

Union Of India vs M. Duraisamy on 19 April, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2665 OF 2022

(Arising from SLP(C) No.6062/2022 @ D.No.18112/2017)

Union of India and Others

...Appellants

Versus

M. Duraisamy

...Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.08.2016 passed by the High Court of Judicature at Madras in Writ Petition No. 33303/2013, by which the High Court has dismissed the said writ petition preferred by the appellants herein – Union of India and others and has confirmed the order passed by the Central Administrative Tribunal, Madras Bench (hereinafter referred to as the ‘Tribunal’) in Original Application (OA) No. 357 of 2012 by which the Tribunal allowed the said OA and modified the punishment from dismissal/removal from service to compulsory retirement, the Union of India and others have preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

That the respondent herein was serving as a Postal Assistant. While he was working as SPM Veppur SO during the period from 2004 to 2007, he committed fraud by way of fraudulent withdrawal in 85 RD accounts and by way of non-credit of deposits in 71 RD accounts and defrauded a sum of Rs.16,59,065/-. The fraud came to light when enquiries were made based on the report of Postmaster, Srirangam vide letter dated 11.06.2007 about double payment of RD closure in respect of some RD accounts which revealed that the accounts were fraudulently closed by the respondent herein for the second time by way of forging the signatures of the depositors and a sum of Rs.52,395/- had been withdrawn from the said accounts by the respondent

fraudulently. Further investigation brought to light the frauds committed by the respondent herein. Thereafter having come to know that the fraud has been detected, the respondent herein deposited a total sum of Rs.18,09,041/- (the amount of fraud Rs. 16,66,439/- + penal interest of Rs.1,42,602/-).

2.1 A departmental enquiry was initiated against the respondent vide office memorandum dated 26.07.2010. Six charges were framed against the respondent. The respondent admitted the fraud in his defence representation. An Inquiry Officer was appointed. The Inquiry Officer held all the charges proved against the respondent – delinquent, as the delinquent officer himself admitted all the charges in the preliminary sitting itself. The Inquiry Officer's report was forwarded to the charged official. The charged official submitted his representation on the Inquiry Officer's report. Thereafter the Disciplinary Authority imposed the penalty of 'removal' from service vide memo dated 19.01.2011, having found that the offence committed by the charged official – respondent herein was grave in nature and retention of such person in the department would further hamper the services rendered to the public. The departmental appeal against the order of removal from service came to be dismissed.

2.2 The respondent – charged official challenged the order of 'removal' before the Tribunal. Vide order dated 26.03.2012, the Tribunal partly allowed the said original application and modified the order of punishment from 'removal' from service to that of compulsory retirement on sympathetic ground by observing that as such the delinquent officer himself deposited the entire amount involved and therefore no loss has been caused to the department. The Tribunal also noted that the delinquent officer had completed nearly 39 years of service and has not suffered any other punishment other than the present one. By observing so, the Tribunal interfered with the order of punishment imposed by the Disciplinary Authority and modified the same to that of compulsory retirement.

2.3 Feeling aggrieved and dissatisfied with the order passed by the Tribunal modifying the order of punishment from removal to that of compulsory retirement, the department preferred a writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition. Hence, the department has preferred the present appeal before this Court.

3. Shri Balbir Singh, learned Additional Solicitor General of India has vehemently submitted that in the facts and circumstances of the case, the Tribunal as well as the High Court have committed a grave error in interfering with the order of punishment imposed by the Disciplinary Authority.

3.1 It is contended by Shri Balbir Singh, learned ASG that both, the Tribunal as well as the High Court have shown undue sympathy to the delinquent officer who committed the fraud and defrauded the huge sum of Rs.16,59,065/- belonging to the RD account holders. 3.2 That the

delinquent officer admitted the charges and the misconduct and he deposited the entire amount along with penal interest only after the detection of the fraud committed by him. It is submitted that looking to the serious proved misconduct and when the respondent was holding a public office of confidence in the Postal Department and thereafter when a conscious decision was taken by the Disciplinary Authority to remove him from service, the same ought not to have interfered with by the Tribunal as well as the High Court. It is urged that merely because the delinquent officer worked for 39 years and the present one was the first misconduct and that the entire amount was deposited (after the fraud was detected) cannot be grounds to interfere with the conscious decision taken by the Disciplinary Authority to remove the delinquent officer from service.

