HIGH COURT OF MADHYA PRADESH : JABALPUR

WRIT PETITION No.3304/2008

R.K. Vishwakarma

Vs.

The M.P. State Electricity Board & others

Shri K.C. Ghildiyal, learned Counsel for the petitioner.

Shri Anoop Nair and Shri Sharad Punj, learned Counsel for the respondents.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R

(12/02/2015)

The writ petition is essentially directed against the order dated 31.01.2007 (Annexure P-12) by which the penalty of dismissal from service is imposed on the petitioner after a departmental enquiry by the respondents. In terms of the liberty granted by this Court in W.P. No.16382/2007(S) vide order dated 07.12.2007, an appeal was preferred by the petitioner against the order of penalty which too has been dismissed vide order dated 16.02.2008. Hence this petition is filed.

2. The petitioner was working at the relevant time on the post of Revenue Accountant in the establishment of respondents and was posted in the office of Executive Engineer (City), Division West, Jabalpur up to 15.07.2005. A charge-sheet was issued to the petitioner on 15.07.2005 making the allegation of committing serious misconduct. The petitioner filed his reply to the charge-sheet denying the allegations. An Enquiry Officer was appointed, who conducted the departmental enquiry and gave a report

holding that the charges against the petitioner were proved. The said report was communicated to the petitioner through second show cause notice and his reply was obtained. After completing the formality of hearing, the Disciplinary Authority vide order dated 31.01.2007 imposed the penalty of dismissal on the petitioner. As stated herein above, earlier a writ petition was filed but thereafter with liberty of the court, the appeal was filed by the petitioner against the order of penalty, which has been dismissed. It is contended in the writ petition that the enquiry was properly conducted inasmuch as the Disciplinary Authority has not recorded its own finding with respect to the proof of charge and has imposed severest penalty on the petitioner. It is contended that the Appellate Authority has also not applied its mind while deciding the appeal of the petitioner.

3. Upon service of notice of this writ petition, the respondents have filed their return contending inter alia that enquiry was rightly conducted against the petitioner in terms of the provisions of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (herein after referred to as 'Rules'), which rules have been adopted by the respondents and as such the allegations that the enquiry was not properly conducted, are not correct. It is further contended that the appeal of the petitioner was also decided in accordance to law and, therefore, interference in the order of penalty was not called for.

4. Though rejoinder and additional documents have been filed, additional returns have also been filed by the respondents but reference to such pleadings are not necessary as this petition is being considered on the questions, whether the Disciplinary Authority has rightly passed the order in terms of the provisions of Rule 15 of the Rules or not and whether the charge framed against the petitioner was the one constituting a serious misconduct for

which a severest penalty of dismissal from service could be imposed on the petitioner.

5. Heard learned Counsel for the parties at length and perused the record.

6. First and foremost question is framing of the charge against the petitioner as during the course of hearing of the writ petition it is found that the charge framed against the petitioner was vague in nature. The petitioner was issued a show cause notice on 06.05.2005/04.06.2005 by the competent authority asking him to file a reply as to why the action be not taken against the petitioner for committing serious misconduct. The allegations made in the show cause notice were that upon investigation a report was submitted by the Executive Engineer (City), West Division, Jabalpur, that the concerned Revenue Collector against whom the complaint has been received from MPERC has deposited Rs.230/- out of consumer bill amount of Rs.253/- in Board's account on 14.09.2004 and Rs.253/- was again deposited in the account of consumer through CACMT-01 dated 07.10.2004, which amount was adjusted in the consumer's bill of September, 2004. The findings were given that the amount was paid regularly by the consumer, which was received by the Collector, who passed a receipt of the same but this amount was not credited in the Treasury of the Board, as a result the amount of bill was treated to be outstanding against the consumer and he was issued a consolidated bill for the next month including the amount of previous bill and the surcharge for delayed payment. This was objected by the consumer, who contacted one of the Section Officer and the bill was corrected accordingly after verifying the records. This indicates that the Collector has not credited the amount in the Board's account. The petitioner was thus called upon to explain such facts.

7. A reply to the show cause notice was filed by the petitioner indicating that the consumer has contacted the petitioner and showed him the receipt for payment of the previous electricity bill. The petitioner has verified this fact from the Cash Collection Clerk. It was found in the computer record that the amount already paid by the said consumer was shown in the account of the Board. Therefore, the amount already deposited by the said consumer was deducted from the bill and rest of the amount was asked to be deposited. The accounts were looked after by the Accountant and on the relevant date when the amount was deposited by the consumer, the other Revenue Accountant was looking after that work. In case the cash deposit from the receipt was not checked by the said person, the petitioner was not responsible for any such misconduct. It was thus contended by the petitioner that no enquiry whatsoever was to be conducted against him.

