A INDIAN DRUGS AND PHARMACEUTICALS LTD. AND ANR.

v.

R.K. SHEWARAMANI

AUGUST 3, 2005

B [ARIJIT PASAYAT AND H.K. SEMA, JJ.]

Service Law :

Industrial Drugs and Pharmaceutical Limited Conduct Discipline and Appeal Rules, 1978—Rule 30(A) (as inserted by amendment)—Departmental C *Proceedings in terms of amended provision—Initiation—Justification of—Two previous departmental proceedings pending—Amendment came into effect after initiation of the previous proceedings—Held : Initiation of proceedings under amended Rule was justified as factors necessary to bring in application of the Rule existed—For initiation of fresh proceedings, giving* D *a go by to pending proceedings not required.*

Two charge-sheets were issued against the respondent-employee. While these charges were pending in departmental proceedings, action in terms of Rules 30(A) of Industrial Drugs and Pharmaceutical Ltd. Conduct Discipline and Appeal Rules, 1978 (as inserted by amendment E **w.e.f. 30.3.1990) were initiated issuing show cause notice. Respondent replied to the notice taking the stand that employer-appellant cannot be permitted to by-pass the enquiry and take action on the basis of amended Rule 30(A). The services of the respondent were terminated.**

F **The Writ Petition challenging the validity of amended Rule 30(A) and the order of termination was allowed by High Court on the grounds that termination order was not passed *bonafide;* that Rule 30(A) was not applicable as two departmental proceedings were pending; and that show cause notice was not in terms of Rule 30(A). Hence the present appeal.**

G

Allowing the appeal, the Court

HELD : 1. There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous H **proceedings pending have been given a go by. The employer is free to proceed**

in as many as departmental proceedings as it considers desirable. Merely because the two proceedings were pending, that did not in any way stand in the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding. [19-B-C]

2. High Court's observation that in the show cause notice there was no reference to Rule 30(A), is not factually correct. Additionally, the respondent-employee was not taken to surprise and no prejudice was caused to him by not mentioning of Rule 30(A) specifically. On the other hand, from his reply it is clearly revealed that he knew that the proceeding was in terms of the amended Rule 30(A). His specific stand was that the company having realized that it will not be in a position to establish the allegations forming foundation of the two departmental proceedings, has resorted to Rule 30(A). That being so, the High Court was not justified in drawing in adverse inference by concluding that non-mention of Rule 30(A) specifically in the show cause notice vitiated the proceedings. There is no dispute that factors necessary to bring in application of Rule 30(A) existed. The High Court was also not justified in coming to the conclusion that the action of the authorities in initiating the proceedings *in terms* of Rule 30(A) is not *bona fide*. [19-D-G]

Pyare Lal Sharma v. *Managing Director and Ors.*, [1989] 3 SCC 448, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5595 of 2002.

From the Judgment of Order dated 22.3.2002 of the Delhi High Court in W.P. No. 1612 of 1991.

V.R. Reddy, Sunil Murarka, S.S. Chaudhary, Ms. Altaf Fatima and Ms. Meera Mathur for the Appellant.

Ms. Deepti Singh and Rajesh Srivastava for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Legality of the judgment rendered by a Division Bench of the Delhi High Court is questioned by the appellants.

A High Court held that the termination of services of respondent by order dated 8.1.1991 was illegal.

The basic facts in a nutshell are as under:

B The respondent-employee was at the relevant point of time working as a medical representative of appellant No. 1-company which undisputedly is "State" within the meaning of Article 12 of the Constitution of India, 1950 (in short the 'Constitution'). He was transferred from Delhi to Eluru in the State of Andhra Pradesh by order dated 17.6.1989. Alleging that the respondent-employee had not joined the transferred post a charge sheet was C issued on 27.9.1989. There was another set of charges and the charge sheet was issued on 12.12.1989. While these two charges were pending consideration in departmental proceedings, action in terms of Rule 30A of the Industrial Drugs and Pharmaceutical Ltd. Conduct Discipline and Appeal Rules, 1978 (in short the 'Rules') was taken. A show cause notice was issued requiring D the respondent to show cause as to why his services shall not be terminated on account of unauthorized absence from duty exceeding 30 days. Rule 30(A) was introduced by way of an amendment w.e.f. 30th March, 1990 on the basis of a decision taken by the Board of Directors on 24.4.1990. On receipt of the show cause notice the respondent-employee took the stand that he had already been charge sheeted and enquiry was going on and, therefore, E the employer cannot be permitted to turn around and by-pass the enquiry and take action on the basis of alleged amended Rule 30(A). Company has realized that it cannot prove the charges in the enquiry and, therefore, the enquiry was being by-passed. He wanted a copy of the approval of the Board of Directors for amending the Rule 30(A) as done on 30.3.1990. The order F of termination was passed keeping in view the unauthorized absence and unsatisfactory reply to the show-cause notice. The Screening Committee after assessing the materials on record came to the conclusion that the services of the respondent were to be terminated with immediate effect under Rule 30(A).

G The order of termination was questioned by filing a writ petition before the Delhi High Court. Validity of amended Rule 30(A) was challenged in addition to taking the stand that the authorities have found it inconvenient to establish the earlier charges and, therefore, have by-passed them and taken resort to amended Rule 30(A) with *mala fide* intents. Present appellants H rebutted the stand and supported the action impugned in the order.

