

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10447 of 1998

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Ram Shinghasan Yadav, son of late Kapur Chand Prasad Yadav, resident of Mohalla Kankarbagh, Gate No.5, P.S. Kankarbagh, District Patna-20.

.... Petitioner/s

Versus

1. The Union of India, through its Managing Director, Food Corporation of India, Head Quarter 1620, Barakhambha, Lane, New Delhi
2. The Managing Director, Food Corporation of India, Head Quarter, 1620 Barakhambha Lane, New Delh
3. The Zonal Manager (East), Food Corporation of India, 10 A, Middleton Raw, Calcutta-71
4. The Senior Regional Manager, Regional Office, Food Corporation of India, Exhibition Road, Patna-1
5. The District Manager, Food Corporation of India, Patna
6. The District Manager, Food Corporation of India, Saharsa
7. The Deputy Manager (MOV-T-OPN) Enquiry Authority, Food Corporation of India, Regional Office, Patna-1

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Bilash Mahto
With Manoj Kumar Singh

For the FCI : Mr. PRABHAKAR TEKRIWAL

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 10-03-2015

1. Heard learned counsel for the petitioner and learned Counsel appearing on behalf of the Respondent Food Corporation of India.

2. In substance, the petitioner seeks quashing of an order dated 18.1.1997 (Annexure-5) passed by Senior Regional Manager, Food Corporation of India, Regional Office, Patna whereby, punishment of "Censure plus recovery of loss to the extent of one years basic pay" has been imposed upon the petitioner.

3. A disciplinary proceeding was initiated against the petitioner, who was at the relevant point of time posted as AG.I (D) at FSD, Madhepura during the period from 1986 to 1991 under Regulation 58 of Food Corporation of India (Staff) Regulations, 1971 vide memorandum dated 14.7.1995. Following was the charge framed against the petitioner:-

“That Shri R.S. Yadav, AG.I(D) was posted at FSD, Madhepura during the period from 1986 to 1991 and he was holding the charge of the depot. In accordance with Prescribed procedure/existing rules, he being over-all Incharge of depot, it was his duty to take care for safety of stock and for the proper maintenance of all the records held in the godown . Occurrence of any malpractices and delay in accounting, depot-in-charge is to be held responsible.

A Squad consisting of S/Shri Asarfi Prasad, AM (QC), R.B. Singh, AG.II(Min) and Bhanu Karamkar, AG.III (D) was constituted by the District Manager, FCI, Purnea with the direction to conduct P.V. of Stock/store held in the godown at FSD, Madhepura.

The Squad conducted verification of stock and after completion of P.V. discrepancies/shortages as indicated hereunder were detected.

1) a) Stack No.B/4 of the depot contained 160 bags of Wheat excess.

b) Stack No.b/14 of the depot contained 41 bags of Wheat excess.

c) Stack No. B/19 of the depot contained 55 bags of Wheat excess.

2. a) Stack No. B/18 of the depot contained 194 bags of wheat short.

b) In alleyways, there were shortages of 62 bags of Wheat.

3. a) Stack No. B/A/1 contained 23 bags of sugar excess.

b) Stack No. b/8 contained 23 bags of sugar short.

4. On 100% weighment of sugar stock, there

were shortages of 37.22.700 qtls. Of sugar.

5. It was detected bby the P.V. squad that superfine Rice bags were got mixed with common Rice bags.

6. There were discrepancies in gunny accouants and 112 pcs. Of S.H. 3 gunny were found excess and 105 pcs. Of unserviceable gunny bags were found short. There was shortages of 03 Pcs. Of gunnies and also there is shortage of 4 packets in small gunny of imported sugar bags.”

4. A departmental enquiry was held. The Inquiry Officer submitted his report on 18.9.1996. The enquiry report has been brought on record by way of Annexure-4 to the writ application. The Inquiry Officer found the charge against the petitioner to be substantially proved except with respect to shortage of 3 pieces of gunnies and four packets in small gunny of imported sugar. The Inquiry Officer, on the basis of evidence adduced during enquiry, record in paragraph 3 of the report that maintenance of stock was in mess “Tiwari godown”. He came to a finding that it was the outcome of the total dereliction of duties and holding supervisory charge of the said godown, on the part of the petitioner, that shortage of the materials occurred in the godown. The Inquiry Officer found the petitioner squarely responsible for his lapse in his supervisory duty of AG.I (D) and Depot In-charge, involving gross negligence leading to gross irregularities in maintenance of the articles in the godown. The Disciplinary Authority, agreeing with the findings of the Inquiry

Officer imposed upon the petitioner the punishment as has been noted above vide order dated 18.1.1997 which is under challenge in the present writ application.

