

BHARAT PETROLEUM CORPORATION
LIMITED AND OTHERS

A

v.

ANIL PADEGAONKAR
(Civil Appeal No. 9778 of 2010)

B

MARCH 17, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Bharat Petroleum Limited Conduct, Discipline and Appeal Rules for Management Staff, 1976 – rr.3(e), (g), (h) – Part III B(2)(e), (f); Part III-A, Clauses 6 & 10; Part III-F(1), (23); Sr.1(a), (b) of Schedule I – Respondent was working as Aviation Officer at the General Aviation Service Station, Gwalior, in the management cadre in Job Group ‘A’ – Charge-sheet issued to him by Deputy General Manager (Aviation) alleging that fresh sand particles were found in all the 10 fuel tanks after his duty hours – Fresh charge-sheet issued w.r.t his absence from duty – Respondent discharged from service – Departmental appeal was rejected – Single Judge ordered remand – Corporation was granted liberty in appeal to issue fresh charge-sheet w.r.t first charge and to pass a lesser order of punishment w.r.t second charge – Held: Respondent was posted at Air Force Station Gwalior – Nature of his duties had an inherent seriousness – A finding of guilt was arrived at by enquiry officer w.r.t both the charges – In his departmental appeal, respondent raised no issues of procedural irregularity with consequent prejudice – Common order of punishment of ‘discharge’ from service followed u/Part III B(2)(e) of the Rules – No order of ‘dismissal’ was passed u/Part III-B (2) (f) – If the Corporation was of the opinion that ‘dismissal’ was the appropriate punishment in the facts of the case nothing prevented it from stating so – High Court fell in serious error by opining that the employee had been ‘dismissed’ from service and on that premise arrived at the conclusion that the charge-sheet was incompetent in absence of it having been issued by Functional Director, the disciplinary authority for punishment of dismissal only – First charge-sheet was issued by an authority competent to do so – Order of discharge calls for no interference – Direction for issuance of fresh charge-sheet is set aside – Service Law.

C
D
E
F
G
H

A **Disposing of the appeals, the Court**

HELD: 1.1 A finding of guilt was arrived at by the enquiry officer with regard to both the charges. The employee in his departmental appeal raised no issues of procedural irregularity with consequent prejudice. A common order of punishment of 'discharge' from service dated 21.05.1997 followed under Part III B (2)(e) of the Bharat Petroleum Limited Conduct, Discipline and Appeal Rules for Management Staff, 1976. No order of 'dismissal' was passed under Part III-B (2)(f) of the Rules. If the Corporation was of the opinion that 'dismissal' was the appropriate punishment in the facts of the case nothing prevented it from stating so. The High Court fell in a serious error by opining that the employee had been 'dismissed' from service and on that premise arrived at the conclusion that the charge-sheet was incompetent in absence of it having been issued by the Functional Director who was the disciplinary authority under Sr. 1 (b) of Schedule I under Part III of the Rules for dismissal. [Para 9] [206-D-G]

1.2 Sr. 1 (a) of Schedule I, to be read with Part III of the Rules, provides that with regard to Job Group 'A' the Functional General Manager was the disciplinary authority for all other penalties except that of dismissal. The Functional Director was the disciplinary authority for punishment of dismissal only. In view of the conclusion that the first charge-sheet had been issued by an authority competent to do so, the order of discharge calls for no interference. The direction for issuance of fresh charge-sheet is therefore is set aside. [Paras 11, 14] [207-B-C; 208-D-E]

H.V. Nirmala v. Karnataka State Financial Corporation (2008) 7 SCC 639 : [2008] 7 SCR 1157 ; *S.R. Tewari v. Union of India and Another* (2013) 6 SCC 602 : [2013] 8 SCR 988 ; *Union of India v. B.V. Gopinath* (2014) 1 SCC 351 : [2013] 14 SCR 185 ; *Chairmen-cum-Managing Director, Coal India Limited and Others v. Ananta Saha and Others* (2011) 5 SCC 142 : [2011] 5 SCR 44 ; *Dev Singh v. Punjab Tourism Development Corporation Limited and Another* (2003) 8 SCC 9 : (2003) 7 SCALE 122 – referred to.

