(2006) 02 SC CK 0017

Supreme Court of India

Case No: Civil Appeal No. 1267 of 2006 (Arising out of SLP (C) No. 23942 of 2003)

Union of India (UOI) and Another — APPELLANT

Vs

S.C. Parashar — RESPONDENT

Date of Decision: Feb. 24, 2006

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 11
- Central Civil Services (Conduct) Rules, 1964 - Rule 3(1), 3(1)(ii), 11(iii)(a), 11(v), 11

Citation: AIR 2006 SC 3566 : (2006) 4 ALT 15 : (2006) 109 FLR 228 : (2006) 4 JCR 18 : (2006) 3 JT 162 : (2006) 2 KLT 107 : (2006) 2 PLJR 200 : (2006) 2 SCALE 527 : (2006) 3 SCC 167 : (2006) SCC(L&S) 496 : (2006) 2 SLJ 490 : (2006) 2 UPLBEC 1429

Hon'ble Judges: S. B. Sinha, J; P. K. Balasubramanyan, J

Bench: Division Bench

Advocate: A. Sharan, A.S.G., Sunita Sharma and Sushma Suri, for the Appellant; Anupam Lal Das, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.
Leave granted.

2. The respondent was a Deputy Commandant in 42 Bn. of Central Reserve Police Force (CRPF). He, in the month of December, 1992, was acting as Officer-in-charge of DAGOs in Delhi in connection with 53rd CRPF anniversary parade which was to be held during the period December, 1992 and January, 1993. He was given a new Maruti `Gypsy'' for performing official duties. He allegedly drove the said Maruti unauthorisedly and at a very high speed beyond his jurisdiction and met with a serious accident when the said vehicle collided with a stationary truck between Mansard and Delhi on National Highway No. 8. The driver of the said Gypsy Link Anand Singh suffered serious injuries on his person. The respondent, however, left

the vehicle unattended. He also left the said driver in an unconscious state. He also did not inform headquarters about the said accident.

3. A disciplinary proceeding was initiated against him on the charges that he failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964 (''the Rules''). In the disciplinary proceedings he was found guilty of the said charges. The disciplinary authority, being the President, imposed the following penalty upon him:

In the light of the above, having regard to all other aspects of the case and after consultation with UPSC the President considers that ends of justice would be met in this case if the penalty of (i) "Reduction to minimum of the time-scale of pay for a period of 3 years (three) with cumulative effect, including loss of seniority and (ii) penalty of 25% (twenty five per cent) of the loss incurred by the Govt. to the tune of Rs. 74,341.89 i.e. Rs. 18,585.47 (Rupees Eighteen thousand five hundred eighty five and paisa forty seven) only on account of damage to the Gypsy in 18 (eighteen) equal monthly installments" is imposed on Shri S.C. Parashar, Dy. 42 Bn. CRPF. The President hereby orders accordingly.

The respondent filed a writ petition before the High Court of Delhi questioning the said order of punishment, which was marked as C.W.P. No. 3992 of 1997.

4. Having regard to the nature of penalty imposed upon the respondent, the counsel appearing on behalf of Union of India contended before the High Court that the same was imposed in terms of Clause (a) of Sub-rule (iii) of Rule 11 of the CCS (CCA) Rules (CCS Rules). The High Court, while refusing to go into the relevancy or otherwise of the material brought on record in the departmental proceeding found that penalty was imposed in violation of the said Rule on the premise that Sub-rule (iii)(a) of Rule 11 provides only for a minor penalty and thus in terms thereof reduction of pay for a period of three years should not have been directed to be effected with cumulative effect. Consequently, it was directed:

The petitioner shall be entitled to seniority on the basis of DPC which was held on 7.4.1997 when his immediate junior was promoted to the rank of Second-In-Command. The petitioner shall also be entitled to all consequential benefits which stood denied due to punishment of loss of seniority.

The learned Additional Solicitor General appearing on behalf of the Appellant contended before us that in the facts and circumstances of the case, Sub-rule (v) of Rule 11 of CCS Rules is attracted and not Sub-rule (iii) thereof.

