IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 27th OF MAY, 2024

WRIT PETITION NO. 20928 OF 2016

BETWEEN:-

VIRENDRA SINGH, S/O LATE SHRI NARAYAN SINGH, AGED ABOUT 59 YEARS, R/O A-114, JANKI NAGAR, CHUNABHATTI, KOLAR ROAD, BHOPAL (M.P.).

... PETITIONER

(BY SHRI A. RAJESHWAR RAO - ADVOCATE)

AND

1. STATE OF M.P. THROUGH SECRETARY, DEPARTMENT OF FARMER WELFARE & AGRICULTURE DEVELOPMENT, VALLABH BHAWAN, BHOPAL (M.P.).

2. M.P. RAJYA BEEJ EVAM FARM VIKAS NIGAM, THROUGH MANAGING DIRECTOR, BEEJ BHAWAN, 36,MOTHER TERESA MARG, ARERA HILLS, BHOPAL (M.P.).

3. UNDER SECRETARY, DEPARTMENT OF FARMER WELFARE & AGRICULTURE DEVELOPMENT, VALLABH BHAWAN, BHOPAL (M.P.).

4. MANAGING DIRECTOR, M.P. RAJYA BEEJ EVAM FARM VIKAS NIGAM, BEEJ BHAWAN, 36, MOTHER TERESA MARG, ARERA HILLS, BHOPAL (M.P.).

... RESPONDENTS

(BY SHRI SIDDHARTH SETH - ADVOCATE)

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This petition coming on for hearing this day, the court passed the following:

ORDER

By the instant petition, the petitioner is challenging the order dated 15.09.2015 (Annexure P/1) whereby recovery of Rs. 56,49,028/- has been proposed against the petitioner.

2. Learned counsel for the petitioner has assailed the impugned order mainly on the ground that in the light of the law laid down by the Division Bench in case of **Union of India and another vs. C.P.Singh** reported in **2004 SCC OnLine MP 811 : ILR 2004 MP 940** a regular departmental enquiry is required to be initiated to impose the punishment of recovery against the petitioner. He has submitted that no such enquiry has been conducted and as such the impugned order is contrary to law and is liable to be set aside.

3. Learned counsel for the respondents has submitted that there were two enquiries initiated against the petitioner. In the first enquiry, the order of punishment of dismissal from service was passed against the petitioner. He has submitted that the said order is Annexure P/11 dated 18.11.2015 in which there is a reference of recovery also. He has submitted that the appeal against the order of termination is also pending. He has submitted that to ascertain the loss caused to the

department, departmental proceeding was initiated and that went on from 1998 in which petitioner moved applications on 05.08.2015 (Annexure P/4) and 06.08.2015 (Annexure P/5) in respect of voluntary retirement to ascertain the amount of proposed recovery and therefore instead of concluding the enquiry, an audit inspection was done to ascertain the actual amount to be recovered. He has submitted that conducting audit inspection is a way of enquiry whereby the actual amount of loss caused to the department has been determined and in pursuance to the said audit report, order of recovery of amount has been passed by the authority after giving due opportunity to the petitioner and as such the action of the respondents cannot be said to be illegal.

4. No other point raised by the learned counsel for the parties.

5. Considering the rival submission of learned counsel for the parties and after perusal of record, it is clear that the challenge is principally made to an order dated 15.09.2015 whereby on the basis of an audit report the loss caused to the department by the petitioner has been assessed and consequently an order has been passed to recover an amount of Rs. 56,49,028/-. Thereafter, an appeal was preferred by the petitioner against the said order but that was also dismissed vide order dated 16.09.2016. From the record, it is also clear that against the petitioner a charge sheet was also issued levelling 11 charges against him and after enquiry final order was passed on 18.11.2015 dismissing the petitioner from service and directing that the total loss caused to the department i.e. Rs. 57,89,573/- be recovered from him.

6. In the case at hand, the petitioner is assailing the order of recovery and the order passed by the appellate authority in appeal mainly on the ground that the recovery is a minor punishment and the allegation made by the employer if denied by the delinquent then to ascertain the factual aspect, a regular enquiry is required to be done. For the purpose, learned counsel for the petitioner has placed reliance upon *in re* **C.P. Singh (supra)** in which the Division Bench observed as under:-

