Chairman & M.D., Bharat Pet. Corpn. Ltd. ... vs T.K. Raju on 24 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3504, 2006 (3) SCC 143, 2006 AIR SCW 1102, 2006 LAB. I. C. 1298, (2006) 40 ALLINDCAS 684 (SC), 2006 (40) ALLINDCAS 684, (2006) 3 ALLMR 214 (SC), (2006) 5 ALL WC 5132, (2006) 2 SCALE 553, 2006 (3) SRJ 515, 2006 (1) UPLBEC 994, 2006 (3) ALL MR 214, 2006 LAB LR 406, (2006) 3 JLJR 1, (2006) 2 LABLJ 113, (2006) 3 MAD LW 235, (2006) 2 PAT LJR 249, (2006) 3 SCJ 30, (2006) 3 SERVLR 220, (2006) 2 SUPREME 369, (2006) 2 LAB LN 54, (2006) 2 EASTCRIC 306, (2006) 43 ALLINDCAS 844 (PAT), (2006) 109 FACLR 232, (2006) 2 KER LT 334, (2006) 1 UPLBEC 994, MANU/SC/1083/2006

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (civil) 8548 of 2003

PETITIONER:
Chairman & M.D., Bharat Pet. Corpn. Ltd. & Ors

RESPONDENT:
T.K. Raju

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

The Respondent was a Senior Sales Officer (LPG) in the Sales Department at Bombay Office of the Appellants. The Chief Divisional Manager of the Cochin Divisional Office under whom the Respondent had been working received complaints from All India LPG Distributors Federation (Kerala Circle) alleging financial irregularities on the part of the Respondent. Allegedly, the Respondent collected diverse amounts from the distributors purported to be by way of 'Short Term Hand Loans'. The same had not been repaid to some of them. On or about 27.7.1992, a charge memo was served upon the Respondent alleging :

"That in November 1991 you had taken the loan of Rs. 5000/- from M/s. Rose Flames, Cochin and the said amount was repaid by you only after a period of five months i.e. only after show cause notice Ref. C. PERS. STF dated December 10, 1991 was served on you by CDM, Cochin Divisional Office. At that time you had also taken one DPR (Differential Pressure Regulator) from the aforesaid Distributor which has not been returned or replaced by you.

You had taken a loan of Rs. 1,000/- from Jyothi Gas, Tripunithura and the said amount was returned only after a period of about 2 weeks. You had also taken a DPR (Differential Pressure Regulator) from this Distributor which was returned only in February 1992 after a period of more than an year.

You had taken a loan of Rs. 10,000 in July 1991 from M/s. Krishna Gas, Ernakulam which amount has not been returned by you. Furthermore, you have also solicited further loan from this distributor.

You had also taken a loan of Rs. 1,000/-from M/s. Cherukara Gas Agencies, Alleppey during July 1991 which was returned by you after a period of 30 days. You had demanded a loan of Rs. 10,000/-from M/s. Seena Gas who had subsequently given you Rs. 5,000/- on September 7, 1991 which has not been returned by you till date.

You had taken a loan of Rs. 10,000/- from M/s. Maria Flames for finalising a house site which has not been returned till now. On assuming charge as LPG Sales Officer in the month of April 1991, you had demanded Rs. 5000/- again from this distributor. When the distributor explained his difficulties you had demanded at least Rs. 2000/- which was not paid by the distributor. On 6.11.91 on your visit to the distributor for an inspection, you demanded an LPG stove which was given to you on credit which amount has also not been settled by you. You had taken articles and availed services worth Rs. 2487/- from our dealer M/s. K.P. Varghese & Sons on credit. This amount has also not been settled by you so far.

You had taken supplies of petrol on credit from M/s. K.K. Abraham, Ernakulam during the period April 1990 and a sum of Rs. 2329.90 due for the supplies has not yet been paid."

A disciplinary proceedings was initiated against the Respondent. He was found guilty therein. The said charges were levelled against him purported to be in terms of Rules 4 and 22 of Part II read with Clauses 4, 6, 20, 22, 31 and 37 of Rule A in Part III of the Conduct, Discipline and Appeal Rules for the Management Staff (for short "the Rules").

