a Government servant can be passed in the event he is held to be guilty of grave misconduct or caused pecuniary loss to Government by his misconduct or negligence during his service. Some procedural safeguards, however, have been laid down in terms of proviso appended thereto, including the requirement to obtain an order of sanction of the Governor. Such order of sanction, however, would not be necessary if the departmental proceedings have been initiated while the delinquent was on duty. Proviso appended to Regulation 351-A merely controls the main proceedings. The same would apply in the exigencies of the situation envisaged therein, namely, even the proceedings were initiated after retirement and not prior thereto.

Explanation appended to Regulation 351-A provides for a legal fiction in terms whereof departmental proceedings would be deemed to have been instituted when the charges are framed against the pensioner or issued or the delinquent has been placed under suspension from an earlier date, on such date.

Regulation 470 of the Civil Service Regulations also provides that pension is not payable to a Government servant as a matter of course and may be withheld if the services of the employee have not been thoroughly satisfactory.

In both the situations, a regular proceeding is required to be initiated which would include issuance and service of show cause notice and in the event, cause is shown, application of mind thereupon. On initiation of departmental proceedings the principles of natural justice must be complied with. In the instant case, the procedures laid down under the statute have been complied with. A report was submitted by the Enquiry Officer and consequent orders have been passed on the basis thereof, in accordance with the procedure laid down therefor by the disciplinary authority.

The question came up for consideration before this Court in State of Uttar Pradesh vs. Brahm Datt Sharma & Anr. [AIR 1987 SC 943], wherein this Court, while interpreting Regulation 470 of the Civil Service Regulations, held :

"A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a Govt. servant on his retirement instead, it is awarded to him if his satisfactory service is approved. If the service of a Govt. servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority. Though the Regulations do not expressly provide for affording opportunity to the Govt. servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the Govt.

servant before any order is passed. Article 311(2) is not attracted, nonetheless the Govt. servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension. It is no more in dispute that pension is not bounty; instead it is a right to property earned by the Govt. servant on his rendering satisfactory service to the State."

It was opined that the State is competent to direct reduction in pension after affording hearing to the Government Servant.

The High Court has placed strong reliance on State of U.P. & Anr. vs. Shri Krishna Pandey [AIR 1996 SC 1656], wherein the departmental enquiry was initiated after the delinquent officer reached his age of superannuation. Noticing Rule 351-A of the Civil Services Rules and that the departmental proceeding was initiated after the retirement of the employee, the same was held to be impermissible in law. Although it was not necessary to pronounce upon the construction of Rule 351-A involving a case where a departmental proceeding was initiated prior to reaching of the age of superannuation by the delinquent officer, it was observed that as the officer had retired on 31st March, 1987 and proceedings were initiated against him on 12th April, 1991, proviso appended to the Rule would be applicable.

The right to withhold or withdraw the pension may arise in different situations. Two different contingencies are clearly envisaged under the Regulations, viz., if the pensioner is found guilty of misconduct either in departmental proceedings or in judicial proceedings. Although, prima facie, the proviso appended to Regulation 351-A does not envisage continuation of the proceedings, the same must be held to be existing on a plain reading thereof. Regulations 351-A and 470 provide for a composite scheme; by emphasizing that payment of pension is not automatic it can be withheld if the conditions laid down therein are satisfied. Undoubtedly, before an order of withholding the amount of pension or a part thereof it is passed, the procedures laid down under the statute are required to be complied with. The procedural safeguards must be kept in mind. Limitations of application of the Rules again have to be borne in mind.

But the said Rules read with the Proviso and the Explanation appended thereto construed in their entirety clearly postulate that the proceeding initiated before the delinquent officer reached his age of superannuation would be valid.

The question, however, is whether the sanction of the Governor was required even for the purpose of continuance of the proceedings which had already been initiated. Answer thereto must be rendered in the negative. The proceedings had not only been initiated by the Governor, the order impugned in the Writ Petition No.2243/93 was also passed by the Governor, the relevant portion whereof reads as under :

"\005\005After examining the aforesaid all the charges, since it is found that all the charges have been proved, hence his excellency, the Governor of Uttar Pradesh has while finding Shri Harihar Bhole Nath guilty, decided to punish him as given below :-

1. The financial loss to the tune of Rs.7,02,279.50 (Rupees Seven lakhs two thousand and two hundred seventy nine and paise fifty only) caused to the State Government by his irregular acts he set off and adjourned against his pension/gratuity payable to him under 351(A) of the CSR by way of arrears of government revenue and the remaining amount be realized from the moveable immovable property of Shri Harihar Bhole Nath by instituting

a (civil) suit in a court of law.

2. The full pension/gratuity payable to Shri Harihar Bhole Nath be forfeited with immediate effect, under Article 351(A) of the CSR. With reference to the aforesaid decision of the government, prior to its implementation, the advice of the Public Service Commission Allahabad has already been obtained and the Commissioner has concurred with the aforesaid punishment proposed by the Government. Hence Shri Harihar Bhole Nath, the then Deputy Inspector General of Registration/Deputy Commissioner (Stamp) Faizabad is published in accordance with what is stated hereinabove.

By order of his Excellency Governor,
Sd/- T.P. Arya (illegible)
Principal Secretary"

The order was authenticated in terms of Clause (3) of Article 166 of the Constitution of India, as the proceeding was initiated under the orders of the Governor and the order of punishment was also passed under the order of the Governor, no sanction of the Governor was required.

Reliance has also been placed on Bhagirathi Jena vs. Board of Directors, O.S.F.C. & Ors. [(1999) 3 SCC 666], wherein this Court was concerned with interpretation of Regulation 17 of the Orissa State Financial Corporation Employees' Provident Fund Regulations, 1959.

This Court noticed the relevant Regulations and opined that therein no specific provision existed for deducting any amount from the provident fund consequent to any misconduct determined in departmental enquiry, nor was there any provision for continuance of departmental enquiry after superannuation. It was in the aforementioned situation opined :

"In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

Such is not the position herein. We are, therefore, of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. However, as the other contentions raised by Respondent have not been determined in the writ petition, the matter is remitted to the High Court for consideration on the merit in respect of the other contentions raised by Respondent.

No costs.