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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 712/91.

XXXXXXXXXXXXXX

DATE OF DECISION: 18.1.95

Arun Vasudev Mirajkar, Petitioner

Shri S. P. Kulkarni, Advocate for the Petitioner

Versus

Union Of India & Others, Respondent

Shri R. K. Shetty, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

O.A. NO.: 712/91.

Arun Vasudev Mirajkar ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri S. P. Kulkarni,
Counsel for the Applicant.
2. Shri R. K. Shetty,
Counsel for the Respondents.

JUDGEMENT :

DATED : 18/1/95

¶ Per. Shri B. S. Hegde, Member (J) ¶

1. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 challenging his non-promotion to the post of Upper Division Clerk for which selection was made vide their letter dated 05.01.1988 (Annexure-15).

2. The applicant was appointed as Lower Division Clerk in the year 1984 in the Office of Sub-Regional Provident Fund Officer, Kolhapur. He appeared for the competitive examination from Lower Division Clerk to the cadre of Upper Division Clerk in the year 1987 and the

result of the said examination was declared on 05.01.1988 (Annexure-A.15) and his Roll No. is shown as 329 and rank obtained was 22.

3. His main grievance is, despite he was selected to the post of Upper Division Clerk, he has not been promoted on the ground that since the enquiry proceedings is pending against the applicant, he could not be promoted. Thereafter, they initiated a disciplinary proceedings against the applicant and on the basis of the findings of the disciplinary proceedings, he was found guilty. Accordingly, the Disciplinary Authority, vide its Order dated January 02, 1989 which was issued on 14.02.1989, imposed a penalty of reduction of pay of the applicant by two stages for a period of three years with cumulative effect. This Office order reads as below :-

"As per Regional Office order No. R.Vig/MH/DC/160/1045 dated 02.01.1989 signed by Regional P.F. Commissioner (I), Bombay.

The pay of Shri A.V. Mirajkar, L.D.C. is reduced to two stages prior to the one which he is presently drawing for a period of three years w.e.f. 2.1.89. Accordingly, his present pay of Rs. 1050/- is reduced and fixed on Rs. 1010/- w.e.f. 2.1.89 in the pay scale of Rs. 950-20-1150-EB-25-1500, with the stipulation that during this period he is debarred from drawing any increments of pay. On the expiry of the period of this penalty the reduction of his pay to the lower stage of his pay will have the effect of postponing the future increments of his pay."

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This punishment imposed on the applicant, would be current upto 01.01.1992.

4. It is an admitted fact, that the applicant did not prefer any appeal against the Impugned Order dated 02.01.1989 issued on 14.02.1989. However, he made representations vide letters dated 10.01.1990 and 30.01.1991 against which the Respondents sent their reply vide their letter dated 04.06.1990 (Annexure A-2) stating that the Competent Authority having passed the appropriate order has become functus officio and that there is no grounds for R.P.F.C. to review or revise the Order dated 02.01.1989. So far as the grievance relating to his promotion as U.D.C. is concerned, he is further informed that he is not entitled to the same during the punishment period.

5. As mentioned earlier, the applicant has not questioned the Impugned Order dated 02.01.1989 passed by the Competent Authority. He has only made a prayer that the Tribunal be pleased to direct the Respondents to hold a Review D.P.C. as on the date, conclusion of Disciplinary Proceedings and the Respondents be further directed to take decision on such review D.P.C. and consequential benefits from that date. Secondly, the Respondents be directed to confirm the applicant after following the due procedure including the holding of D.P.C. as on due date.

6. The Respondents, in their reply negatived the contentions of the applicant stating that since the disciplinary proceedings were initiated against the applicant in September, 1989 for his unbecoming behaviour with his superiors, he was awarded penalty of reduction of pay to two stages prior to which the applicant was drawing for a period of three years with stipulation that during

the proceedings and its ultimate conclusion which may either result in the imposition of a penalty or in the exoneration of the official concerned. In the interval it may be that he may have promotional chances. If he is promoted pending the said proceedings, the public interest will suffer and there will be a public ridicule. At the same time, if there is a with-holding of promotion on the ground of pendency of the proceedings, the officer concerned would stand seriously prejudiced in the event of his being ultimately exonerated or acquitted of the charges." In the result, it was held that the employee is entitled to be considered for promotion as per the rules, alongwith others, if he is duly qualified for the higher post.