8. The charge-sheet was issued to the petitioner on 11.10.2005 levelling a singular charge, which reads thus :

> "Shri RK Vishwakarma, RA (Under Suspension) while posted as RA in O/o EE(City) Dn. West Jabalpur upto 15/07/05 allowed to manipulate the entries by depositing the amount on 7/10/04 by Shri Vivek Pandya, Revenue Collector, and also allowed adjustment of amount of Rs.263/- from the bill of Rs.520/- issued in favour of Shri RG Oka on 12.10.04 by neglecting the duties of Revenue Accountant/Revenue Auditor indicated in the Revenue Manual. Thus, Shri Vishwakarma acted in deceptive manner showing involvement in the matter.
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> Thus this act on his part is against M.P. Civil Services (Conduct) Rules, 1965, thereby rendered himself liable for disciplinary action."

The charge was explained in statement of imputation. The entire narration of fact in the said statement nowhere indicates that the petitioner was also held responsible for

the aforesaid embezzlement if made by any person, by name Vivek Pandya, who was the cashier incharge and who admitted that though the amount was received from the consumer, by name Shri R.G. Okha, but the counterfoil of the receipt was not available. He further admitted the fact that Shri R.G. Okha, the consumer, had not made any deposit on 07.10.2004 but said amount was said to be deposited in his account. Who deposited the said amount, whether the petitioner had any role to play or not in such deposit, was not clearly stated in the statement. A bare reading of the charge itself will make it clear that allegation of embezzlement by the petitioner was not made. Even this much was not said that he was an allie to said misconduct of embezzlement of the cashier or that the cashier within his knowledge has embezzled the amount. Thus only allegation made against the petitioner was that of not properly checking the accounts on the date of incident whereas according to the petitioner he was not performing the said work in that particular Section on that day.

9. This is how the charge was levelled against the petitioner. The Enquiry Officer after recording the evidence gave his finding that the charge levelled against the petitioner was found proved. The enquiry report is placed on record as Annexure P-10. From the perusal of the enquiry report it appears that some of the witnesses were examined and those witnesses have deposed that the petitioner was responsible to shield the misconduct of the cashier, who has not credited the amount in the account of the Board. However, the statement so recorded and appreciated, indicates only this much that the consumer has contacted the petitioner with respect to the excessive bill complaining that he has already paid the previous bill. This fact was also stated that the matter was looked into by the petitioner. However, this itself was not enough to show that the petitioner was in any way associated with the

misconduct of embezzlement of the amount of bill, said to be committed by the Cashier. This fact was explained by the petitioner in his reply to the second show cause notice issued after the departmental enquiry. Despite this, the findings given by the Enquiry Officer were accepted and the Disciplinary Authority simply said that the charge against the petitioner is proved, therefore, looking to the gravity of the misconduct, severest penalty was to be imposed on the petitioner.

10. In fact the charge was such as it could not be said to be a serious charge of defalcation or misappropriation of the funds of the respondents. The charge indicated herein above will disclose that certain manipulations in the record were alleged against the petitioner but again it was not said that manipulation was done only with a view to extend a helping hand to the person, who has embezzled the amount. The allegation as set forth indicates that the amount was to be collected by someone else and a receipt was required to be issued by him to the consumer regarding the electricity charges. After furnishing that information, the responsibility of the petitioner was to examine the correctness of the amount deposited before him to be transmitted to the treasury of the respondents. However, it is nowhere alleged that on a particular date the amount was not deposited by the Collector and any manipulation was done in the record by the petitioner to assist him in embezzling the amount. On the other hand, from the reading of the charge it appears as if the manipulation was done only when the amount was deposited by the person concerned in the treasury of the respondents. If that was the situation, specific allegation of misappropriation or defalcation or even participation in the said act of defalcation of somebody else should have been levelled in the charge, which after reading the whole charge is not made out.