5. Mr. Anupam Lal Das, learned Counsel appearing on behalf of respondent, on the other hand, would submit that in view of the concession made at the Bar before the High Court and in particular, the fact that two penalties as contemplated under Sub-rules (iii) and (iii)(a) of Rule 11 of CCS Rules were also included in the order of

punishment, the same must be held to be illegal. It was further submitted that the Enquiry Officer or the Disciplinary Authority failed to take into consideration the circumstances under which the accident took place. According to the learned Counsel, the respondent had gone to Mansard to collect some material for the purpose of imparting training to the trainees which being not available, they were returning to Delhi. On his way to Delhi he had his dinner. The driver was sent to the Mess and as the driver being drunk, was not in a fit state to drive, he had to drive the vehicle himself.

6. In this case, we are not concerned with the correctness or otherwise of the report of the Enquiry Officer. Misconduct on the part of the Respondent has been proved. The High Court also did not go into the said question. The respondent has not questioned before us that part of the order of the High Court.

7. The only question, therefore, which arises for consideration is as to whether in terms of the rules the penalty imposed on the respondent was permissible in law. The relevant provision of Rule 11 of CCS Rules reads thus:

PENALTIES

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:

Minor Penalties --

(i) censures;

(ii) withholding of promotion;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

(iii)(a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.

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(v) save as provided for in Clause (iii)(a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

8. It is not in dispute that Sub-rules (iii) and (iii)(a) of Rule 11 provide for minor penalties whereas Clause (v) thereof provides for major penalty. Indisputably the procedure adopted in the departmental proceeding was for imposition of a major penalty. It is trite that even in a case where the procedure followed in the departmental proceedings for imposition of a major penalty, having regard to the

facts and circumstances of a case, minor penalty can also be imposed. The question is as to whether the penalty imposed by the President upon taking into consideration the report filed by the Enquiry Officer, was under Clauses (iii) and (iii)(a) or Clause (v) of Rule 11 of the CCS Rules.

9. Before adverting to the said question we may record that wrong concession of a counsel on a pure question of law is not binding upon a party. It is furthermore trite that non-mentioning or wrong mentioning of a provision in an order may be held to be irrelevant if it is found that the requisite ingredients thereof were available on records for passing the same. We may further notice that the High Court proceeded on the basis that the penalty imposed upon him was a major penalty.

10. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties: (1) reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs. 74,341.89p., i.e., Rs. 18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly installments. Whereas reduction of time-scale of pay with cumulative effect is a major penalty within the meaning of Clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by Clause (iii) and (iii)(a) thereof. The Disciplinary Authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.

11. However, there cannot be any doubt whatsoever that the Disciplinary Authority never intended to impose a minor penalty. The concession of the learned Counsel appearing for the appellant before the High Court was apparently erroneous. It is now well-settled that wrong concession made by a counsel before the court cannot bind the parties when statutory provisions clearly provide otherwise. [See Union of India and Others v. Mohanlal Likumal Punjabi and Others- (2004) 3 SCC 628 . The penalty imposed upon the respondent, in our considered view, therefore, should be kept confined to the reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect. The effect of such a penalty has been considered by this Court in Shiv Kumar Sharma v. Haryana State Electricity Board, Chandigarh & Ors. [AIR 1988 SC 1673] in the following terms:

We are unable to accept the above contention. The penalty was imposed on April 15, 1968, and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant''s increment for one was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from Dec.1, 1969, that is, long after the date of

confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list.

The ratio of the said decision is applicable to the fact of the present case also.

12. In this view of the matter, indisputably, the respondent was entitled to be considered for promotion after a period of three years. We have, however, been informed that he has since been promoted to the rank of Commandant.

13. We, therefore, in modification of the order of the High Court that the punishment which could have been imposed upon the respondent herein was reduction of pay for the period of three years with cumulative effect and, thus, if his case is considered for promotion after the said period, no further direction is required to be issued. We set aside the directions of the High Court to the effect:

The petitioner shall be entitled to the seniority on the basis of DPC which was held on 07.04.1997 when his immediate junior was promoted to the rank of Second-In Command. The petitioner shall also be entitled to all consequential benefits which stood denied due to punishment of loss of seniority,

and direct that the punishment shall be reduction of pay to the minimum of the time scale of pay for a period of three years with cumulative effect

14. With the aforesaid modification, the appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.