

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL NO. 1 OF 2006****With****CIVIL APPLICATION NO. 58 OF 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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COTTON CORPORATION OF INDIA & ORS. - Appellant(s)**Versus****SUDHA VIJAYBHAI PUJARA,****WIFE OF DECEASED VIJAYBHAI PUJARA & ANR. - Respondent(s)**

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Appearance :

MR. D.C. DAVE for Appellant(s) : 1 - 3.

MR. NIRAV C. THAKKAR for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 31/08/2006****ORAL JUDGMENT**

1. After hearing the parties, the appeal is
admitted for hearing the parties on the following

substantial questions of law:

- (i) Whether the first Appellate Court was justified in holding that the Reviewing Authority, while exercising powers under Rule-33 of the Cotton Corporation of India Limited Employees Conduct, Discipline & Appeal Rules, 1975, would become Disciplinary Authority if it proposes to enhance the punishment by awarding major penalty?
- (ii) Whether the first Appellate Court was justified in quashing the entire chargesheet or it should have set aside the final order passed by the Disciplinary Authority with a direction to the said authority to place the entire records, including the proceedings and other material, before the Reviewing Authority to pass an appropriate order in accordance with spirit of Rule-33 of the Rules?

With the consent of the parties, the matter is finally heard.

2. The respondent-plaintiff had filed Regular

Civil Suit No.239 of 1990 in the Court of the 4th Joint Civil Judge (S.D.), Rajkot, seeking the relief of declaration that the order passed by the Disciplinary Authority, discharging him from services, was patently illegal and without jurisdiction.

The suit was contested by the present appellant; the learned trial Court dismissed the suit; the said judgement and decree were challenged by the original plaintiff in Regular Civil Appeal No.31 of 2003, which was finally disposed of on 18th March, 2005 and the learned first Appellate Court decreed the suit; being aggrieved by the said judgement and decree, the defendant is before this Court.

3. The short facts necessary for disposal of the present appeal are that the plaintiff was working as a Cotton Purchaser with the present appellant-Corporation; during the course of his service, it was alleged that the price published in the daily newspapers were not brought to the notice of the Committee Members and it was incorporated in the Minutes without the knowledge of the Committee Members. The lapse was taken to be misconduct on the part of the plaintiff and he was served with a notice by the Branch Manager who under the Rules happened

to be the Disciplinary Authority. After receipt of the explanation, the said Branch Manager was pleased to award punishment of warning *vide* his order dated 21st January, 1988, as contained in Exh.91. It appears that against the order contained in Exh.91, the Chairman-cum-Managing Director decided to review the order; he issued a notice to show cause on 12th December, 1988 (Exh.138) to the plaintiff, informing him that the Chairman-cum-Managing Director ('the CMD' for short) as Reviewing Authority, in exercise of powers conferred upon him under Rule-33 of the Cotton Corporation of India (CDA) Rules, 1975 ("the Rules" for short), orders that regular departmental inquiry be held against the said plaintiff.

3.1 In pursuance of the said direction of the CMD, regular inquiry was made by the Branch Manager and he passed an order of removal of the plaintiff. The order is contained in Exh.82. It bears No.CCI/VIG/DE/VKP/89-90/817 dated 23rd March, 1990. The order was to take effect immediately.

3.2 The plaintiff, being aggrieved by the said order, instead of taking up the matter in departmental appeal, filed the present suit. The learned trial Court, as already observed, dismissed the suit, but the learned

first Appellate Court, after hearing the parties, came to the conclusion that on a true interpretation of Rule-33 of the Rules, the order of punishment could not be made by the Branch Manager because in a case where no inquiry is made under Rule-25 of the Rules and minor penalty is awarded to the delinquent and the Reviewing Authority is of the opinion that major penalty is to be awarded, then, an inquiry is to be conducted and the Reviewing Authority will have to act as the Disciplinary Authority. It, accordingly, held that the order passed by the Branch Manager was bad and without jurisdiction. While setting aside the said order, the learned first Appellate Court also quashed the chargesheet.