3.3 Making the above submissions and relying upon the decisions of this Court in the cases of B.C. Chaturvedi v. Union of India, reported in (1995) 6 SCC 749 (paragraph 19); Chairman & Managing Director, V.S.P. & Others v. Goparaju Sri Prabhakara Hari Babu, reported in (2008) 5 SCC 569, as well as the other decisions of this Court in the cases of Maruti Udyog Ltd. v. Ram Lal, reported in (2005) 2 SCC 638; State of Bihar v. Amrendra Kumar Mishra, reported in (2006) 12 SCC 561; Regional Manager, SBI v. Mahatma Mishra, reported in (2006) 13 SCC 727; State of Karnataka v. Ameerbi, reported in (2007) 11 SCC 681; State of M.P. v. Sanjay Kumar Pathak, reported in (2008) 1 SCC 456; and Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi, reported in (2008) 2 SCC 310, it is vehemently submitted that as held by this Court in the aforesaid decisions, the High Court cannot set aside a well- reasoned order passed by the Disciplinary Authority only on sympathy or sentiments. It is submitted that in the aforesaid decisions, it is observed and held that once it is found that all the procedural requirements had been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee.

4. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondent – delinquent officer. 4.1 It is strenuously contended by the learned counsel appearing on behalf of the respondent that when the Tribunal, considering the facts and circumstances of the case, interfered with the order of punishment imposed by the Disciplinary Authority, the High Court was absolutely justified in not interfering with the same. It is submitted that, as such, the Tribunal assigned cogent reasons while modifying the punishment from removal to that of compulsory retirement. The same is rightly not interfered with by the High Court. It is urged that the same may not be interfered with by this Court, in exercise of powers under Article 136 of the Constitution of India.

4.2 It is also submitted that even otherwise on merits also, once the delinquent officer voluntarily deposited the entire amount along with interest even before the departmental enquiry was initiated and thereby no loss has been caused to the department and considering the fact that the delinquent officer had a long service career of 39 years and during the entire career, there was no punishment imposed and now by the order of compulsory retirement, he will get the retiral/pensionary benefits, which otherwise he would not be able to get in view of the order of removal from service, it is prayed not to interfere with the impugned judgment and order passed by the High Court as well as of the Tribunal.

5. We have heard the learned counsel for the respective parties at length.

The respondent herein, who at the relevant time was serving as Postal Assistant was subjected to a departmental enquiry for defrauding a sum of Rs.16,59,065/-. That during the period from 2004 to 2007, he committed fraud by way of fraudulent withdrawal in 85 RD accounts and by way of non-credit of deposits in 71 RD accounts and thus defrauded a sum of Rs. 16,59,065/-. Only after the fraud came to light, the respondent – delinquent officer deposited the entire defrauded amount with interest. However, as the misconduct was very serious, the department initiated departmental enquiry for having failed to maintain absolute integrity and devotion to duty as required of him by Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964. The respondent – delinquent officer admitted the charge. The Inquiry Officer submitted the report and held all the charges proved. That thereafter, the Disciplinary Authority concurred with the findings recorded by the Inquiry Officer and considering the seriousness of the misconduct committed, passed an order of removal. The Tribunal interfered with the quantum of punishment of removal imposed by the Disciplinary Authority and substituted the same to that of compulsory retirement, mainly on the ground and reasoning that the delinquent officer had completed 39 years of unblemished service and the entire amount of fraud with interest has been paid and recovered from him and thus there is no financial loss caused to the department. The order passed by the Tribunal has been confirmed by the High Court, by the impugned judgment and order.

6. Therefore, the short question which is posed for the consideration of this Court is, whether, in the facts and circumstances of the case, the Tribunal and the High Court were justified in interfering with the punishment imposed by the Disciplinary Authority and modifying/substituting the same from removal to that of compulsory retirement.

7. While answering the aforesaid question/issue, the decision of this Court in the case of Goparaju Sri Prabhakara Hari Babu (*supra*), on the judicial review and the limited jurisdiction of the High Court on the proportionality of the order of departmental authority is required to be referred to.

In the said decision, after referring to a catena of judgments of this Court, it is observed and held by this Court that the jurisdiction of the High Court on the proportionality of the order of departmental authority is limited. It is observed that it cannot set aside a well-reasoned order only on grounds of sympathy and sentiments. It is further observed and held that once it is found that all the procedural requirements had been complied with, courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. It is further observed that the superior courts, only in some cases may invoke the doctrine of proportionality, however if the decision of an employer is found to be within the legal parameters, the doctrine would ordinarily not be invoked when the misconduct stands proved.