8. On perusal of the above citation, it can be said that the judgement is to be understood that whenever a person is due for promotion and if disciplinary enquiry is pending against him, he is not to be given any promotion. However, the right to be considered for the purpose of promotion, cannot be denied to him. In such cases, after considering his case for promotion, the result of the D.P.C. should be kept in a sealed cover till the enquiry is completed or the punishment, if any, as the case may be. In the instant case, such a situation does not arise because he has already been selected, however, before giving promotion, it was well within the knowledge of the Appropriate Authority that the disciplinary proceeding was pending against him, thereby, he could not be given any promotion to the

the period of these three years he was debarred from drawing any increments of pay.

7. We have heard the rival contentions of the parties and heard the arguments of the Counsel Shri S.P. Kulkarni for the Applicant as well as Shri R. K. Shetty for the Respondents. The main grounds agitated in this petition is that, the applicant should have been promoted to the post of Upper Division Clerk on the basis of the result of the Departmental Qualifying Examination, in which the applicant was declared successful, nevertheless, they did not promote him. The Learned Counsel for the applicant, Shri S.P. Kulkarni, urged that the Regional Provident Fund Commissioner is not the Competent Authority to impose major penalty on the applicant. In this connection, he draws our attention to para 4(xiii) of the original application, according to which he submits that the RPFC has no powers to impose major penalty on any employee (even appointed by him). Since the specific delegation of power to do so came to him in the year 1991, therefore, prior to that, R.P.F.C. does not possess any power to impose any major penalty. In support of his contention, he cited a Full Bench decision of the Tribunal in Venkata Reddy & Others V/s. Union Of India & Others [1989 (2) CAT 115] wherein the Full Bench has observed that "Whenever a Government servant is accused of any misconduct and a departmental proceedings is initiated, the procedure contemplated by the relevant rules have to be followed in the conduct of the disciplinary enquiry. There is naturally a time lag between the initiation of

employee and he is also a disciplinary authority by virtue of powers under Part-V Rule 8 of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971. In other words, the R.P.F.C., who is the appointing authority for Class-III and IV employees is also a disciplinary authority for the purpose. In this connection, the Learned Counsel for the Respondents, brought to our notice that pursuant to the Employees' Provident Fund (Staff and Conditions of Services) Regulations, 1962 (as amended upto 31st August, 1992), Rule 5 of the Regulation states that "the appointing authority for various posts in the Organisation shall be as given in the Annexure-I to this regulation." Annexure-I stipulates that R.P.F.C. is the appointing authority so far as L.D.C.s as well as U.D.C.s are concerned. He also draws our attention to the provisions referred to in Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962 Rule 5, Sub-rule (4) which reads as follows :-

"Appointments to other categories of posts shall be made by the Commissioner in accordance with the provisions of the Scheme and the recruitment rules laid down in the Third Schedule. The Central Commissioner shall be the appointing authority for the posts in the Headquarters office and the posts of Head Clerk and Provident Fund Inspector Grade-II in the Regional Offices and the Regional Commissioner for all the remaining posts in their respective regions."

In this connection, he also referred to Section 16 of the General Clause Act, which states that power to appoint or include, power to suspend or dismiss. Therefore, he submits that it is clear from the above provisions that the power to terminate or any other punishment flows

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post of U.D.C. Therefore, the aforesaid decision is distinguishable and the ratio laid down in the said case does not apply to the facts of this case.

9. It is contended by the Respondents that the R.P.F.C., who is the appointing authority for Class-III and IV employees, is also the Disciplinary Authority by virtue of the powers under Part-V, Rule-8 of the Employees Provident Fund Staff (Classification, Controls and Appeal) Rules, 1971 and therefore, there is nothing illegal about the imposition of the major penalty by the R.P.F.C. So far as further promotion is concerned, it is contended that the applicant could not be promoted to the post of Upper Division Clerk, as he was subjected to a major penalty, which proceedings were initiated against him prior to his passing the test for Upper Division Clerk.

