

R-114

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 02.12.2010
Judgment Delivered on: 06.12.2010

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RSA No.168/2002

ASHA RAM

.....Appellant

Through: Mr.R.K.Kapoor, Advocate.

Versus

THE FOOD CORPORATION OF INDIA Respondents

Through: Mr.P.L.Chopra, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 13.8.2002 which had endorsed the finding of the Trial Judge dated 15.1.2002 whereby the suit of the plaintiff Asha Ram had been dismissed.

2. The plaintiff was appointed as an Assistant Manager with the Food Corporation of India (FCI). His contention was that he was illegally removed from his services. Charge sheet had been issued by the Senior Regional Manager who was below the rank of Appointing Authority; he had no jurisdiction to issue the charge sheet on a major penalty against the plaintiff. The Zonal Manager was the Appointing Authority as also the Disciplinary Authority; he alone could have issued the charge-sheet. In July 1994 one Technical Assistant namely Bhim Sen working under the plaintiff at the Food Storage Depot, Bhadaur had applied for his leave

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between 20.7.1994 to 27.7.1994. Tej Singh, another Technical Assistant also applied for a six day casual leave w.e.f. 21.7.1994 to 23.7.1994 and then from 25.7.1994 to 27.7.1994. Subsequently their leaves were recommended. To protect the interest of the Corporation in the absence of the aforestated technical assistants, the plaintiff made a local arrangement and on 21.7.1994 deputed Mahesh Kumar a Technical Assistant, Grade-I to look after the works at Bhadaur in addition to his duties at Tapa in order that the work of Bhadaur did not suffer. This arrangement was made by the plaintiff with a prior intimation to the District Manager. Mahesh Kumar joined duties at Bhadaur on 21-22.7.1994. In this period Mahesh Kumar offered to accept agency mill rice at Food Storage Depot Bhadaur for delivery and 103 consignments were accepted by him; this was done by Mahesh Kumar at his own level without the knowledge of the plaintiff. On this information Inspector of Food and Civil Supply suspecting the rice to be sub-standard took samples of this rice which had been accepted by Mahesh Kumar. Manohar Lal on the directions of the District Manager had proceeded to Bhadaur for drawing the samples. He had submitted a false reported against the plaintiff. This was with a malafide intention. All this happened in the absence of the plaintiff who was busy over his own work. Plaintiff in fact gained knowledge about this fact from other sources. Complaint was filed against the plaintiff. Plaintiff was placed under suspension vide suspension order dated 3-5.9.1994. This order was passed by defendant no.3 who had no jurisdiction to do so. Enquiry was conducted whereby the plaintiff was dismissed. The present suit was accordingly filed praying that the enquiry proceedings i.e. RSA No.168/2002

enquiry report dated 19.5.1995 and the penalty imposing dismissal of service of the plaintiff dated 15.1.1995 be declared null and void and he be re-instated with all back wages.

3. Defendant had contested the suit by filing written statement. It was stated that the plaintiff was involved in the various vigilance cases. These had been concealed by the plaintiff; plaintiff had not availed of the remedy before the appropriate forum; he could not have filed a suit straightway. Reliance had been placed upon Regulation 57(2) of the Food Corporation of India (FCI) (Staff) Regulations 1971; it was stated that the defendant no.3 was competent to issue the charge sheet as also to pass the suspension order. It was stated that the plaintiff had intentionally permitted the two Technical Assistants to go on leave in order that he could avail services of Mahesh Kumar to accept sub-standard rice from the rice miller at Bhadaur. This was in collusion with Mahesh Kumar; this had caused loss to the tune of Rs.1.64 crores to the department. Enquiry was conducted within the ambit of Rules and Regulations of defendant no.1.

4. On the pleadings of the parties eight issues had been framed. Issue nos.5,6 and 7 are relevant and were disposed of by a common discussions. They read as follows:

“.....

v. Whether there exists any cause of action in favour of the plaintiff and against the defendant for the purpose of the present suit? OPP

vi. Whether the plaintiff is entitled for the relief of declaration as claimed as per the prayer clause? OPP

vii. Whether the plaintiff is entitled for the consequential relief of reinstatement with back wages as claimed as per the prayer clause? OPP

..... ”

5. The trial judge held that under Regulation 57(2) defendant no.3 the Senior Manager was competent to issue charge sheet as also suspension order. The penalty of removal of services was in proportion to the charges established against the plaintiff. Plaintiff had been granted ample opportunity to cross-examine the witnesses in the enquiry proceedings; enquiry was in accordance with the principles of law. No bias had accrued to the plaintiff. Suit of the plaintiff was dismissed.