Case Law Reference

A

| | | |
|--------------------|-------------|--------|
| [2008] 7 SCR 1157 | referred to | Para 6 |
| [2013] 8 SCR 988 | referred to | Para 6 |
| [2013] 14 SCR 185 | referred to | Para 7 |
| [2011] 5 SCR 44 | referred to | Para 8 |
| (2003) 7 SCALE 122 | referred to | Para 8 |

B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9778
of 2010.

From the Judgment and Order dated 19.08.2008 of the High
Court of Judicature of Madhya Pradesh at Gwalior in Writ Appeal No.
582 of 2006.

C

With

Civil Appeal No. 9779 of 2010.

D

J.P. Cama, Sr. Adv., Sumit Goel, Ms. Swati Bhardwaj, Raghav
Bansal, Ms. Suruchi Kumar, M/s. Parekh & Co., Puneet Jain,
Ms. Christi Jain, Harsh Jain, Harshit Khanduja, Abhinav Deshwal,
Ms. Pratibha Jain, Advs. for the appearing parties.

The Judgment of the Court was delivered by

E

NAVIN SINHA, J.

1. The two appeals have been preferred by the appellant-
Corporation and the respondent-employee respectively, to the extent that
they are aggrieved by the common order in a writ appeal preferred by
the Corporation. They have thus been heard together and are being
disposed by a common order.

F

2. The Corporation is aggrieved to the extent the impugned order
sets aside the order of punishment on the ground that the charge-sheet
had not been issued by the disciplinary authority. The employee is
aggrieved by the grant of liberty to the Corporation for issuance of fresh
charge-sheet, and denial of back wages while granting reinstatement.
In the interregnum, the employee has attained the age of superannuation
in February 2018.

G

3. A charge-sheet was issued to the employee on 31.12.1993 by
the Deputy General Manager (Aviation) (hereinafter referred to as “the

H

A DGM”) while he was working on the post of Aviation Officer at the
General Aviation Service Station, Gwalior, in the management cadre in
Job Group “A”. It was alleged that fresh sand particles had been found
in the all 10 fuel tanks after his duty hours in the ‘C’ shift ended while
the earlier inspection during the ‘B’ shift had found it to be free of dirt
and water except for minor traces of water in tank nos. 3 and 9. While
B the departmental proceedings were pending, a fresh charge-sheet was
issued to the employee on 27.09.1994 with regard to absence from duty
on 13.08.1994. The employee was therefore charged with having acted
in a manner prejudicial to the interests of the Corporation and negligence
in the performance of duty including malingering or slowing down of
C work under Clause 6 & 10 of Part III-A of the Bharat Petroleum
Limited Conduct, Discipline and Appeal Rules for Management Staff,
1976 (hereinafter referred to as ‘the Rules’). Pursuant to a domestic
inquiry, the inquiry officer returned a finding of guilt on 06.01.1995. The
employee was furnished a copy of the report and after consideration
of his reply, the Director (Marketing) under Part III-B (2)(f) of the
D Rules by a common order dated 21.05.1997 ‘discharged’ the employee
from service. The departmental appeal under the Rules was rejected
by a reasoned order by the Chairman on 05.10.1998.

4. The employee assailed the orders in a writ petition. The learned
Single Judge, with regard to the first charge-sheet, held that the
E punishment of ‘dismissal’ stood vitiated because the Functional Director
alone was competent to issue the charge-sheet. The second charge-
sheet though issued by the disciplinary authority, required reconsideration
as the punishment was held disproportionate to the charge, necessitating
an order of remand. The Corporation was granted liberty in appeal to
F issue a fresh charge-sheet with regard to the first charge and to pass
a lesser order of punishment with regard to the second charge. Though
reinstatement was ordered, the question of back wages was left for
consideration subject to the outcome of such fresh proceedings.

