

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA NO. 2 of 2009**

% **Judgment reserved on: 12th January, 2011**
Judgment delivered on: 10th March, 2011

National Fertilizer Limited & Anr. Appellants
Through Ms. Ravi Birbal, Mr. Sanjiv Kumar Saxena,
and Mr. G. Joshi, Advocates.

VERSUS

B.S. Rahi & Ors. Respondents
Through Mr. Rakesh Upadhyay, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether 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

Sanjiv Khanna, J.

The appellant, National Fertilizer Limited, by this intra-court appeal assails the judgment dated 17th October, 2008 allowing Writ Petition (Civil) No. 13672/2006 which was filed by the respondent herein, Mr. B.S. Rahi. By the impugned judgment, it was, inter alia, held that the Board of Directors of the appellant had, vide order dated 7th July, 2006, erred in accepting the resignation letter dated 9th

September, 2003 with effect from 25th November, 2003. The appellant has been directed to reinstate the respondent and pay back-wages with effect from 25th November, 2003 till the date of his retirement on 31st December, 2005.

2. The respondent had joined Fertilizer Corporation of India on 5th June, 1972 and upon bifurcation became an employee of the appellant with effect from 1st April, 1978. He worked up, on various posts and on 1st June, 1996 he was promoted as Manager (Material) and was posted at Bhatinda. On 6th September, 1996, after preliminary enquiry, the respondent was suspended in a 'Jute Bag case' along with some other officers. On 13th December, 1996, the suspension of the respondent was revoked. Central Bureau of Investigation investigated the said case and by their letter dated 24th April, 1999 recommended initiation of departmental proceedings.

3. On 3rd July, 2002, a charge-sheet was issued to the respondent in respect of procurement of spares of angle valves and ammonia feed pumps from M/s Kalyani Engineering Works. An enquiry officer was appointed and as per his report dated 27th January, 2003, the enquiry

officer concluded that almost all the charges stand proved against the respondent.

4. On 24th April, 2003, Chief Vigilance Officer of the appellant had issued show cause notice to the respondent for lack of serious efforts to recover dues from Punjab Poly Jute Corporation and Tirgun Auto Plast. Ltd.

5. In 2003, on scrutiny of the property/assets return files of the respondent, lapses were noticed in submitting the requisite details regarding immovable properties. By memorandum dated 28th March, 2003, the respondent was asked to furnish clarification on the points mentioned in the memorandum. The respondent had submitted a reply dated 5th May, 2003 but the same was found to be unsatisfactory and by another memorandum dated 28th May, 2003, the respondent was advised to submit required information with regard to his immovable properties by filing Form F. The respondent replied by letter dated 24th June, 2003, which was again found to be unsatisfactory by the appellant. However, further proceedings were kept in abeyance as the respondent was dismissed from service pursuant to departmental

proceedings mentioned hereinafter. It may, however, be relevant to reproduce below, a portion of memorandum dated 28th May, 2003 :-

“2. In earlier communication, it was requested that Mr. Rahi should provide full details regarding each transaction, for example, date, source of finance, ownership etc. in the Form “F”. But Mr. Rahi has still not submitted information about transactions and source of finance in respect of following transactions made by his wife in the prescribed Form “F” –

- Plot of 500 yds. Opposite NFL guest house and construction of the House.
- House at Mohali in the name of self.
- Plot of 650 yds at village Gilpatti, Bhatinda termed as agricultural land in joint name with his wife.
- Purchase of Agricultural land 6.75 acre (rural land) out of which 4 acres has been purchased in joint name of Mr. Rahi, his wife and his son, the sale of ancestral property. Both the transactions have not been intimated in Form “F”.
- 2 nos. booths and one shop purchased by Shri Rahi and his wife. Out of the above, one booth in the name of Smt. Inder Kaur was sold for 65000/-. No information in Form “F” was submitted regarding purchase and disposal of the booth /shop.

- Two plots in Distt. Gurdaspur 14.5 marla each acquired as ancestral property were also not informed.
- Holiday resort at Chandigarh.

3. Mr. Rahi has stated in Sept. 1998 NFL authorities had asked him to submit the details regarding immovable/movable properties as per NFL prescribed procedure, however, Mr. Rahi did not submit the detailed information in Form "F" as per NFL rules but instead gave a brief note about various properties on plain paper, which does not indicate details of parties with whom transactions were made and the sources of funds involved.