6. In appeal the impugned judgment dated 13.8.2002 had confirmed this finding.

7. This is a second appeal. It was admitted and three substantial questions of law were formulated on 02.7.2003; which were thereafter amended on 19.11.2008; they inter alia read as follows:

“1. Whether chargesheet and inquiry were issued/conducted by a competent authority and whether Regulation 57(2) of the Food Corporation of India (staff) Regulations, 1971 was properly applied in this behalf?

2. Whether the punishment imposed upon the appellant was disproportionate?

3. Whether there was violation of principles of natural justice?”

8. Learned counsel for the appellant has urged that the first substantial question of law has to be addressed and if this finding is in his favour the other two questions need not be answered. It is pointed out that Rule 57(2) of the FCI Regulations did not permit the Senior Manager to issue charge sheet or to place the plaintiff under suspension. This had vitiated the entire proceedings. Reliance has been placed upon AIR 1969 Assam & Nagaland High Court Manihar Singh Vs. Supdt. Of Police, Shilong to substantiate his submission that framing of charges, holding of an enquiry into

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them, the suspension of the civil servant during the enquiry, the notice to show cause, are all steps in the exercise of the disciplinary powers; all these steps are required to be taken by the disciplinary authority and not by his delegate. It is submitted that in view of the ratio of the judgment of the Apex Court reported in 1999- (003)-SCC-0422-SC Babu Verghese & Ors. Vs. Bar Council of Kerala & Ors., the Supreme court had clearly held that the basic principle of law has long been settled that when a particular act is prescribed under any statute, that act must be done in that manner or not at all. In this case the Rule 57(2) of the Regulations of the FCI have not been adhered to. Reliance has also been placed upon AIR 1989 SC 1582 Marathwada University Vs. Seshrao Balwant Rao Chavan to point out that the power to regulate work and conduct of officers cannot include the power to take disciplinary action for their removal.

9. Arguments have been countered. Attention has been drawn to the provisions of Rule 54 and 57(2) of the FCI Regulations 1971.

10. Relevant it would be to extract the said Rules. They read as follows:

“54. Penalties:

Notwithstanding anything contained in any other regulation, and without prejudice to such action to which an employee may become liable under any other regulation or law for the time being in force, the following penalties may (for good and sufficient reasons and as hereinafter provided) be imposed on any employee of the Corporation.

Minor Penalties

- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders;
- (iv) withholding of increments of pay;

Major Penalties

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation 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;
- (vi) reduction to a lower time-scale of pay or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of the Corporation was reduced and his seniority and pay on such restoration to the post;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Corporation;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation.

57. Authority to institute proceedings:

(1) The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix 2) empowered in this behalf by general or special order of the Board may:

- (a) institute disciplinary proceedings against any employee of the Corporation;
- (b) direct a disciplinary authority to institute disciplinary proceedings against any employee of the Corporation on whom that disciplinary authority is competent to impose under these Regulations any of the penalties specified in Regulation 54.

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of Regulation 54 may institute, disciplinary proceedings against any employee of the Corporation for the imposition of any of the penalties specified in clauses (v) to (ix) of Regulation 54 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties."

11. Rule 57(2) clearly states that a disciplinary authority who is competent under these regulations to impose a penalty specified in Clause (i) to (iv) of Regulation 54 may institute disciplinary proceedings against any employee of the Corporation for major penalty which is specified in Clause (v) to (ix) of Regulation 54. This is accompanied by the rider which is a non-obstante clause stating that this power is available to this disciplinary authority notwithstanding that this disciplinary authority is not competent otherwise under these regulations to impose this latter penalty i.e. the major penalty. Meaning thereby that the disciplinary authority who is not competent to impose the major penalty under Rule 54 may still be competent to institute disciplinary proceedings against such an employee.