The Management in the said departmental enquiry examined Mr. Jayaraman, Secretary of the Federation. Other distributors being eight in number were also examined. The said witnesses were also cross-examined by the Respondent. An enquiry report was submitted before the disciplinary authority and the latter by an order dated 5.12.1994 imposed a punishment of dismissal of services

upon the Respondent. He performed a statutory appeal thereagainst before the Chairman and the Managing Director of the Appellant-Corporation who was the designated appellate authority. The said appeal was dismissed by the appellate authority by an order dated 6.6.1995 stating:

> "Having come to the conclusion that charges were duly proved and established against Sri Raju, as above, I feel I have considered the question of punishment. I feel that any one of eight charges, if proved, against Sri Raju, would warrant the punishment of dismissal from service, considering the position held by him as well as the nature of the misconduct involved. I have already mentioned about the admissions relating to charges 7 and 8. Taking all this into account, I feel that in the interests of the Corporation, it is not proper to retain a person like Sri Raju who is guilty of such misconducts proved against him in the service of the Corporation.
>
> In the above circumstances, I conclude that the various submissions, averments made by Sri T.K. Raju in his Appeal dated 9.3.1995 do not provide any ground meriting review of the order passed by the Director (Marketing).
>
> Considering the grave nature of acts of misconducts proved against Sri T.K. Raju, I hold that the order of dismissal of Sri T.K. Raju from Corporation's services, passed by the Director (Marketing) on 5.12.94 is proper, just and equitable, and I do not, therefore, wish to interfere with the said Order."

A writ petition, questioning the legality and validity of the said orders was filed by the Respondent in the High Court of Kerala at Ernakulam which was marked as Original Petition No. 15479 of 1995. Although the learned Single Judge held that the principles of natural justice had been complied with and there was no violation of the Rules, he was of the opinion that quantum of punishment is disproportionate to the charges of misconduct levelled against him and as such remitted the matter back to the appellate authority for imposing appropriate punishment. The Appellants as also the Respondent preferred appeals thereagainst. By a common judgment dated 21st December, 2001, the Division Bench disposed of both the appeals. The Division Bench relying on or on the basis of decisions of this Court in M/s. Glaxo Laboratories (L) Ltd. v. Presiding Officer, Labour Court, Meerut and others [AIR 1984 SC 1361], A.L. Kalra v. The Project and Equipment Corporation of India Ltd. [AIR 1984 SC 1361], Papachristou v. City of Jacksonville [405 US 156] and Kartar Singh v. State of Punjab [(1994) 3 SCC 569], opined:

> "8. We find that those charges include the violation of Clause 4 Part II apart from other charges and the punishment order also relies on the said clause to impose the penalty of dismissal from service. It is a fairly settled principle of law that when a penal provision is vague, it denies the equal protection of laws guaranteed under Article 14. In the light of the above legal principles, the reliance placed on Clause 4 of Part II of the Classification, Control and Appeal Rules for the Management Staff, the impugned order is vitiated.

> 9. When a disciplinary authority takes a decision regarding the guilt of a delinquent employee, it is taking the decision objectively on the basis of the materials before it. So even if irrelevant considerations have also been looked into for forming the conclusion of guilt, the Court judicially reviewing the action can consider whether the remaining ground would have been sufficient for entering the finding of guilt. So, even if the irrelevant considerations are excluded, still according to us, the finding of guilt of the writ petitioner will remain "

Having said so, it agreed with the opinion of the learned Single Judge and directed :

> "11. Now it is for the appellate authority to take a decision as to what must be the penalty which should be imposed on the delinquent employee. The learned single Judge has suggested a penalty that may be appropriate on the facts of the case. Going through the judgment, we feel that the learned Judge only wanted the imposition of a penalty commensurate with the misconduct proved other than a penalty resulting in loss of job to him. We feel that the exercise of discretion made by the learned single Judge that the penalty should be something other than dismissal or removal from service cannot be said to be perverse warranting interference at our hands. We notice that the writ petitioner is a member of the scheduled caste. There is no allegation that he has taken the loans etc. for giving undue pecuniary advantage to the dealers concerned. Nor is there any allegation that they have gained any advantage by succumbing to the demands made by the writ petitioner. Therefore, we affirm the discretion exercised by the learned single Judge subject to the modifications and clarifications mentioned, above. Therefore, we remit the matter for fresh decision by the appellate authority in the light of the observations contained hereinabove. The authority will be free to take any decision regarding penalty to be imposed on the writ petitioner except the penalty of dismissal or removal from service. The said authority shall take a decision within two months from the date of receipt of a copy of this judgment."

Mr. T.R. Andhyarujina, learned senior counsel appearing on behalf of the Appellant inter alia contended that the High Court committed a factual error in coming to the conclusion that the order of dismissal was passed in terms of Rule 4 of the Rules. It was urged that the decisions of this Court in Kalra (supra) and Glaxo (supra) are not applicable to the facts of this case.