As per NFL Employees (CDA) Rule 20 (i) prior information to Management regarding each and every immovable transaction is necessary. An employee need not be asked personally in this regard. NFL has a well prescribed policy regarding reporting of immovable transactions and all employees are expected to follow the procedure. A senior officer cannot take a plea that provision of conduct/rules are not known to him and that he did not give proper information because he was not specifically asked to do so. Strangely, now when he has been specifically asked to do so even then he has not done so.

Shri B.S. Rahi is advised to submit the required information on each point with regard to the above immovable properties by filing Form "F" in respect of each property within a period of 15 days from the receipt of this Memorandum."

6. Another charge-sheet dated 15th September, 2003 was issued to the respondent for leakage of official documents. This charge-sheet was issued as Bibi Surjeet Kaur, sister of the respondent, had written two representations alleging therein that injustice was done to the respondent and along with the representations, she had enclosed copies of official documents including notings from confidential files which were not supposed to be made available to the outsiders. However, no further proceedings have taken place in the said chargesheet.

7. In addition to the aforesaid, the respondent had faced departmental enquiry in the matter of reclamation of rail wheel burns, scabbing, cup welding at rail tracks at Bathinda. We are concerned with this enquiry. Chief Vigilance Officer in his report had observed that the award and execution of work, verification of job, quality of work and release of payment, etc. were not done as per the prescribed procedure and were not given proper attention by the concerned officials. The concerned officers including the respondent, were asked to give their explanation.

8. The Department of Fertilizers examined the aforesaid report and observed that it was a fit case for initiation of departmental proceedings against the respondent and others who were prima facie found to be guilty in the vigilance enquiry. Board of Directors of the appellant constituted a Disciplinary Committee of three senior officers to take further course of action in the matter. Explanation from 8 officers including the respondent was called on various points. After considering the explanation received and the relevant documents, Disciplinary Committee decided to take disciplinary action against the respondent and one Mr. A.K. Aggarwal. The committee authorized the Chairman-cum-Managing Director of the appellant to take further action including appointment of an enquiry officer. Thereafter charge-sheet dated 17th April, 2003 was issued to the respondent. Mr. Rajneesh Goel, the then Director of Department of Fertilizers was appointed as the enquiry officer. During the course of enquiry proceedings, the respondent submitted his resignation on 9th September, 2003. However, the same was not accepted by the Board of Directors of the appellant for two reasons, firstly, the disciplinary

enquiry in the railway reclamation case was pending; and secondly, disciplinary action against the respondent for leakage of official documents was contemplated. There is clear admission by the appellant in the counter affidavit filed by them to the writ petition that the resignation dated 9th September, 2003 was declined and was not accepted. This averment in the counter affidavit and the said aspect will be adverted to in the subsequent portion of this judgment.

9. The enquiry officer in his report dated 22nd October, 2003, held that Article I, II, III, IV and V of charge stood proved and Article VI was partly proved against the respondent. After receiving the enquiry report, the respondent made a representation denying all charges. The Disciplinary Committee, however, accepted the findings in the enquiry report and imposed major penalty of dismissal on the respondent with forfeiture of gratuity vide resolution dated 24th November, 2003. Chairman-cum-Managing Director of the appellant by his order dated 25th November, 2003, passed the order of dismissal of the respondent with forfeiture of gratuity.

10. The said order was made subject matter of challenge in the writ petition No. 23746/2005 before this Court. By the order dated 19th April, 2006, the respondent was given liberty to file an appeal against the order of dismissal and forfeiture of gratuity before the appellate committee of the Board of Directors of the appellant.

11. The appeal filed by the respondent was considered by the appellate committee of the Board of Directors in their meeting dated 1st June, 2006, which resolved to constitute a committee to inspect the site in question. The appellate committee also resolved that the respondent would be given an opportunity of personal hearing. The two member committee inspected the site and furnished a report to the appellate committee. The committee observed that the visual inspection had revealed that no repairs had been carried out in the exchange yard outside the factory premises. The committee further observed that it was not in a position to comment on the extent of work executed against the quantum of work claimed to have been done but on some of the locations, no repairs could be seen or no work was practically visible. The committee, however, expressed its inability to give any

expert opinion on the extent of repair that was not carried out. The committee also expressed that it was not possible link up repair jobs carried out with the amount claimed in phase I and phase II of the reclamation of rail wheel burns.

12. The appellate committee of the Board of Directors gave personal hearing to the respondent and by their order dated 7th July, 2006, set aside the order dated 25th November, 2003 dismissing the petitioner and forfeiting his gratuity and directed that the resignation of the respondent dated 9th September, 2003 should be accepted with effect from 25th November, 2003.