10. As stated earlier, the contention of the applicant is that, in his case the major penalty was imposed on him by the R.P.F.C. prior to the date of delegation i.e. on 02.01.1990. Therefore, the action of the R.P.F.C. in imposing the major penalty was ab initio void. Therefore, it is contended that the R.P.F.C. at the relevant time, has no power to impose major penalty. According to the Respondents, power to appoint encompasses the power to discipline and this power includes power to impose major penalty as per Rule 7 of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971. The Respondents in their reply further denied the contention of the applicant and stated that R.P.F.C. is the Appointing Authority for Class-III and IV

naturally and as a sequence from the power to create. This power cannot be delegated to an authority sub-ordinate to the appointing authority.

11. In the light of the above, the question that arises here is, who is the appointing authority of the applicant? Undisputedly, the appointing authority is the R.P.F.C., which would be clear from the perusal of the provisions embodied in Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962. Regulation Rule 3 of the aforementioned ~~the~~ states that "those regulations shall apply to every whole time employee of the Organisation, other than the Commissioner appointed under paragraphs 19 and 20 of the Scheme." Rule 5, Sub-rule (4) of the regulations, which talks of delegation of powers to R.P.F.C. with regard to appointment, which reads as follows :-

"The Central Government, hereby, directs that the power exercisable by it under sub-section (2) of Section 5D of the aforesaid Act shall in respect of officers whose maximum monthly salary is not more than twelve hundred rupees and not less than five hundred rupees, be also exercisable by the Central Provident Fund Commissioner except in respect of Upper Division Clerks and Junior Stenographers in the offices of the Regional Provident Fund Commissioner and the Regional Provident Fund Commissioners in respect of Upper Division Clerks and Junior Stenographers in their respective offices."

It is further made clear that Rule 5, sub-rule (5) that the Commissioner, may, if it is considered necessary, delegate the powers of appointment in respect of Class-IV

posts or any of the junior Class-III posts for which he is the appointing authority, to an officer sub-ordinate to him, but not below the rank of an Assistant Commissioner, etc. On perusal of the aforesaid rules, we are ~~specific~~ ^{satisfied} that the appointing authority of the applicant is the R.P.F.C., hence, the contention raised by the applicant that he is not empowered to impose any major penalty, does not appear to have any substance and such a contention is not sustainable because the R.P.F.C. is empowered to impose major penalty and the penalty imposed against the applicant is just and proper. Though the regulations are being amended from time to time, the powers of the R.P.F.C. have not been changed and he is empowered to impose the required penalty and the same was done in accordance with relevant provisions of the law. However, the Learned Counsel for the Respondents submits that the applicant could not be promoted to the post of U.D.C. in view of Section 19⁽⁴⁾ of the Administrative Tribunals Act, as the matter was pending before the Tribunal. There is considerable force in the contention of the Respondents.

12. In the circumstances and for the reasons stated above, we are of the view that there cannot be any doubt that R.P.F.C. is the appointing authority so far as the applicant is concerned. Since the applicant did not challenge the impugned order of punishment dated 02.01.1989, it is not open to him at this stage to take any irrelevant issues and since he had already undergone punishment and the respondents could not consider his case for promotion to the post of U.D.C., pending disposal of

this petition. The Respondents is not to be faulted.

13. The document furnished by the Applicant at Annexure A-7, which appears to have been received on 1-6-1991, though the full text is not placed, in what context it is issued, the learned counsel for the Applicant was not able to explain and the authenticity of that document is not known to the Applicant's counsel. Therefore, we cannot give any credence and evidentiary value to that document. As stated earlier, since the competent authority to appoint the Applicant has not been questioned, it is not open to us at this stage to get carried away with the oral arguments of the Applicant's counsel.