The High Court allowed the writ petition primarily on two grounds; firstly it was noted that there was no material to show that in the last show-cause notice it was indicated that the earlier departmental proceedings were dropped and secondly, in the notice it was not indicated that the same was in terms of the amended Rule 30(A) of the Rules and was not in continuation of the earlier charge sheets. Even after service of the last show cause notice, the respondent had been served minutes of charge sheets dated 27.9.1989 and 12.12.1989 of the proceedings held on 30.7.1990. He was also asked to attend enquiry on certain dates. The High Court, therefore, held that the impugned order cannot be said to have been passed *bona fide*. Rule 30(A) of the Rules had no application as the two departmental proceedings were already pending and those related to periods prior to coming into effect of Rule 30(A) which cannot be said to have any retrospective effect. Accordingly, the writ petition was allowed and the order of termination was set aside. Liberty was however given to the employer for proceedings further with the departmental proceedings against the respondent.

In support of the appeal, learned counsel submitted that the approach of the High Court is clearly erroneous. There is no requirement in law that when a fresh enquiry is commenced, the earlier proceedings should be given a go by. Further, factually also it is not correct as held by the High Court that the show cause notice was not in terms of Rule 30(A). In any event, the respondent himself knew that the action had been taken under Rule 30(A). There was no *mala fide* involved as erroneously observed by the High Court.

In response, learned counsel for the respondent-employee submitted that because of trade union activities the respondent was made a victim. When two proceedings were already in progress, there was no necessity to take resort to Rule 30(A) and that too in a hurried manner without proper opportunity being granted to the respondent to place his side of the case. Therefore, the High Court was justified in interfering with the order of termination.

Rule 30(A) reads as follows:

> "30(A) Notwithstanding anything contained to the contrary in any other rules, the services of any employee shall be terminated by the Company if:-

(a) his post is abolished;

(b) he is declared on medical ground to be unfit for service in the Company, or

(c) he remains on unauthorized absence for thirty days or more.

Explanation:

1. In a case of (a) & (b) above, the services shall be terminated after giving three months' notice to a permanent employee and one months' notice to a temporary employee or pay in lieu thereof in both the cases;

2. In the case of (c) above, services of any employee shall be terminated if he fails to explain his conduct satisfactorily within 15 days from the date of receipt of the Show Cause Notice by him. The Management shall be empowered to take a decision without resorting to further enquiries.

3.(a) The decision in case of (c) above would be taken only with the prior approval of a Screening Committee of 2 Directors/ Executive Director to be constituted for this purpose by the Chairman & Managing Director.

(b) The reasons for the decision would be recorded in writing.

These rules are made effective with effect from 30th March, 1990."

At this juncture, it is to be noted that the validity of a Rule similar to Rule 30(A) was considered by this Court in *Pyare Lal Sharma* v. *Managing Director and Ors.*, [1989] 3 SCC 448. In that case after having held that the concerned rule was *intra-vires*, on the facts of the case it was held the amended rule could not operate retrospectively and could operate only from the date of amendment and, therefore, on the facts of that case it was held that for a period prior to the introduction of the amended provision, action cannot be taken. In the instant case, the period of absence to which reference has been made by the appellants clearly related to a period subsequent to the date of introduction of the amended provision. That being

so, the High Court has rightly not led any stress on that plea though urged by respondent-employee before the High Court. A

That brings us to the crucial question as to whether the High Court's view is sustainable on the facts of the case.

There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous proceedings pending have been given a go by. The employer is free to proceed in as many as departmental proceedings as it considers desirable. Even in a hypothetical case in two of the departmental proceedings the finding is in favour of the delinquent employee, yet in another departmental proceeding finding adverse to the delinquent officer can be recorded. Merely because the two proceedings were pending, that did not in any way stand on the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding. The High Court's view therefore is clearly unsustainable. The High Court had also observed that in the show cause notice there was no reference to Rule 30(A). This is not factually correct. As the records reveal clear reference was made to IDPL Corporate Office letter No.IDP/7/32/Estt/90 dated 24.9.1990. This related to the amendment of Rule 30(A). Additionally, the respondent-employee was not taken to surprise and no prejudice was caused to him by not mentioning of Rule 30(A) specifically. On the other hand, from his reply dated 22.6.1990 it is clearly revealed that he knew that the proceeding was in terms of the amended Rule 30(A). His specific stand as is revealed from reply to the show cause notice is that the company having realized that it will not be in a position to establish the allegations forming foundation of the two departmental proceedings, has resorted to Rule 30(A). That being so, the High Court was not justified in drawing an adverse inference by concluding that non mention of Rule 30(A) specifically in the show cause notice vitiate the proceedings. There is no dispute that factors necessary to bring in application of Rule 30(A) existed. The High Court was also not justified in coming to the conclusion that the action of the authorities in initiating the proceedings in terms of Rule 30(A) is not *bona fide*. B C D E F G

Looked at from any angle, the High Court's order is indefensible and is set aside. The appeal succeeds but without any order as to costs.

K.K.T. Appeal allowed.