12. Circular No.16 dated 09.1.1989 has further clarified Rule 57(2). A distinction between the institution of the disciplinary proceedings against an employee for imposition of a major penalty and the actual imposition of a major penalty had been drawn. The aim of the circular as is clear from the para 4 was to clarify this position with regard to initiation and the final disposal of the cases started under the provisions of Regulation 57(2). Clause (4) reads as follows:

“4. Where a lower authority such as the District Manager/Regional Manager feels that proceedings for major penalty against a Class-III/II employees are called for, such an authority may himself frame the charge memo, sign the same and issue it to the delinquent official concerned. Such an authority may also proceed to examine the reply received from the official concerned and appoint an Inquiry Officer as well as a Presenting Officer, if necessary. On completion of the inquiry, the authority who ordered the inquiry should examine the proceedings and if he comes to the conclusion that only a minor penalty is called for, he will award the same and close the case at his own level. However,

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if on examination the proceedings, comes to the conclusion that the case deserves a major penalty, he will pass on the proceeding to the competent authority i.e. Regional Manager/Zonal Manager for further disposal.”

13. The clarification made in this Circular has answered the query raised by the learned counsel for the appellant. The submission of the learned counsel for the appellant that a circular cannot substitute the provision of a Regulation which has a statutory force is without any merit; this circular has only clarified what is contained in Regulation 57(2); it has cleared the ambiguity if any.

14. Rule 57(2) thus gave power to the Senior Regional Manager (who in this case was defendant no.3) to issue the charge sheet as also to place the plaintiff under suspension which was in accordance with the aforementioned rules. There is no violation of the same. The judgments relied upon by learned counsel for the do not come to his aid.

15. The facts adduced before the Enquiry Officer which had led him to impose a major penalty upon the plaintiff had been appreciated and re-appreciated by the two fact finding Courts below i.e. the Court of Civil Judge and Court of the Additional District Judge. Both had found no merit in the contention raised; it was held that a fair opportunity had been granted to the plaintiff/delinquent to present his case. He had himself cross-examined the witnesses.

16. These Articles of Charge has been leveled against the delinquent; they read as follows:

“Article-I

That he allowed leave to the two TA’s posted at FSD

Bhadaur to make room for Sh.Mahesh Kumar TA-I, to accept the rice at Bhadaur who was deployed from Tapa to look after the work of the TA's during their leave period. He did not obtain approval of the Distt.Manager for making this arrangement for which he was not competent as TA/DA was involved. This was done in collusion with Sh.Mahesh Kumar TA-I who accepted BRL rice valuing Rs.1.64 crores at FSD Bhadaur.

Article-II

That from 22.7.94 to 27.7.94, 103 rice consignments consisting of 25650 bags pertaining to agency milling valuing Rs.1.64 crores falling beyond rejection limit were accepted under his direct supervision with mala fide intention to derive monetary gains for himself and in lieu thereof he gave undue favour to the Rice Millers in the matter of acceptance of their substandard rice. Thus he put the corporation to huge pecuniary losses.

Article-III

That he failed to exercise effective supervisory checks rather he in connivance with Sh.Mahesh Kumar TA-I, sent improved samples to the DFSC Lab.Barnala after a gap of 16 to 20 days to further his vested interests. Thus he committed a fraud against the corporation with a predetermined idea."

17. Report of Enquiry Officer is dated 19.5.1995, Article-I stood fully proved excepting cost of BRL rice. Article-III was partly proved; it was proved that the delinquent Asha Ram had failed to exercise effective supervisory check on Mahesh Kumar when the latter accepted rice at Bhadaur; this was all the more necessary when permanent staff posted at Bhadaur had been sent on leave by him and Mahesh Kumar had been detained temporarily to look after this work. The act of the plaintiff in permitting the technical assistants to go on leave to avail the services of Mahesh Kumar whose act of acceptance of sub-standard rice and not exercising the due supervisory control over him were serious charges calling for the major penalty of dismissal of service of the plaintiff.

18. In (1975) 2 SCC State of A.P.Vs. Chitra Venkata Rao the Supreme Court had held:

“.....The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court.....”

19. A Court does not sit in an appeal over the finding of an Enquiry Officer; only if the findings of the Enquiry Officer are perverse and opposed to the principles of natural justice is an interference called for. No such case is made out. This has been held by both the Courts below.

Substantial questions of law are answered accordingly. There is no merit in the appeal; it is dismissed.

(INDERMEET KAUR)
JUDGE

DECEMBER 06, 2010
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