5. Shri. J.P. Cama, learned senior counsel appearing on behalf
G of the Corporation, submitted that the employee was not ‘dismissed’
but ‘discharged’ from service. The DGM being the functional General
Manager and Head of the Department, the highest officer on the spot,
was fully competent under the manual for delegation of authority dated
15.12.1987 to issue charge-sheet for a punishment lesser than dismissal
under serial 1(a) of Schedule I under Part III of the Rules. The manual
H for delegation of authority had never been withdrawn or superseded

even after amendment of Rule 3(g) on 22.08.1991 with regard to the definition of Disciplinary Authority in the Rule. The misconduct on the part of employee, considering his place of posting at an air force station was serious in nature. There was no infirmity in the conduct of the departmental proceedings. The employee had since reached the age of superannuation in February, 2018. Continuance of the proceedings under the Rules was an impossibility in absence of any provisions for the same.

A

B

6. The employee did not take any objection in his reply to the charge-sheet or in the memo of appeal that the DGM was not competent to issue the same. Relying on *H.V. Nirmala vs. Karnataka State Financial Corporation*, (2008) 7 SCC 639, it was submitted that the objection with regard to the lack of jurisdiction ought to have been raised at the very first instance. The employee took this objection for the first time before the High Court in the writ petition. In any event the employee has failed to demonstrate any prejudice to him thereby, assuming though not admitting any lapse. Reliance was also placed on *S.R. Tewari vs. Union of India and Another*, (2013) 6 SCC 602, that there could be no standardised yardstick with regard to proportionality of punishment which would depend on the facts of each case.

C

D

7. Shri Puneet Jain, learned counsel for the employee, submitted that dismissal was a major punishment under Part III-B (2)(f) of the Rules. The Corporation themselves opined that the charges were very serious. The procedure followed was that for a major penalty. The mere use of the word ‘discharge’ in the order of punishment therefore could not be determinative. The High Court has committed no error in holding that the employee had been dismissed from service pursuant to a charge-sheet issued without jurisdiction. The view taken by the High Court that after amendment of the term disciplinary authority in Rule 3(g) by the Board of Directors on 22.08.1991, the manual for delegation of authorities dated 15.12.1987 had lost its relevance, does not call for any interference. The Functional Director alone was competent to issue charge-sheet for dismissal under Sr.1(b) of Schedule I under Part III of the Rules. The charge-sheet issued by the DGM has rightly been held to be without authority, thus vitiating the punishment. The Rules make a distinction between the disciplinary authority in Rule 3(g) and competent authority in Rule 3(h). Competent authority cannot be equated with disciplinary authority. Reliance was placed on *Union of India vs.*

E

F

G

H

A **B.V. Gopinath**, (2014) 1 SCC 351, to submit that a charge-sheet not issued according to law rendered the entire proceedings *non-est*. The High Court, in the facts of the case ought not to have given liberty to issue fresh charge-sheet or deny back wages while directing reinstatement.

B 8. The entire proceedings having been vitiated back wages ought to have been granted while directing reinstatement relying on **Chairmen-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others**, (2011) 5 SCC 142. With regard to the second charge-sheet, it was submitted that the punishment of dismissal for absence from place of duty one hour before duty hours got over was grossly disproportionate relying on **Dev Singh vs. Punjab Tourism Development Corporation Limited and Another**, (2003) 8 SCC 9.

C 9. We have considered the submissions on behalf of the parties. The employee was posted at the Air Force Station Gwalior. There can be no two opinions that the nature of his duties had an inherent seriousness. Two charge-sheets were issued to him and departmental proceedings were conducted. The employee was given full opportunity of defence. A finding of guilt was arrived at by the enquiry officer with regard to both the charges. The employee in his departmental appeal raised no issues of procedural irregularity with consequent prejudice. A common order of punishment of ‘discharge’ from service dated 21.05.1997 followed under Part III B (2)(e) of the Rules. No order of ‘dismissal’ was passed under Part III-B (2)(f) of the Rules. If the Corporation was of the opinion that ‘dismissal’ was the appropriate punishment in the facts of the case nothing prevented it from stating so. The High Court fell in a serious error by opining that the employee had been ‘dismissed’ from service and on that premise arrived at the conclusion that the charge-sheet was incompetent in absence of it having been issued by the Functional Director who was the disciplinary authority under Sr. 1 (b) of Schedule I under Part III of the Rules for dismissal.