14. In the result, we hold that it is open to the Respondents to convene a review D.P.C. and consider his promotion to the post of U.D.C. from the date he completes his punishment, i.e. 1-1-1992 and take an appropriate decision within a period of two months from the date of receipt of a copy of this order. While considering his case for promotion to the post of UDC from 1992 onwards, Respondents may also note that he has successfully passed the required examination for the post of U.D.C. in 1987. This may be kept in view while considering his case for promotion to the post of U.D.C. and this exercise be completed within a period of two months from the date of receipt of this order.

15. Both the O.A. No. 712/91 and M.P. No. 696/92 are disposed of in the light of the above. There will be no order as to cost.


(B.S. Hegde)
Member (J)

(21)

M.P.No.1008/91 which was allowed on 6-2-92.

The reliefs originally claimed by the applicant were to quash and set aside the impugned order and to consider the case of the applicant for promotion. But this relief was amended to read as that the respondents should be directed to hold a review DPC as on the date of conclusion of disciplinary proceedings and they should also be directed to confirm the applicant in the lower post of LDC.

19. During the course of arguments, however, the learned counsel for the applicant contended that although he had deleted the relief relating to quashing and setting aside the penalty, the tribunal could well consider the relief because, according to him, the order of penalty is void ab-initio and it has been settled by the judgment of the Supreme Court that an order which is void ab-initio collapses on its own. The proposition that a void order has no life of its own is however difficult to accept. The Hon'ble Supreme Court in *Shiv Chander Kapoor v. Amar Bose* (1990) 1 SCC 234 quoting from Wade's Administrative Law observed in para 23 that 'void' is meaningless in an absolute sense; and 'unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' In the words of Lord Diplock, "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue."

16. I am inclined to agree with the final decision as contained in para 14 above. However, I would like to give my additional reasons and would like to make certain supplementary observations. It is common ground that the applicant has not been confirmed in the lower post of LDC and has not been promoted to the higher post of UDC because of the departmental proceedings which culminated in the order dated 2-1-89 according to which the pay of the applicant was reduced to two steps (prior to the one which he is presently drawing) for a period of three years during which he was also debarred from drawing any increments of pay.

17. The first point I want to note is that although technically the applicant had not appealed against this order, he had filed a representation which he erroneously called 'review' on 10-1-90. Unfortunately the R.P.F.C.(I) took the technical stand that he had passed the order and had become functus-officio and therefore the representation was filed. Thus the applicant lost a valuable departmental remedy of his appeal being considered by the superior departmental authorities. It would have been entirely in order for the R.P.F.C.(I) to treat the so called representation as an appeal and forward it to the appellate authority. Unfortunately he did not do so.

18. Secondly we note that the applicant amended the application under

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We therefore do not agree with the counsel that void order of penalty collapses on its own and a ^{it required} even if it is void order is to be declared as such and then alone a further relief would follow.

20. However, even assuming that the applicant is entitled to the relief of declaring the order of penalty as void irrespective of the amendment made by him to the O.A., let us consider whether the applicant succeeds in persuading us that the order is void for any legal reason. Here counsel for the applicant argues as below: Under Rule 5(4), Regional Commissioner is an appointing authority for all posts in regional office except the post of Head clerk and Provident Fund Inspector Gr.II. However, the applicant contends that the power to appoint does not encompass within itself the power to impose all penalties inasmuch as powers to inflict punishment under Rule 7(i) to 7(iv) i.e. minor penalties were, for the first time, delegated to the Regional Provident Fund Commissioner in relation to the employees of any rank upto the level of superintendent by notification dated 4-6-87 and the power to inflict major penalty on any employee upto the rank to whom he is the appointing authority vide Rule No. 7(v) to 7(ix) i.e. major penalties, were delegated to the Regional Provident Fund Commissioner vide notification dt. 1-6-1991. The contention of the applicant is that in his case the major penalty was imposed on him by the R.P.F.C. prior to the date of delegation viz. on 2-1-90. Therefore the action of the