11. First of all it has to be examined whether on such a vague charge a severest penalty could be imposed on the petitioner or not. The occasions have come before the High Courts in such disciplinary matters. In the case of ***Nabish Hussain Shaikh vs. K.K. Uppal and others, 1991 SCC Online Bom 218=1992 (1) BomCR 197***, the Bombay High Court has tested the vagueness of the charges and the impact of it in the matter of penalty. It was held by the Court that in case definite charge is not made, mere proving of such a vague charge will not be sufficient to impose a severest penalty. In the case of ***Sundar Dhanraj Kasliwal vs. Karamveer Kakasaheb Wagh Sakhar Karkhana Ltd. and others, 1994 SCC Online Bom 427=1995 (2) BomCR 253***, again the Division Bench of the Bombay High Court has tested the correctness of the charges levelled against a delinquent employee and impact of its vagueness on the quantum of penalty. The opinion expressed by the Division Bench was that unless there is a definite charge and conclusive proof of the same against an employee, the severest penalty is not to be imposed on the basis of the findings recorded on a vague charge. In the case of ***Union of India and others vs. Gyan Chand Chattar, (2009) 12 SCC 78***, the Apex Court has looked into such aspects and has held that on flimsy or vague charges the penalties are not to be imposed. Again in the case of ***Anant R. Kulkarni vs. Y.P. Education Society, (2013) 6 SCC 515***, the Apex Court has held that though the procedure laid-down for conducting a criminal trial or even a civil suit by framing definite charges or issues are not applicable strictly in the domestic enquiry but charges of misconduct, if alleged are to be definite, indicative of a serious misconduct and there must be a reasonable finding of holding the charge proved, then only the severest penalty can be imposed.

12. In view of the law laid-down by the Courts aforesaid, if the charge levelled against the petitioner is examined, it would be amply clear that the charge framed against the petitioner was not indicative of the grave misconduct of embezzlement by himself or by his collaboration with the main culprit. It was not the definite charge that the petitioner was aware that the amount is received by the Cashier from the consumer towards the electricity charges but is not credited in the account of the Board. In absence of the definite charge, only alleging that by such act the petitioner has showed involvement in the matter, it would not itself be enough to say that petitioner was also guilty of the act of embezzlement. Thus, it has to be held that the charge framed against the petitioner was vague in nature and was not constituting a misconduct sufficient for imposing the severest penalty. In the enquiry report there was no discussion in respect of the defence taken by the petitioner.

13. Now the second question is whether the Disciplinary Authority has acted in terms of the provisions of Rule 15 of the Rules while accepting the findings of the Enquiry Officer. For the purpose of appreciation and elaborate consideration of the effect of the provisions of Rule 15 of the Rules, the same is reproduced hereunder, which reads thus :

> "**15. Action on the inquiry report.-** (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.
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> (2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.

> (3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing:
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> Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant."

The provisions of Rule 15 of the Rules make it clear that Disciplinary Authority is required to apply its mind while recording the findings on article of charge levelled against the delinquent employee. The provisions of Sub-rule (3) of Rule 15 of the Rules enable the Disciplinary Authority to record its own finding on all or any of the article of charge and then to form opinion as to which penalty under Rule 10 is to be imposed on the employee concerned, if the misconduct is said to be proved. Reading as a whole if the order impugned is examined, it would be clear that finding in that respect were not recorded by the Disciplinary Authority and only a satisfaction was recorded with respect to the conduct of the enquiry and giving finding by the Enquiry Officer. In fact the Disciplinary Authority has given his opinion in the following manner :

> "AND WHEREAS, in view of the above misconduct proven in the departmental enquiry and considering the gravity of the misconduct, the total fact and circumstances of the case, it has been finally decided by the competent authority to impose the penalty of DISMISSAL from the MPSEB Services against Shri R.K. Vishwakarma, O.A.Gr.I(U/s).

> NOW THEREFORE, the services of Shri R.K. Vishwakarma, O.A.Gr.I(U/s) stands DISMISSED from the MPSEB Services with immediate effect."

14. By no stretch of imagination, such recording of fact can be treated as recording of reasons for holding a misconduct proved by the Disciplinary Authority. It is not clear whether such a ground was raised by the petitioner in his appeal or not, yet it was the requirement of the Appellate Authority to consider all these aspects as an appeal is required to be considered under Rule 27 of the Rules and this has to be examined by the Appellate Authority whether the procedure laid-down under the Rules has been followed or not. The order issued by the Appellate Authority do not indicate any such finding. As such, the issue whether the penalty could be imposed on the charge so levelled against the petitioner or not was not decided by the Appellate Authority. The appeal of the petitioner was also not decided in accordance to law.

15. In view of the aforesaid reasoning, the order impugned dated 31.01.2007 cannot be sustained. Resultantly, the writ petition is allowed. The order dated 31.01.2007 is quashed. The petitioner be reinstated in the service immediately with all consequential benefit. However, the respondents would be at liberty to initiate appropriate proceedings against the petitioner afresh in case any misconduct of the petitioner is prima facie made out. This order will not come in the way of conducting fresh enquiry.

16. The writ petition stands allowed and disposed of. There shall be no order as to costs.

(**K.K. Trivedi**)
Judge

Skc