4. Mr. Dhaval C.Dave, learned Counsel for the appellants, after taking me through Rule-33 of the Rules, submits that on a true interpretation of Rule-33, it has to be held that an inquiry is required to be made under Rule-25 of the Rules and thereafter, an order is to be passed by the Disciplinary Authority and the said order could be subjected to an appeal before the Appellate Authority or to review before the Reviewing Authority. He submits that if Rule-33 is interpreted otherwise, then too, the learned first Appellate Court could not quash the chargesheet, nor could it say that everything comes

to an end. According to Mr.Dave, the learned first Appellate Court could only quash the order of penalty and require the Disciplinary Authority/Branch Manager to place the entire records before the Reviewing Authority, which, in its turn, could pass an appropriate order as a Disciplinary Authority.

5. Mr.N.C.Thakker, learned Counsel for the respondents, on the other hand, submits that the learned first Appellate Court was absolutely justified in interpreting Rule-33 in the manner it has done and in any case, was also justified in quashing the chargesheet. He also submits that the learned first Appellate Court disposed of the entire appeal on a legal issue and has not adverted itself to the other issues, which were raised by the parties, especially, in relation to violation of principles of natural justice and non-observance of the proper procedure at the time of inquiry by the Branch Manager, non-payment of Travelling Allowance and Dearness Allowance (T.A./D.A.) to the delinquent, which disabled him from taking effective part in the proceedings.

6. I have heard the parties. The Rules of 1975, as applicable to the employees of the appellant-Corporation,

contain provisions relating to award of penalties. Rule-23 defines minor penalties and major penalties; Rule-24 defines the disciplinary authority. According to it, the Competent Authority will also be called the disciplinary authority for the purposes of Rule-24 and it may impose any of the penalties specified in Rule 23 on any employee.

Rule-25 provides the procedure to be adopted for imposing major penalties. According to Rule-25, the Disciplinary Authority itself may act as the Inquiring Authority or it may assign the inquiry to some person, who shall act as the Inquiring Authority, complete the proceedings, record its reports and produce the entire material before the Disciplinary Authority. Rule-26 of the Rules says that the Disciplinary Authority if it is not itself the Inquiring Authority may, for the reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provision of Rule-25 as far as may be. According to Sub.Rule-(2) of Rule-26, if the Disciplinary Authority disagrees with the findings of the Inquiring Authority, then, it may record its own findings if the evidence on

record is sufficient for the said purpose. If the Disciplinary Authority having regard to its findings on all or any of the Articles of the charge, is of the opinion that any penalty specified in Rule-23 is to be imposed, then, notwithstanding anything contained in Rule-27, it shall make an order imposing such penalty. If the Disciplinary Authority is of the opinion that the charges are not made out against the delinquent officer or employee, then, it shall pass an order exonerating the said employee. Rule-28 relates to communication of the orders, while Rule-29 relates to common proceedings in relation to two or more employees. Rule-32 confers a right upon the delinquent employee/officer to challenge the order passed by the Disciplinary Authority before the Appellate Forum. The Appellate Forum shall be entitled to pass any order confirming or reversing, modifying or annulling the order passed by the Disciplinary Authority. The Schedule appended with the Rules refers to the Disciplinary, Appellate and Reviewing Authorities. The Branch Manager would be entitled to act as the Disciplinary Authority upto and including Office Managers and equivalent ranks for minor/major penalties. In such a case, the Chief General Manager (Marketing) or the Chief General Manager (Finance) or any person looking after such duties would be the Appellate Authority, while the

Director (Purchase & Sales) or the Director (Finance) or any Officer looking after those duties would be the Reviewing Authority.

8. Rule-33 of the Rules, which is the subject matter of discussion, reads as under:

“Rule 33 : Review

Notwithstanding anything contained in these rules, the Reviewing Authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

Provided that if the enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in clause (e), (f) or (g) of Rule 23 and an inquiry as provided under Rule 25 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the enquiry and pass such orders as it may deem proper. If the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of Rule 25, the Reviewing Authority shall pass final order.”