> "To find an answer, we may refer to the decisions which have considered some of these questions.
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> In C.R Warrier v. State of Kerala [(1983) 1 SLR 608.] , the Kerala High Court considered the question whether holding of an inquiry under Kerala CCA Rules was necessary before imposing a minor penalty. It held that where the charge levelled against the employee could be established only after a detailed enquiry, the procedure prescribed for imposing a major penalty ought to have been followed, even if what was imposed was a minor penalty.
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> In V. Srinivasa Rao v. Shyamsunder [ILR 1989 Kar 3455.] , a Division Bench of the Karnataka High Court considered Rule 12 of the Karnataka Civil Service (CCA) Rules, 1957, dealing with the procedure for imposing minor penalties. Rule 12(1) (b) required that no order imposing a minor penalty shall be made except after holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 11, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary. In that case, a show cause notice was issued to the employee charging him with loss/shortage of articles entrusted to his custody and proposing to recover the loss of Rs. 19,538/- from his pay. After considering his reply denying the charge, an order was made without enquiry, imposing the penalty of recovery of the loss. When it was challenged, a learned single Judge held that as what was imposed was only a minor penalty, issue of a show cause notice and consideration of reply was

sufficient compliance with Rule 12 and an enquiry was not necessary. Reversing the said decision, the Division Bench held:

"…….We are also of the view that even in cases where a minor penalty is proposed to be imposed against a civil servant, if the nature of the charge or charges levelled against him are such that a finding of guilt could be recorded only after holding a regular inquiry in which oral and documentary evidence in support of the charge's should be recorded and the delinquent should be given an opportunity of cross-examining the witnesses or explaining the documents, the holding of an inquiry as provided in Rule 12(1) (b) becomes mandatory and the disciplinary authority is bound to form an opinion that holding of an inquiry is necessary and to hold the inquiry."

(emphasis supplied)

In G. Sundaram v. General Manager, Disciplinary Authority, Canara Bank [ILR 1998 Kar 4005.] , learned single Judge of the Karnataka High Court, considering the scope of a rule in pari materia, that is Rule 8 (2) of the Canara Bank Employees (Discipline & Appeal) Regulations 1976, held:

"…. I hasten to add that there can be no manner of doubt that where a minor punishment is imposed the procedure for holding an enquiry need not be followed unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is wholly barred or that it is entirely subject to the pleasure of the disciplinary authority. Sub-clause (2) provides that if disciplinary authority is satisfied if an enquiry is necessary, then he will follow the procedure prescribed for imposing a major penalty as laid down in regulation 6. The expression satisfied such an enquiry is necessary' clearly suggests that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed by the delinquent officer and give his reasoned finding whether an enquiry is necessary or not. The duty to give satisfactory reasons for coming to a decision is a

duty of importance which cannot be lawfully disregarded. ….In the instant case the disciplinary authority while framing the impugned order does not even say that a case of this nature does not require any enquiry much less summary enquiry. In the absence of such a finding either in the note or order sheet maintained by the disciplinary authority or in the order itself, the order imposing penalty would be invalid. More so in the present case as the dilinquent officer employee in his reply to the charge memo requests the disciplinary authority to hold an impartial' enquiry, if he is not satisfied with the explanation offered by him. There is no express provision in the regulation for the disciplinary authority either to accede or reject the demand of the delinquent but when such a request is made by the delenquent officer it is for the disciplinary authority to consider the same and pass appropriate orders. This unwritten duty is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the parties ……"

(emphasis supplied)

In D.K. Bharadwaj v. Union of India [(2001) 9 SCC 180.], rendered on 14.10.1996 but belatedly reported in the Supreme Court rejected the contention that it was not essential to hold an enquiry or give a hearing to the employee before imposing a minor penalty. It held:

"Even in the case of a minor penalty, an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect of the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and said requirement cannot be dispensed with."

(emphasis supplied)

The matter was however looked at a different perspective in I food *Corporation of India* v. *A. Prahalada Rao* [(2001) 1 SCC 165 : AIR 2001 SC 51 : (2001) 1 SCC 165.] ,. In that case, the Supreme Court considered Regulation 60 of the FCI (Staff) Regulations, 1971, which prescribed the procedure for imposing minor penalties, similar to Regulation Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 with which we are concerned. In that case, the order of the Disciplinary Authority, imposing penalty of recovery of Rs. 7,356/- from the pay of the employee on the ground of dereliction of duties causing loss to the Corporation, was passed without holding any inquiry even though the employee had denied the charge. The Division Bench of the Andhra Predesh High Court held that where the employee disputes that any loss is caused to the employer either by negligence or breach of order, and if so, how much pecuniary loss has been incurred, it was necessary that an inquiry should be conducted as otherwise it would be impossible to arrive at a correct finding as to whether the employee caused any loss by his negligence or breach of order and if so the quantum of loss. Feeling aggrieved, the FCI filed an appeal contending that the High Court had virtually added a proviso to Regulation 60 by holding that when the employee disputes his liability, it is incumbent upon the disciplinary authority to conduct a detailed inquiry as provided for major punishment, and that was impermissible. On the other hand, the Employees Union contended that the employer, under the guise of imposing minor penalty, was dispensing with holding of regular departmental enquiry in cases where charges cannot be proved. It was further contended that there was a large scale misuse of power under Regulation 60 providing for dispensing with regular inquiry. Considering the said contentions and interpreting Regulation 60, the Supreme Court has held as follows:

"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 inquiry in a

particular case or not. **But that would not mean that in all cases where an employee disputes his liability, a full-fledged inquiry should be held. Other wise, 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 an 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 an employee and in such other cases as mentioned therein, the disciplinary authority shall hold inquity in the manner laid down in Regulation 58 before making any order imposing any such penalty. Hence, it is apparent that the High Court erroneously interpreted the Regulation by holding that once the employee denies the charge, it is incumbent upon the authority to conduct inquiry contemplated for imposing major panalty. It also erred in holding that where an employee denies that loss is caused to the Corporation either by his negligenceor breach of order, such inquiry should be held. It is settled law that Court's power of judicial review in such cases in — limited and court can interfere where the authority held the inquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry 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."

(emphasis supplied)

The position as can be gathered from the Rules and the aforesaid decisions can be summarised thus:

(i) In a summary inquiry, a show cause notice is issued informing the employee about the proposal to take disciplinary action against him and of the imputations of misconduct or misbehaviour on which such action is proposed to be taken. The employee is given an opportunity of making a representation against the proposal. The Disciplicary Authority considers the records and the representation and records of findings on each of the imputations of misconduct.

(ii) In a regular inquiry, the Disciplinary Authority draws up the articles of charge and it is served on the employee with a statement of imputation of misconduct, list of witnesses and list of documents relied on by the Department. The Disciplinary Authority call upon the employee to submit his defence in writing. On considering the defence, the Disciplinary Authority considers the same and decides whether the inquiry should be proceeded with, or the charges are to be dropped. If he decides to proceed with the enquiry, normally an Inquiring Authority is appointed unless he decides to hold the inquiry himself. A Presenting Officer is appointed to present the case. The employee is permitted to take the assistance of a co-employee or others as provided in the rules. An inquiry is held where the evidence is recorded in the presence of the employee. The employee is permitted to inspect the documents relied upon by the employer. The employee is also permitted to call for other documents in the possession of the Management which are in his favour. The delinquent employee is given an oppertunity to rebut the evidence of the management by cross-examining the managment witnesses and by producing his evidence both documentary and oral. Arguments-written and/or oral-are received/heard. The delinquent employee is given full opportunity to put forth his case. Therefore, the Inquiring Authority submits his report. The copy of the report is furnished to the employee and his

representation is received. Thereafter the Disciplinary Authority considers all the material and passes appropriate orders. The detailed procedure for such inquiries is contained in sub-rules (6) to (25) of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 corresponding to sub-rules (3) to (23) of Rule 14 of the Central Civil Services (CCA) Rules, 1965 and M.P. Civil Services (CCA) Rules, 1966.

(iii) The normal rule, except where the employee admits guilt, is to hold a regular inquiry. But where the penalty proposed is a 'minor penalty', then the Rules give the Disciplinary Authority a discretion to dispense with a regular inquiry for reasons to be recorded by him, and hold only a summary enquiry.

(iv) Though the Rules contemplate imposing a minor penalty without holding a regular enquiry, where the Disciplinary Authority is of the opinion that such enquiry is not necessary, such decision not to hold an enquiry can be only for valid reasons, recorded in writing. Dispensation with a regular enquiry where minor penalty is proposed, should be in Cases which do not in the very nature of things require an enquiry, for example, (a) cases of unauthorised absence where absence is admitted but some explanation is given for the absence; (b) non-compliance with or breach of lawful orders of official superiors where such breach is admitted but it is contended that it is not wilful breach; (c) where the nature of charge is so simple that it can easily be inferred from undisputed or admitted documents; or (d) where it is not practicable to hold a regular enquiry.

(v) But, even where the penalty proposed is categorised as minor penalty, if the penalty involves withholding increments of pay which is likely to affect adversely the amount of pension (or special contribution to provident fund payable to the employee), or withholding increments of pay for a period exceeding three year or withholding increments of pay with cumulative effect for any period, then it is incumbent upon the disciplinary authority to hold a regular inquiry.

(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 summarily, the employee can always challenge the minor punishment imposed, on the ground that the decision not to hold a regular enquiry was an arbitrary decision. In that event, the Court or Tribunal will in exercise 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 carrer-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 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.