R.P.F.C. in imposing the major penalty was ab initio void. According to the respondents power to appoint encompasses the power to discipline and this power includes power to impose ^{a.} major penalty. The applicant, however, relies on the case of Lachman Singh vs. Union of India and Ors. 1988(4)SLJ(CAT)906 decided by the Chandigarh Bench. The case of Lachman Singh relies in its turn on the case of Gafoor Mia v. Director DMRL & Ors. (1988)6 ATC 675. It is contended that the case of Lachman Singh is paramaterial relating as it does to the Employees' Provident Fund Organisation and Lachman Singh inter-alia relies on the implications of the delegations of power. In this connection the relevant para reads :

"Reliance has also been placed by the respondents on another order passed by the Central Government, which is dated 14-5-1973 (copy Annexure R-4) in this context. However, a perusal of the said order would show that the power under Rule-8(2) of the EPFS(CC&A) Rules designating the Regional Provident Fund Commissioners as a disciplinary authority competent to impose any of the minor penalties specified in clauses (i) to (iv) of Rule-7 was delegated to them. Obviously this delegation has absolutely no relevance to the point in issue, because the penalty on the applicant Rajinder Sain is a major penalty and not a minor penalty. Hence looked at this matter from any angle there is no escape from the conclusion that the impugned order of dismissal

(copy Annexure P-8) in the case of Rajinder Sain having been passed by the Central Provident Fund Commissioner, who was not the highest amongst the 'appointing authorities' cannot be sustained. It is wholly illegal and void ab-initio."

21. We have considered the case law especially ^{the} ~~case~~ of Lachman Singh heavily relied on by the applicant. In our view, Lachman Singh in its turn relies on the Full Bench judgment in Gafoor Mia vs. Director DMRL & Ors. (1988) 6 ATC 675. Ratio of Gafoor Mia to the effect that a penalty which is not imposed by the highest among the appointing authorities is not valid is no longer good law in view of Supreme Court Judgment in Scientific Adviser to Ministry of Defence v. S. Daniel ATR 1990 (2) SC 134. Therefore, the only point which can if at all help the applicant would be to show as shown in the case of Lachman Singh that at the material date viz. 2-1-89 the R.P.F.C. did not have with him the power of imposing the major penalty in terms of the delegation. The applicant in this regard has quoted notification dt. 1-6-91 but a reference to the original schedule of Administrative and Financial Powers shows that the power to impose major penalty was delegated on the R.P.F.C. on 13-10-88 i.e. to say prior to the date of imposition of penalty on the applicant. The notification dated 1-6-91 referred by the applicant appears to be a circulatory notification and does not indicate the ~~exact~~ exact date of delegation which remains 13-10-88. This was conceded by the counsel for the applicant at the stage of

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arguments. We would also like to note here that there are two sets of rule/regulations viz. Employees' Provident Fund(Staff and conditions of service)Regulations,1962 and Employees' Provident Fund Staff(Classification, Control and Appeal)Rules,1971. In our view it is this latter set of rules which are relevant for the purposes of deciding the case and it is the delegation under Rule 8 related to disciplinary authority which has been modified w.e.f. 13-10-1988 to give the powers of imposition of major/penalty on the staff in question like the present applicant. Therefore, the case of Lachman Singh which appears to have decided prior to the delegation does not also help the applicant. In view of this the only relief the applicant can get is as indicated by my brother Judge in para 14 of his order

with which I concur.

M.R.Kolhatkar
(M.R.Kolhatkar)
Member(A)

22.

In view of this O.A. is disposed of by passing the following order :

"In the result, we hold that it is open to the Respondents to convene a review D.P.C. and consider his promotion to the post of U.D.C. from the date he completes his punishment, i.e. 1-1-1992 and take an appropriate decision within a period of two months from the date of receipt of a copy of this order. While considering his case for promotion to the post of UDC from 1992 onwards, Respondents may also note that he has successfully passed the required examination for the post of U.D.C. in 1987.

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This may be kept in view while
considering his case for promotion
to the post of U.D.C and this exercise
be completed within a period of two
months from the date of receipt of
this order. "

M.R.Koliatkar

(M.R.KOLIATKAR)
Member(A)

B.S.Hegde

(B.S.HEGDE)
Member(J)

M