A fair reading and understanding of Rule-33

would make it clear that the Reviewing Authority would be entitled to call for the records of the case within six months from the date of the final order, it would be entitled to review the case and pass such orders thereon as it may deem fit. If the Reviewing Authority is of the opinion that in a given case, a major penalty ought to have been awarded and no inquiry under Rule-25 has been made in the case on hands, then, the Reviewing Authority shall direct that such an inquiry be held in accordance with Rule-25, thereafter consider the records of the inquiry and pass such orders as it may deem proper. In case an inquiry under Rule-25 has already been made, then, the Reviewing Authority, without calling for any further inquiry report, may proceed to pass final orders.

9. Present is a case where no inquiry was conducted under Rule-25 of the Rules because the Branch Manager was of the opinion that minor penalty of warning was to be awarded in accordance with Rule-23 of the Rules. The Reviewing Authority, after taking into consideration the entire material available before it, came to the conclusion that present was a case where some major penalty, as provided under Rule-23, was required to be awarded. Once the Reviewing Authority comes to the conclusion and records its opinion that the case on hands

is a case of major penalty and it also finds that the inquiry under Rule-25 was not made, then, it will have to direct that such an inquiry be held and thereafter, it has to consider the records of the inquiry. The word "it" does not refer to the first Disciplinary Authority, which was otherwise competent to make an inquiry under Rule-25, but, the word "it" would refer and relate to the Reviewing Authority. In a case where the inquiry under Rule-25 was not made, the Reviewing Authority shall direct that an inquiry be made under Rule-25 and thereafter, the Reviewing Authority itself has to consider the record of the inquiry and pass such orders as it may deem proper. The learned first Appellate Court, in the considered opinion of this Court, was absolutely justified in holding that on a true interpretation of Rule-33, the Branch Manager could not award any punishment to the plaintiff.

10. In the present matter, once there was a direction by the Reviewing Authority that an inquiry ought to have been made, then, the inquiry papers and the complete records were to be placed before the Reviewing Authority and in a case like that, the Reviewing Authority would be required to pass an order of punishment as a Disciplinary Authority. It would be

proper to note that in a case where the Reviewing Authority holds that the case on hands was a case for award of major penalty and thereafter, the matter is decided by any authority which is subordinate to the Reviewing Authority, then, such subordinate authority would not go against the wishes of the Reviewing Authority. To avoid such a situation and unnecessary pressure upon the first Inquiring/Disciplinary Authority, the rule has been couched in such language to confer jurisdiction upon the Reviewing Authority to exercise its powers as a Disciplinary Authority. If the Disciplinary Authority, subordinate to the Reviewing Authority, does not pass any order according to the wishes of the Reviewing Authority, then, the order can again be reviewed by the Reviewing Authority and ultimately, the punishment, as proposed by the Reviewing Authority, can always be awarded. In a matter like this, if the Reviewing Authority, after receipt of the complete records of the inquiry, exercises its powers as the Disciplinary Authority, then, its order is always subject to appeal or to review before the Officer or Authority, which otherwise is entitled to hear and dispose of the matter where the Reviewing Authority, in fact, is the Disciplinary Authority such as in the cases of the Chief General Managers and equivalent ranks for minor/major

penalties.

11. For the reasons aforesaid, I must hold that the order of termination/removal passed by the Branch Manager was patently illegal and was running contrary to the very spirit of Rule-33 of the Rules.

12. The question still would be that whether the learned first Appellate Court was justified in quashing the chargesheet itself. In my considered opinion, the learned first Appellate Court could not quash the chargesheet, nor could quash the entire proceedings simply on the ground that the Branch Manager had no jurisdiction to award the punishment. If the Branch Manager had no jurisdiction to award the punishment or impose the penalty, then too, he was entitled to make an inquiry under Rule-25 of the Rules and send the complete records to the Reviewing Authority, which, in its turn, would pass an appropriate order. The quashing of the complete proceedings, including the chargesheet, is bad and cannot be allowed to stand.

13. In view of the facts and circumstances, this Court is of the opinion that the Inquiring Authority/Branch Manager should be asked to place the

complete records before the Reviewing Authority for its consideration and for passing of an appropriate order.

