IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 8th OF SEPTEMBER, 2023

WRIT PETITION No.7788 of 2011

BETWEEN:-

ROOP SINGH BHADORIYA W/O MOHARMAN SINGH, AGED 55 YEARS, POSTED AS JUNIOR ENGINEER (TA GRADE I) R/O GOVARDHAN COLONY, GOLA KA MANDIR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI D.P.SINGH - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH VIDYUT VITARAN CO. LTD. GWALIOR, DISTRICT GWALIOR (MADHYA PRADESH)

2. THE CHIEF ENGINEER (GR), MADHYA PRADESH VIDYUT VITARAN CO. LTD. GWALIOR.

3. THE GENERAL MANAGER (O&M), MADHYA PRADESH MADHYA KSHETRA VIDYUT VITARAN CO. LTD. GWALIOR CIRCLE GWALIOR

.....RESPONDENT

(BY SHRI VIVEK JAIN – ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

With consent heard finally.

2. The present petition is preferred under Article 226/227 of the Constitution taking exception to the order dated 21.04.2011 (Annexure P-1) passed by General Manager (O&M) Gwalior Circle whereby petitioner who was working as Junior Engineer was inflicted with punishment of stoppage of one annual increment without cumulative effect.

3. Precisely stated facts of the case are that petitioner at the relevant point of time was posted at rural area and divisional office Datia. Petitioner made less recovery of electricity dues from the consumers in comparison to previous year i.e. 2009-2010 and did not achieve the target of recovery in 2010-2011 resulting into loss to the company. Therefore, a show cause notice was served on 10.06.2010 which was received by the petitioner on 23.06.2010. Same was replied on 02.07.2010 wherein petitioner categorically mentioned the fact that he has not right to write the Confidential Report (C.R.) of employees working under him therefore, they did not make any cooperation in the field regarding recovery as well as with respect to installation of transformer therefore, less recovery was made. He pleaded innocence.

4. After receiving the reply respondent did not conduct the departmental enquiry and passed the impugned order dated 21.04.2011 whereby petitioner has been inflicted with minor penalty of stoppage of increment for one year without cumulative effect. Therefore, petitioner is before this Court.

5. It is the submission of counsel for the petitioner that when

show cause notice was issued by the respondents purportedly under Rule 16 of The M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and respondent denied the charges by filing reply then it was imperative for the respondents to hold departmental inquiry. He relied upon the Judgment of Apex Court in the case of **O.K.Bharadwaj Vs. Union of India and Ors. (2001) 9 SCC 180** in support of submission. According to him, once the charges are factual and if they are denied by the delinquent employee, full-fledged departmental inquiry is required to be conducted.

6. It is further submitted that in series of judgments including the judgment of Division Bench of this Court in the case of **Bholeram Soni Vs. Union of India and Ors.** vide order dated 09.01.2015 passed in W.P.No.3021/2014 while relying upon the judgment of O.K.Bharadwaj **(supra)**, Division Bench allowed the petition and quashed the order of punishment. He further relied upon the order dated 02.01.2018 passed in **M.P.No.1798/2017, (Union of India and Ors. Vs. Ajay Agrawal)**, order dated 28.11.2017 passed in **W.A.No.369/2017 (Dr. Arun Dubey Vs. State of M.P. and Ors.)** and order dated 30.01.2019 passed in **W.A.No.1673/2018 (Roop Singh Bhadoriya Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company)** and submit that petitioner was earlier inflicted with same punishment but on the ground of ratio of O.K.Bharadwaj (supra) impugned order of penalty was set-aside.

7. Learned counsel for the respondents opposed the prayer and placed the order dated 08.09.2020 passed by Division Bench of this Court in bunch of writ petitions **W.A.761/2020 (Ratan Singh Silawat Vs. The State of M.P. & Ors.** is the lead case) and submit that the case of O.K.Bharadwaj (supra) deals in respect of Major Penalty and since the present case is of Minor Penalty therefore, ratio of O.K.Bharadwaj (supra) would not apply here. Looking to the nature of allegations in show cause notice and the reply where petitioner raised the stand that he is not competent to write the ACR of subordinate employees, but said aspect has been specifically dealt with and denied in the impugned order because previous year he wrote the ACR of those employees. Thus, the defence as raised by the petitioner was suitably and reasonably met by the respondents. Therefore, no case is made out for interference. He also relied upon the judgment of Division Bench of this Court in the case of **Union of India and Anr. Vs. C.P. Singh, 2004 (2) MPJR 252** to submit that it is the discretion of authority to hold inquiry or not in a given fact situation like the present case. He prayed for dismissal of petition.

8. Heard the counsel for the parties at length and perused the documents appended thereto.

9. This is the case where petitioner is taking exception to the impugned order of infliction of Minor Penalty under Rule 10 of Rule, 1966.