D 10. Part-III B (2) of the Rules provides for major penalties which includes *inter alia* removal from service which shall not be a disqualification for future employment and dismissal from service which shall ordinarily be a disqualification from future employment. The Rules therefore themselves recognise them as different punishments with varying severity. Though the word ‘discharge’ does not find reference

E
F
G
H

under the Rules, nonetheless in service jurisprudence, removal and/or discharge are synonymous leading to a termination or end of service but without the punitive consequences of dismissal entailing loss of past services, affecting future employment and debarring retiral benefits. There is no dispute that consequent to the impugned order of ‘discharge’, the employee has been paid his dues.

A

B

11. The employee either in his reply to the charges or in the departmental appeal rightly raised no issues with regard to lack of competence in the DGM to issue the charge-sheet. Sr. 1 (a) of Schedule I, to be read with Part III of the Rules, provides that with regard to Job Group ‘A’ the Functional General Manager was the disciplinary authority for all other penalties except that of dismissal. The Functional Director was the disciplinary authority for punishment of dismissal only. The employee for the first time raised the issue in the writ petition that the charge-sheet had been issued by other than the disciplinary authority. If the employee had raised the issue either in his reply to the memo of charges or in appeal perhaps the Corporation could have addressed the issue better. Nonetheless, since a fundamental issue of jurisdiction has been raised, we shall proceed to examine the issue.

C

D

12. Rule 3(e) defines a Functional Manager as the Manager in-charge of a function. Rule 3(g) defines Disciplinary Authority as specified in Schedule I competent to impose penalties under the Rules. Competent Authority has been defined in Rule 3(h) to mean any authority empowered by the Board of Directors or the Chairman by any general or special rule or order to discharge the function or use the powers specified in the rule or order. Under Schedule I, the Functional General Manager was the disciplinary authority for punishment lesser than dismissal and the Functional director was the disciplinary authority for punishment of dismissal. We are of the considered opinion that the term Competent Authority will include a disciplinary authority so authorised in the manner prescribed in 3(h) under the delegation of authority manual dated 15.12.1987. Under Part III-F(1) of the Rules dealing with procedure for imposing major penalties, the disciplinary authority has been described to include an authority as specified in Schedule I. It includes both a Functional manager and Functional Director. Part-III-F(23) provides as follows:

E

F

G

“(23) If the Disciplinary Authority or the Competent Authority having regard to its findings on all or any of the charges is of

H

A the opinion that any of the penalties specified in Rule “B” should be imposed on the Management Staff it shall, notwithstanding anything contained in Rule “G”, make an order imposing such penalty”

13. The fact that the words ‘Disciplinary Authority or Competent Authority’ have been used interchangeably in Part III-F leaves no doubt in our mind that the delegation of authority manual had never been recalled or superseded. It is the specific case of the Corporation that the manual for delegation of authority issued on 15.12.1987 had never been withdrawn and the Corporation had all along in all other cases also acted on basis of the same and that no charge-sheet for a punishment lesser than dismissal had ever been issued by the Functional Director. The DGM was therefore fully competent under the manual also to both suspend and issue charge-sheet. The High Court itself reasoned that had the penalty been other than dismissal, the Functional Manager would have been competent to issue the charge-sheet. The High Court having posed unto itself the wrong question of dismissal from service, naturally arrived at an erroneous conclusion.

14. In view of our conclusion that the first charge-sheet had been issued by an authority competent to do so, the order of discharge calls for no interference. The direction for issuance of fresh charge-sheet is therefore held to be unsustainable and is set aside. The direction for reinstatement and grant of back wages including any proportionality of punishment under the second charge therefore becomes academic and needs no consideration.

15. The appeal preferred by the appellant-Corporation is allowed and that preferred by the respondent-employee is dismissed. There shall be no order as to costs.