14. Mr.Thakker, learned Counsel for the respondent-plaintiff, at this stage, submits that various illegalities were committed during the course of conduction of the disciplinary inquiry, no proper opportunity was afforded to the delinquent, T.A./D.A was not given to him, the documents were misread and even the defence statement, as contained in the written statement, was illegally read in favour of the Department. He submits that for the present, the plaintiff's fate is sealed and the decision is foregone because the Reviewing Authority would not be entitled to examine the correctness, validity and propriety of the inquiry proceedings.

15. Mr.Dave, learned Counsel for the appellant-defendant, on the other hand, submits that a fair understanding of Rule-26 would make it clear that where the Disciplinary Authority is not the Inquiring Authority, it may look into the correctness, validity and propriety of the inquiry proceedings. He submits that the plaintiff would be entitled to raise every question before the Reviewing Authority, which has now become the

Disciplinary Authority and has to act in accordance with Rule-26.

16. Rule-26 of the Rules reads as under:

"Rule 26: Action on the Inquiry report:

1) *The Disciplinary Authority if it is not itself the Inquiring Authority may, for reason to be recorded by it in writing remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provision of Rule 25 as far as may be.*

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 findings 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 23 should be imposed on the employee it shall, notwithstanding anything contained in Rule 27, make an order imposing such penalty.*

4) *If the Disciplinary Authority having regard to its findings on all or any of the Articles of charge, is of the opinion that no*

penalty is called for, it may pass an order exonerating the employee concerned."

The very opening words of Rule-26 show that where the Disciplinary Authority is not itself the Inquiring Authority, it may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provision of Rule-25. Rule-26(1) would cover an eventuality where the Inquiring Authority and the Disciplinary Authority are different. The Inquiring Authority, in fact, is a delegatee of the powers and the delegator would certainly be entitled to look into the correctness, validity and propriety of the proceedings recorded by the delegatee. The Disciplinary Authority would not be bound by the report submitted by the Inquiring Authority, nor it would be obliged to accept the procedure adopted by the Inquiring Authority if it comes to the conclusion that the findings are perverse or the procedure adopted was illegal and was in the teeth of the principles of natural justice.

The apprehension expressed by the learned Counsel for the respondent-plaintiff is unfounded.

17. In view of the above discussion and findings, I hold that the Branch Manager was not entitled to award any punishment to the present plaintiff, but, he could only place the complete records before the Reviewing Authority for passing an appropriate order in accordance with Rule-33, read with Rule-26, of the Rules. The learned first Appellate Court was not justified in quashing the proceedings and giving a clean chit to the plaintiff.

18. In view of the aforesaid discussion, it is further directed that the appellant-defendant would be entitled to proceed further in the matter, give a notice to the legal representatives of the plaintiff, who has died during the pendency of these proceedings, provide them an opportunity of hearing and decide the matter in accordance with law.

The plaintiff or his legal representatives would be entitled to raise every question available to them, including the question of invalidity of the procedure adopted, violation of the principles of natural justice and the question of limitation also.

19. So far as Question No.1 is concerned, in view

of above discussion, it must be held that in view of the language employed in Rule-33 of the Rules, the moment the Reviewing Authority proposes to impose a major penalty in a case where no inquiry was made under Rule-25, then, the Reviewing Authority becomes the Disciplinary Authority for the purposes of imposing penalty or awarding punishment.

20. So far as Question No.2 is concerned, in view of the above discussion, it must be held that the learned first Appellate Court was not justified in quashing the entire chargesheet and complete proceedings of the inquiry, but, it should have, after setting aside the punishment order passed by the Branch Manager, asked the Reviewing Authority (which would now be the Disciplinary Authority) to take up the matter as the Disciplinary Authority, provide an opportunity of hearing to the delinquent and pass orders afresh as the Disciplinary Authority.

21. The appeal to the extent indicated above is allowed. There shall be no order as to costs. A decree be framed accordingly.

22. In view of the final disposal of the Second

Appeal, Civil Application No.58 of 2006 stands disposed of.

*kamlesh**

[R.S.Garg, J.]