13. It is not possible to accept the plea and contention of the appellant that the appellate committee of the Board of Directors could have accepted and acted upon the resignation letter dated 9th September, 2003 sent by the respondent. As noted above, the said resignation letter was not accepted by the appellant. In the counter affidavit filed by the appellant to the writ petition, it has been specifically averred as under:-

“(I) One of the important thing that happened during the course of the aforesaid enquiry proceeding, that the

petitioner by his faxed letter dated 9th September, 2003 submitted his resignation from the service of NFL which however was not accepted by the competent authority i.e. Board of Directors of NFL primarily for the following reasons:-

- (i) Disciplinary enquiry in railway reclamation case was pending and was going on.
- (ii) By that time disciplinary action against the petitioner in the matter of leakage of official documents was under contemplation in which he was finally charge-sheeted by charge sheet dated 15th September, 2003. Therefore, it was realized that the petitioner had offered his resignation to avoid disciplinary action in such a serious matter, therefore, resignation was not accepted.”

14. Once the resignation letter was not accepted and was declined, the same could not have been accepted by the appellate committee of the Board of Directors without renewed or a fresh request made by the respondent tendering his resignation. The approach and the action of the appellate committee to accept the resignation of the respondent, which had already been rejected and had lapsed, is faulty and legally untenable. The appellant had defended and justified the acceptance of the resignation letter by the appellate committee of the Board of Directors on the following grounds:-

“The appellate authority had so decided to set aside the dismissal order dated 25th November, 2003, keeping in view long service of the petitioner in NFL and his superannuation on 31.12.2005. Another factor which compelled the Appellate Committee to set aside the order dated 25th November, 2003 was unclear and definite findings in the report of the committee. It was only for the humanitarian consideration the Appellate Committee of the Board decided to set aside the order dated 25th November, 2003 but at the same time it decided to accept the resignation dated 9th September, 2003 as the report of the committee constituted to inspect the site in question has not clearly held and reported that the petitioner was not at all guilty and/or was not responsible for the latches in the job of reclamation of rail wheel burns etc.”

15. The aforesaid grounds do not justify acceptance of the resignation letter in the year 2006, which had already been declined three years back, during the course of the disciplinary proceedings in 2003. The appellate committee was competent to take humanitarian view but not by accepting the resignation letter. The resignation letter by its very nature, means a voluntary act which may or may not be accepted by the employer. It is essentially contractual in nature and must have the essential ingredients of a valid contract i.e. offer and acceptance. Letter of resignation is an offer which normally requires

acceptance by the employer to constitute a concluded contract/agreement. The offer of resignation once made and rejected, does not get revived merely because the appellate committee of the Board of Directors felt and thought that it was humanitarian to accept the resignation letter. The aforesaid principle is subject to a contract or a statutory provision to the contrary. The appellant has not rested their case on any such exception.

16. In view of the aforesaid legal position, learned counsel for the appellant has submitted that the matter should be remanded to the appellate authority for fresh consideration and in support thereof, reference has been made to the following judgments :

- (i) ***State of Haryana and another vs. Jagdish Chander***, (1995) 2 SCC 567;
- (ii) ***State of Punjab & Ors. vs. Dr. Harbhajan Singh Greasy***, (1996) 9 SCC 322;
- (iii) ***S.C. Girotra vs. United Commercial Bank (Uco Bank) and Ors.***, 1995 Supp(3) SCC 212.
- (iv) ***Ramesh Chand vs. Commissioner of Police, Delhi & Ors.***, (2000) 1 LLJ 271 (Supreme Court)

17. We have given a thoughtful consideration to the said contention. In the present case, we are not inclined to remand the matter to the Board of Directors. The respondent has already retired from service. He has also been paid his retirement benefits in the form of gratuity etc. No pension is to be paid to the respondent. The enquiry proceedings in the chargesheet were initiated some times in 2002 with report of the Chief Vigilance Officer. It has been 8 years since then. The real issue which survives is the question of back wages which have been directed to be paid by the impugned judgment dated 17th October, 2008 for the period between the order of dismissal on 23rd November, 2003 till retirement of the respondent on 31st December, 2005. In view of the aforesaid facts, we feel that the interest of justice will be served in case 50% back wages are paid to the respondent for the period 23rd November, 2003 till 31st December, 2005 i.e. from the date of order of dismissal till retirement of the respondent.

18. The appeal is accordingly disposed of. The judgment dated 17th October, 2008 passed in Writ Petition (Civil) No. 13672/2006 is modified to the extent indicated above. There shall be no orders as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

MARCH 10, 2011
KKB/pg