While 'censure' and withholding of increments of pay for specified period may conveniently be termed as minor punishements, we feel very uncomfortable with 'recovery of pecuniary loss, for negligence or breach of orders' without stipulating a ceiling, being considered as a 'minor penalty'. Recovering small amounts, as reimbursement of loss caused to the employer by way of negligence or breach of orders from the pay of the employee can be a minor penalty. But can recovery of huge amounts running into thousands and lakhs, by way of loss sustained on account of negligence or breach of orders, be called as a minor penalty? For example, in this case, recovery sought to be made from the petitioner is Rs. 75,525/- determined as being 50% of the total value of 74 rail posts. Theoretically, what would be the position if the loss was 740 or 7400 rail posts? Does it mean that recovery of Rs. 7.5 lakhs or Rs.75 lakhs can be ordered from the government servant, still terming it as a minor penalty, without holding any enquiry? It is time that the State and authorities take a second look as what is termed as 'minor penalty' with reference to recovery of losses. The recovery of pecuniary loss on account of negligence or breach of order though termed as a minor penalty may have disastrous

consequences, affecting the livelihood of the employee, if the amount sought to be recovered is huge.

In the absence of any ceiling as to the pecuniary loss that can be recovered by treating it as minor penalty, it is necessary to find out whether there is any indication of the limit of amount that can be recovered without enquiry, by applying the procedure for imposition of minor penalties. We get some indication of the pecuniary limit in Rule-11 (2) which provides that if the minor penalty involves withholding of increments of pay for a period exceeding three years then a regular enquiry is necessary. Thus, we can safely assume that the pecuniary loss proposed to be recovered exceeds the monetary equivalent of increments for a period of three years, then a regular enquiry has to be held.

The fastening of pecuniary liability on the basis of negligence or breach of orders, involves decision on four relevant aspects:

(a) What was the duty of the employee?

(b) Whether there was any negligence or breach of order on the part of the employee while performing such duties?

(c) Whether the negligence or breach of order has resulted in any financial loss to the employer?

(d) What is the quantum of pecuniary loss and whether the pecuniary loss claimed include any remote damage and whether the employer has taken steps to mitigate the loss?

These are not matters that could be decided without evidence, and without giving an opportunity to the employee to let in evidence. Therefore, where the charge of negligence or breach of lawful order is denied, a regular enquiry is absolutely necessary before fastening financial liability on the employee, by

> way of punishment of recovery of pecuniary loss from the employees. However, having regard to the decision in FCI, regular inquiry can be dispensed with, for valid reasons, if the amount to be recovered is small (which in the absence of a specific provision, does not exceed the equivalent of three years increment at the time of imposition of penalty). Any attempt to fasten any higher monetary liability on an employee without a regular enquiry, by terming it as a minor penalty, would be a travesty of justice."

7. This Court in number of cases has also taken a view that if dispute is factual in nature and denied by the employee then even for imposing a minor penalty, a regular departmental enquiry is required to be conducted so as to ascertain correctness of the allegation.

8. In the present case since the amount is not only huge but the allegations are also denied by the petitioner, therefore, factual aspect is required to be ascertained and that can be done only by conducting a regular departmental enquiry. In consequence thereof, the impugned order based upon audit report cannot be given seal of approval because during course of audit no proper opportunity of hearing was given to the petitioner.

9. Although learned counsel for the respondents has submitted that in the order of dismissal passed by the Disciplinary Authority after conducting a regular departmental enquiry there is a reference of loss caused to the respondents and as such conducting an audit and ascertaining the loss is also one sort of enquiry, but I am not convinced with the submission made by the learned counsel for the reason that the order of dismissal contained the fact that the petitioner was asked to deposit the amount of loss caused to the department but he did not

deposit the said amount and then consequential order of dismissal was passed. The audit inspection made can be considered to be a sort of enquiry but that cannot be a substitute of disciplinary proceeding in which delinquent is given full opportunity to participate and defend himself. As such, submission made by the learned counsel for the respondents does not inspire the confidence of this Court so as to approve the order imposing recovery upon the petitioner.

10. Consequent upon the above, this petition succeeds in part. The impugned orders dated 15.09.2015 (Annexure P/1) and 16.09.2016 (Annexure P/2) are hereby set aside. However, liberty is granted to the respondents if they want to impose a minor penalty to recover the amount of loss caused to the department, they may conduct a regular departmental enquiry to ascertain the actual amount, which is to be recovered from the petitioner.

(SANJAY DWIVEDI)
JUDGE

Raghvendra