10. The question arises in the present set of facts is whether after

show cause notice being received by the petitioner and he denied the charges, then whether in the given set of facts, departmental inquiry was required to be conducted or not.

11. Here, petitioner was show caused vide notice dated 10.06.2010 (Annexure R/1) for alleged misconduct committed by him. For the month of May, 2010, his distribution center was given target of Rs.30 lakhs for recovery of revenue but he recovered only 4.09 lakhs which was only 13.43% of the total target, therefore, it was alleged that he did not take any sincere efforts for recovery and therefore, found guilty of negligence/casualness.

12. After show cause notice being received, petitioner raised the defence vide reply dated 05.07.2010 (Annexure P/3) that he has no authority over the field employees like helper, lineman etc. because he does not have the right to write their ACRs. Since he does not write his ACR, therefore, they do not follow the instructions of petitioner, therefore, recovery was much short of target. That was the specific defence undertaken by the petitioner.

13. Incidentally, said contention was dealt with by the respondent by mentioning the fact that last year, in 2009-10 petitioner wrote the ACRs of those helpers, linemen and therefore, he had sufficient supervision and authority over the employees working under him. Therefore, he was required to garner/motivate them to perform better but petitioner faltered. Therefore, show cause notice was given.

14. When defence raised by the petitioner was sufficiently met by

the disciplinary authority and addressed the issue raised by him in a logical and reasonable manner, then scope of interference constricts.

15. Petitioner has raised the import of Rule 16 of the Rule 1966 which is reproduced for convenience and ready reference:-

> **16. Procedure for imposing minor penalties.-**
>
> (1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of Rule 10 and Rule 11 shall be made except after-
>
> (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
>
> (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
>
> (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
>
> (d) recording a finding on each imputation of misconduct or misbehavior; and
>
> (e) consulting the commission where such consultation is necessary.
>
> (1-a) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the

Government Servant under clause (a) of that sub-rule to withhold increments of pay of Stagnation Allowance and such withholding or increments of pay or Stagnation Allowance is likely to effect adversely the amount of pension payable to the Government Servant or to withhold increments of pay or Stagnation allowance for a period exceeding three years of to withhold increments of pay or Stagnation allowance with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.]

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the commission, if /any;

(vi)the findings on each imputation of misconduct or misbehavior; and

(vii) the orders on the case together with the reasons therefor.

Perusal of rule 16 indicates that disciplinary authority has sufficient discretion as provided in Rule 16 (1) (b) of Rules, 1966 where the subjective satisfaction of disciplinary authority is paramount. That aspect has been clarified by the Apex Court in a

subsequent to judgment in the case of O.K. Bharadwaj (supra), in the case of **Food Corporation of India, Hyderabad and Ors. Vs. A. Prahalada Rao, (2001) 1 SCC 165**. Incidentally, the said judgment pronounced in Food Corporation of India (Supra) is dated 01.11.2000 whereas O.K. Bhardwaj (Supra) was delivered on 04.10.1996 much prior to the judgment of Food Corporation of India. In the judgment of FCI (supra), it has been held as under:-

> "5. In our view, on the basis of the allegation that Food Corporation of India is misusing its power of imposing minor penalties, the Regulation cannot be interpreted contrary to its language. Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold enquiry in a particular case or not. **But that would not mean that in all cases where employee disputes his liability, a full-fledged enquiry should be held. Otherwise, the entire purpose of incorporating summary procedure for imposing minor penalties would be frustrated.** If the discretion given under Regulation 60(1)(b) is misused or is exercised in arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. **It is for the disciplinary authority to decide whether regular departmental enquiry as**

contemplated under Regulation 58 for imposing major penalty should be followed or not. This discretion cannot be curtailed by interpretation which is contrary to the language used. Further, Regulation 60(2) itself provides that in a case if it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of retirement benefits payable to employee and in such other cases as mentioned therein, the disciplinary authority shall hold enquiry in the manner laid down in Regulation 58 before making any order imposing any such penalty. **Hence, it is apparent that High Court erroneously interpreted the regulation by holding that once the employee denies the charge, it is incumbent upon the authority to conduct enquiry contemplated for imposing major penalty.** It also erred in holding that where employee denies that loss is caused to the Corporation either by his negligence or breach of order, such enquiry should be held. It is settled law that Courts power of judicial review in such cases is limited and Court can interfere where the authority held the enquiry proceedings in a

> manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry and imposing punishment or where the conclusion or finding reached by the disciplinary authority is based on no evidence or is such that no reasonable person would have ever reached. **As per the Regulation, holding of regular departmental enquiry is a discretionary power of the disciplinary authority which is to be exercised by considering the facts of each case and if it is misused or used arbitrarily, it would be subject to judicial review.**"

16. Therefore, it appears that Apex Court has stressed over the discretion of disciplinary authority as contemplated in Rule 16 of the Rules, 1966 and that discretion cannot be curtailed in any manner. The judgment of Division Bench of this Court in the case of **C.P. Singh (Supra)** reconciled the position before the decision in FCI (supra) and decision thereafter.