Mr. M.N. Krishnamani, learned senior counsel appearing on behalf of the Respondent, on the other hand, urged that having regard to the fact that the Respondent has not caused any financial loss to the company nor has defrauded the company to any extent, the punishment imposed upon him must be held to be harsh. It was further submitted that charges 2 and 6 cannot be said to have been proved and in that view of the matter the extreme punishment of dismissal from service is not commensurate with the charges levelled against the Respondent. It was argued that as several other punishments could be imposed upon the Appellant which come within the purview of major penalty; there was no reason as to why extreme punishment of dismissal of services was imposed upon the Respondent by the disciplinary authority.

The Respondent was a Sales Officer. In 1990, it is stated, there were extreme shortages of LPG gas cylinders. He, in his official capacity, was dealing with the LPG Distributors. In terms of Clause 4 of Part II of the Rules, it was expected of an officer of the Corporation not to do anything which could be unbecoming of its Management Staff. Clause 22 of Part II of the Rules categorically debars an employee from raising any loan in the following terms:

> "No Management Staff of the Corporation shall, save in the ordinary course of business with a bank, the Life Insurance Corporation or a firm of standing, borrow money from or lend money to or otherwise place himself under pecuniary obligation to any person with whom he has or is likely to have official dealings or permit any such borrowing, lending or pecuniary obligation in his name or for his benefit or for the benefit of any member of his family."

The Respondent admittedly was not only charged under clause (4) of Part III of the Rules , he was also charged for various other misconducts enumerated in different clauses of Part II thereof. The High Court, therefore, was not justified in proceeding with the matter on the premise that some of the charges against the Respondent had been framed only in terms of clause (4) of Part II of the Rules.

In Kalra (supra), the misconduct alleged against the delinquent was trivial. Report against him was found to be on ipse dixit. It was held that Rule 4(1)(i) did not specify that its violation will constitute misconduct. It was opined that the delinquent did not commit any misconduct by violating 'Advance Rules'. In that situation, it was observed that "how did the question of integrity arises passes our comprehension". It was held:

> "To sum up the order of removal passed by the disciplinary authority is illegal and invalid for the reasons: (i) that the action is thoroughly arbitrary and is violative of Article 14, (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules,
>
> (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy, and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the disciplinary authority as well as the Appellate Authority suffer from the same vice.

Therefore, the order of removal from service as well as the appellate order are quashed and set aside."

Glaxo (supra) was also rendered in the fact situation obtaining therein.

It is not in dispute that misconduct is a generic term.

In State of Punjab and Others v. Ram Singh Ex. Constable [(1992) 4 SCC 54] it was stated: -

> "Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:
>
> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."

Misconduct in office has been defined as:

> "Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3026, the term 'Misconduct' has been defined as under:

> "The term misconduct implies a wrongful intention and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

More than one occasion, different courts have taken pains to explain that Kalra (supra) does not lay down any inflexible rule. [See Probodh Kumar Bhowmick v. University of Calcutta & Ors., 1994 (2) C.L.J. 456, Tara Chand v. Union of India and Ors. CWP 5552 /2000 disposed of on 27th August, 2002 (Delhi High Court), Secretary to Government and Others v. A.C.J. Britto, 1997) 3 SCC 387 and Noratanmal Chouraria v. M.R. Murli and Another (2004) 5 SCC 689].

In the aforementioned situation, the High Court in our opinion committed a manifest error in relying upon Kalra (supra) and Glaxo (supra), as we have noticed hereinbefore, that the Respondent was not charged in terms of the Rules alone. He was charged for violation of several other clauses of the Rules. The High Court, therefore, was not correct in coming to the conclusion that as some of the charges were vague and indefinite, thus, no punishment could have been imposed on the basis thereof.

We also do not agree with the submission of Mr. Krishnamani that two of the eight charges have not been found to be proved. The charges levelled against the Respondent must be considered on a holistic basis. By reason of such an action, the Respondent had put the company in embarrassment. It might have lost its image. It received complaints from the Federation. There was reason for the Appellant to believe that by such an action on the part of the Respondent the Appellant's image has been tarnished. In any event, neither the learned Single Judge nor the Division Bench came to any finding that none of the charges had been proved.

The power of judicial review in such matters is limited. This Court times without number had laid down that interference with the quantum of punishment should not be done in a routine manner. [See V. Ramana v. A.P.SRTC and Others, (2005) 7 SCC 338, and State of Rajasthan & Anr. v. Mohammed Ayub Naz, 2006 (1) SCALE 79].

Having regard to the facts and circumstances of this case, we are of the opinion that it cannot be said that the quantum of punishment was wholly disproportionate to the charges levelled against the Respondent.

The High Court, therefore, committed an error in passing the impugned judgment which is set aside accordingly. The appeal is allowed. No costs.