

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 356 of 2002

Reserved on: July 20, 2011
Decision on: August 4, 2011

B.R.S. PANWAR

..... Petitioner

Through: Mr. Chetanya Siddharth, Advocate

versus

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through: None.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

JUDGMENT
04.08.2011

1. The Petitioner, who was working as an Assistant Manager (QC) with Respondent No. 1 Food Corporation of India ('FCI'), challenges an order dated 27th July 2001 passed by the Disciplinary Authority ('DA') agreeing with the report of the Inquiry Officer ('IO') and imposing the penalty of recovery of Rs. 28.68 lakh from the terminal benefits of the Petitioner and dismissing him from service.

2. What stands out about the entire disciplinary proceedings is the manner in which the FCI went about conducting it. The Petitioner was to retire on 31st July 2001. The FCI appears to have waited till about two months prior thereto to initiate the proceedings in respect of certain events which took place in May 1998. One charge sheet was served on the Petitioner on 15th May 2001. Even before he could reply to the said charge

sheet a second one was issued to him on 23rd July 2011 and he was asked to furnish a reply “within ten days”. A copy was marked to the District Manager, FCI, Hissar with the following note:

“The District Manger, FCI, Hissar. He is requested to serve the memorandum upon the official concerned under dated acknowledgment which may be sent to this office immediately. If the CO requests for inspection of documents relevant to this case he be allowed to inspect the same with specific directions to do so within two days of the receipt of the memo and submit reply within four days thereafter, without fail. The reply of CO be forwarded immediately. If the CO does not submit reply within the stipulated period as above, necessary intimation to this effect must be given to this officer immediately after the expiry of this period. The details report/forwarding letter by which the dated acknowledgment of the CO regarding delivery of memo as well as his reply invariably be signed by him. The bio-data of the official may also be sent on the prescribed proforma especially mentioning the basic pay being drawn presently.”

3. To say that failure to submit any reply to the above charge sheet amounted to an admission by the Petitioner reflects the mindset of the Respondent. The Petitioner was directed to inspect the relevant documents by 25th July 2011 and to furnish a reply within four days thereafter, i.e. by 29th July 2001. In any event, prior to 29th July 2001 no order on the said charge sheet could have been passed. Yet on 27th July 2001 itself the DA passed an order holding the Petitioner guilty. The only reason given for this extraordinary hurry is that a notice of preliminary hearing could not be served on the Petitioner as he was on medical leave. The IO opined that the Petitioner had not submitted any documentary proof of his having been admitted to a hospital. The DA concluded that “it is *prima facie* unbelievable that the C.O. is inflicted with all manner of infirmities only at this stage when inquiry against the charges had to be conducted

in a time bound manner keeping in view the date of his retirement.” Consequently, Regulation 63 of the Food Corporation of India (Staff) Regulations, 1971 was invoked and everything averred in the charge sheet was accepted. It is remarkable that the DA had failed to notice that the memorandum dated 23rd July 2001 gave the Petitioner six days’ time to submit a statement of papers after inspection of documents. The said letter was asked to be given to him through the District Manager, FCI, Hissar for inspection and offer his reply within six days that expired on 29th July 2011 and yet the DA passed the order removing the Petitioner from services on 27th July 2001 itself.

4. The Petitioner has placed on record medical records which support his case of having been unwell during the period in question. Clearly, the Petitioner was not even given a chance to place the above documents on record.

5. The counter affidavit offers no explanation for the extraordinary procedure adopted. It is only stated that the medical records produced appear to be backdated. It is further contended that the Petitioner was actually served with the first charge sheet on 15th May 2001 but no reply had been filed. It appears that there were two charge sheets issued, one on 15th May 2001 and the second one on 23rd July 2001. It is stated that the second charge sheet dated 23rd July 2001 was for a minor penalty whereas his dismissal was based on the earlier charge sheet issued on 15th May 2001. It is stated that the Petitioner had avoided the enquiry on a false pretext.

6. The order of the DA however does not make such distinction. The narration of facts in the impugned order only states that the notice of preliminary hearing could not be served on the Petitioner. A disciplinary proceedings was initiated against the Petitioner alongwith six other officers, one Mr. P.R. Sharma, AM (D) was appointed as

Presiding Officer ('PO') but he declined to continue as such when he was pressurized to complete the enquiry before 31st July 2001 and another PO, namely, Mr. M.B. Singh, AM (QC) was appointed in his place. By an order dated 15th/16th July 2001 the IO had in fact fixed 6th August 2001 for hearing and yet on 27th July 2001 itself the DA passed the impugned order.

7. Even on merits, it appears that the Petitioner was in Narwana on departmental duty till May 1998 and no accusation has been made against him during that time for having accepted any sub-standard food articles. It appears that no effective opportunity was given to the Petitioner to defend himself. To saddle the Petitioner with the entire loss of Rs. 28.68 lakhs allegedly suffered by the FCI appears to be arbitrary and disproportionate. The extraordinary hurry shown by the FCI in fast tracking the enquiry proceedings violated the right of the Petitioner to effectively defend himself in the enquiry proceedings. The impugned order of the DA dated 27th July 2001 is stated to be bad in law.

8. It is not denied in the counter affidavit that the report of IO was not furnished to the Petitioner and no opportunity to show cause was granted to him prior to the imposition of the penalty. Learned counsel for the Petitioner has placed reliance on the decisions of the Supreme Court in *Managing Director, ECIL v. B. Karunakar* 1993 (4) SCC 727, *Disciplinary Authority v. Shanti Prasad Goel* 1998 (7) SCC 84 and *Kumaon Mandal Vikas Nigam Limited v. G.S. Pant* 2001 (1) SCC 182.

9. The only explanation given in the counter affidavit is that since the Petitioner did not file any reply to the charge sheet and failed to cooperate in the enquiry proceedings, the dismissal order was passed in accordance with the rules. This can

hardly be an explanation for not furnishing to the Petitioner a copy of the report and seeking his explanation before imposing a major penalty of removal from service. The failure of the FCI to follow the basic procedure in imposing a major penalty is fatal to the proceedings.

10. Considering that the Petitioner had no effective opportunity of defending himself in the enquiry, the resultant failure to follow the procedure in accordance with law vitiates the impugned order of the DA. The Petitioner has pointed out that as regards his unauthorized absence from 5th to 30th July 2001 the order dated 31st July 2001 directed that pay and terminal benefits for this period not be given to him. This still does not justify the denial of an opportunity to the Petitioner to defend himself against the charge sheet served on him on 15th May 2001.

11. For all the aforementioned reasons, the impugned order dated 27th July 2001, passed by the DA removing the Petitioner from his services is hereby set aside. It is further directed that the Petitioner would be given all consequential benefits as if he had not been removed from service by the impugned order and retired in the normal course on 31st July 2001. The terminal and other benefits now be released to the Petitioner by the Respondent together with salary for the month of July 2001 and other increments which had been withheld on account of the impugned order together with his leave encashment, gratuity, CPF and other benefits within a period of twelve weeks from today. In case of failure to do so, the Petitioner would be entitled to penal interest @ 9% per annum on the said amount for the period of delay. The consequential orders dated 22nd January 2003 and 25th February 2003 seeking to recover the penalty amount of Rs. 28.68 lakhs from the Petitioner are also quashed.

12. The writ petition is allowed in the above terms, with costs of Rs. 5,000/- which will be paid by the Respondents to the Petitioner within four weeks.

S. MURALIDHAR, J

AUGUST 4, 2011

rk