> **(vi) Position before decision in FCI:** Where the charges are factual and the charges are denied by the employee or when the employee requests for an inquiry or an opportunity to put forth the case, the discretion of the

Disciplinary Authority is virtually taken away and it is imperative to hold a regular inquiry.

Position after decision in FCI: Where the Rules give a discretion to the Disciplinary Authority to either hold a summary enquiry or regular enquiry, it is not possible to say that the Disciplinary Authority should direct only a regular enquiry, when an employee denies the charge or requests for an inquiry. Even in such cases, the Disciplinary Authority has the discretion to decide, for reasons to be recorded, whether a regular enquiry should be held or not. If he decides not to hold a regular enquiry and proceeds to decide the matter summarly the employee can always challenge the minor punishment imposed on the ground that the decision not to hold a inquiry was an arbitrary decision. In that event, the Court or Tribunal will in exerciser of power of judicial review, examine whether the decision of the Disciplinary Authority not to hold an enquiry was arbitrary. If the Court/Tribunal holds that the decision was arbitrary then such decision not to hold an enquiry and the consequential imposition of punishment will be quashed. If

the Court/Tribunal holds that the decision was not arbitrary, then the imposition of minor penalty will stand.

It is also possible to read the decisions in Bharadwaj and FCI harmoniously, if Bharadwaj is read as stating a general principle, without reference to any specific rules, that it is incumbent upon the Disciplinary Authority to hold a regular enquiry, even for imposing a minor penalty, if the charge is factual and the charge is denied by the employee. On the other hand, the decision in FCI holding that the Disciplinary Authority has the discretion to dispense with a regular enquiry, even where the charge is factual and the employee denies the charge, is with reference to the specific provisions of a Rule vesting such discretion.

There is yet another aspect which requires to be noticed. Where the penalty to be imposed though termed as minor, is likely to materially affect the employee either financially or career-wise then it is not possible to dispense with a regular enquiry. In fact, this is evident from sub-rule (2) of Rule-11 which

> says that where the penalty to be imposed, though termed as minor penalty, involves withholding of increments which is likely to affect adversely the amount of pension or special contribution to provident fund, or withholding of increments of pay for a period exceeding three years or withholding of increments of pay for a period exceeding three years or withholding of increments of pay with cumulative effect, then an enquiry as contemplated under Rule-9 (6) to (25) is a must. Thus, categorization of penalties into 'major' and 'minor' penalties, by itself may not really be determinative of the question whether a regular enquiry is required or not.

17. Division Bench of this Court in the case of Ratan Singh Silawat (supra) has held in similar lines as held in the case of C.P.Singh (supra). Learned Division Bench after considering all judgments in instant realm concluded that it is the discretion of departmental authority in such cases where Minor Punishment is intended to be inflicted whether to hold departmental inquiry or not. It differs from case to case, therefore, it is not automatic. Otherwise provision of summary procedure would lose its meaning.

18. Therefore, it is a discretion of the authority in the given fact

situation whether in a case of minor penalty when employee denies the charges, then departmental inquiry is required to be held or not. Holding of departmental inquiry is not automatic and not in every case of minor penalty departmental inquiry is required to be conducted as per the Rule 16 of the Rules, 1966, as per the mandate of Apex Court in the case of **FCI (supra)** and later on interpreted by the Division Bench of this Court in the matter of **C.P. Singh (supra)**. However, said discretion is to be exercised reasonably and objectively and it should not be guided by the arbitrariness.

19. In the present case, petitioner was inflicted with minor punishment of stoppage of annual increment for one year without cumulative effect, therefore, petitioner could have received the benefit of grant of increment after period of one year is over and therefore, no adversity would have caused in pensionary matter also. Besides that, when petitioner replied the show cause notice, then his contention was considered by the authority and thereafter, passed the impugned order.

20. Petitioner raised the point of lack of teeth for supervision but it was specifically mentioned that in previous year 2009-10, petitioner wrote the ACR of his subordinates therefore, all this supporting staff is assumed to be under the supervision of petitioner. Therefore, this contention, even if departmental inquiry would have been held then would have surfaced in same fashion and it is not the case where departmental inquiry would have given some new dimensions to the case of petitioner.

21. Resultantly, in the considered opinion of this Court, no injury has been caused to the petitioner while not holding the departmental inquiry. Petitioner was rightly punished for the misconduct committed by him.

22. Petition being bereft of *merit* is hereby dismissed.

(Anand Pathak)
Judge

Ashish*