7.1 In the case of B.C. Chaturvedi (*supra*), the High Court interfered with the order of punishment imposed by the Disciplinary Authority and substituted the punishment of dismissal from service to one of compulsory retirement on the reasoning that the employee had put in 30 years of service and that he had a brilliant academic record and that he had earned promotion after the disciplinary proceedings were initiated. Setting aside the judgment and order passed by the High Court, this Court observed that the reasoning is wholly unsupportable. Such reasons are not relevant or germane to modify the punishment. What is required to be considered is the gravity of the

misconduct. In the said case, the employee was found to be in possession of assets disproportionate to the known sources of his income. Therefore, this Court observed and held that the interference with the imposition of punishment was wholly unwarranted.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the order passed by the Tribunal, confirmed by the Division Bench of the High Court, substituting the punishment of removal to that of compulsory retirement is unsustainable. Neither the Tribunal nor the High Court have found any irregularity in conducting the departmental enquiry. No procedural lapses have been found. In fact, the respondent employee admitted the charge of having defrauded Rs.16,59,065/- and on detecting the fraud, he deposited the defrauded amount of Rs.16,59,065/- along with penal interest. But for the detection of the fraud, probably, the respondent employee would not have deposited the defrauded amount. Once, a conscious decision was taken by the Disciplinary Authority to remove an employee on the proved misconduct of a very serious nature of defrauding public money, neither the Tribunal nor the High Court should have interfered with the order of punishment imposed by the Disciplinary Authority, which was after considering the gravity and seriousness of the misconduct.

9. Merely because the respondent-employee had worked for 39 years and in those years, there was no punishment imposed and/or that he voluntarily deposited the defrauded amount along with penal interest and therefore there was no loss to the Government/Department cannot be a ground to interfere with the order of punishment imposed by the Disciplinary Authority and substitute the same from removal to that of compulsory retirement. Neither the Tribunal nor the High Court have, in fact, considered the nature and gravity of the misconduct committed by the delinquent officer. Therefore, both, the Tribunal as well as the High Court had exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the Disciplinary Authority.

10. None of the grounds/reasoning on which the order of punishment of removal has been interfered with by the Tribunal and affirmed by the High Court are germane and can be sustained. Once it was found that the delinquent officer who was serving in the post office had defrauded to the extent of Rs.16,59,065/- and that too, by way of fraudulent withdrawal in as many as 85 RD accounts and by way of non-credit of deposits in 71 RD accounts, no sympathy on such an employee was warranted. Being a public servant in the post office, the delinquent officer was holding the post of trust. Merely because subsequently the employee had deposited the defrauded amount and therefore there was no loss caused to the department cannot be a ground to take a lenient view and/or to show undue sympathy in favour of such an employee. What about the loss caused to the department by way of goodwill, name and fame of the department and its reliability amongst the public? By such a misconduct/act on the part of the delinquent officer, the reputation of the department had been tarnished. Therefore, in the facts and circumstances of the case, both, the Tribunal as well as the High Court have exceeded in their jurisdiction in interfering with the quantum of punishment imposed by the Disciplinary Authority and to substitute the same to that of compulsory retirement.

11. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court as well as the order passed by the Tribunal substituting the order of punishment

from removal to that of compulsory retirement cannot be sustained and the same deserve to be quashed and set aside.

12. Accordingly, the present appeal is allowed. The impugned judgment and order passed by the High Court dated 30.08.2016 passed in Writ Petition No. 33303 of 2013 dismissing the same and confirming the judgment and order passed by the Tribunal dated 26.03.2013 in O.A. No. 357 of 2012 is hereby quashed and set aside. Consequently, order dated 26.03.2013 passed by the Central Administrative Tribunal, Madras Bench in O.A. No. 357/2012, by which the Tribunal substituted the punishment of removal to that of compulsory retirement is hereby quashed and set aside. Consequently, O.A. No. 357/2012, preferred by the delinquent officer, stands dismissed and the order passed by the Disciplinary Authority imposing the punishment of removing the delinquent employee from service is hereby restored. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J.
[M.R. SHAH]

NEW DELHI;
APRIL 19, 2022.

..... J.
[B.V. NAGARATHNA]