5. The petitioner had preferred appeal against the said order passed by the Disciplinary Authority dated 18.1.1997 which came to be dismissed by an order dated 10.12.1998 passed during the pendency of the writ application by the Zonal Manager (East) Calcutta, Food Corporation of India. The appellate order has been brought on record by way of Annexure-1 to the counter affidavit filed on behalf of the Respondent- Food Corporation of India. The petitioner has not challenged the said appellate order dated 10.12.1998 in the present proceeding. The appellate authority in his order dated 10.12.1998 has specifically recorded that there was sufficient evidence to come to a conclusion that the petitioner was responsible for shortage of huge amount of sugar. He came to a conclusion that it was a case of improper supervision by the Depot In-charge which led to abnormal shortage of gunny bags for which the petitioner could not escape his responsibility of proper and timely inspection and checking of Depot records maintained in various sheds. He accordingly, affirmed the order of the disciplinary authority imposing punishment upon the petitioner.

6. Challenging the order passed by the disciplinary



authority, it has been asserted in the writ application in paragraph 5(IV) that during the course of enquiry, the petitioner, on 3.7.1996 had requested the Inquiry Officer for supply of certain additional documents but those additional documents could not be made available to the petitioner during the short period granted by the Inquiry Officer and consequently such additional documents could not be submitted by the petitioner for his defence.

7. A counter affidavit has been filed on behalf of the respondent Food Corporation of India asserting that the petitioner was given time to procure documents which were available. The petitioner though obtained extract of such documents but he failed to exhibit such documents. As regards additional documents, it has been stated that there is no pleading in the writ application as to how the petitioner's case was prejudiced because of non-supply of such documents or whether such documents was relevant at all or not.

8. Learned counsel appearing on behalf of the petitioner has challenged the impugned action on the ground of non-supply of relevant documents which according to him were essential for developing defence in favour of the petitioner. He has drawn my attention to the enquiry report to make out a case that the petitioner had demanded production of certain documents which were relevant for the purpose of reaching to a correct conclusion in the departmental

proceeding but such documents were not produced by the Corporation before the Inquiry Officer. He has referred to paragraph 1 of the report of the Inquiry Officer in this regard.

9. In support of his submission, learned counsel for the petitioner has relied upon Supreme Court decision in case of Kashi Nath Dixit Vs. Union of India reported in (1986) 3SCC 229.

10. Mr. Prabhakar Tekriwal, learned counsel appearing on behalf of the Respondent Food Corporation of India, has on the other hand, submitted that the petitioner was given reasonable opportunity of being heard in course of the disciplinary proceeding. He had sufficient opportunity to adduce evidence in his favour before the Inquiry Officer. He had ample opportunity to cross examine the witness and produce his own witness. He accordingly, submits that there has been no violation of principles of natural justice. He further submits that on the basis of evidence made available in course of departmental enquiry, the Inquiry Officer came to the finding of the petitioner's guilt which finding was subsequently accepted by the disciplinary authority who imposed the punishment by the impugned order. He submits that the order of the disciplinary authority merged with the order of the appellate authority who affirmed the order of the disciplinary authority. He submits that in the absence of any challenge to the order of the appellate authority, this writ application



cannot entertain wherein the petitioner has sought for quashing of the order of the disciplinary authority only, which subsequently merged in the order of the appellate authority. He would further contend that the findings of the Inquiry Officer, the disciplinary authority or the appellate authority cannot be said to be perverse as they are not based on such evidence/material which can be said to be irrelevant. He has also submitted that there is no pleading in the writ application as to which document the petitioner had demanded in course of the disciplinary enquiry which were not supplied to him and in what manner non-supply of such documents prejudiced the petitioner's case. He has accordingly submitted that the petitioner's plea that departmental enquiry is vitiated because of non-supply of documents demanded by him is not tenable. He has relied upon a Supreme Court decision in case of Union of India and others vs. P. Gunasekaran reported in 2014 AIR SCW 6657 in order to submit that scope of judicial review under Article 226 of the Constitution of India over the findings of the disciplinary authority in a departmental proceeding is limited and such interference would be warranted only if the findings can be said to be perverse, without any evidence.

11. Having heard and considered the rival submissions made on behalf of the parties, I find that the petitioner's plea that the order of the disciplinary authority is vitiated because in course of



departmental proceeding the additional documents demanded by him were not supplied, cannot be accepted. This is for the reason that I do not find any pleading in the writ application as what were those documents which the petitioner had demanded for the purpose of his defence in course of the disciplinary proceeding. Secondly, there is no pleading as to how such documents were relevant for the purpose of the charges and the disciplinary proceeding and thirdly, there is no pleading in the writ application as to how non-supply of those documents actually prejudiced the petitioner's case. In the absence of these pleadings in the writ application, submissions made on these aspects cannot be accepted.

12. The Supreme Court decision in case of Kashi Nath Dixit Vs. Union of India (supra) is of no avail to the submission made on behalf of the petitioner. In case of Kashi Nath Dixit Vs. Union of India (supra), the appellant had set out in detail and had specifically quoted as to how he had been prejudiced in regard to his defence on account of non-supply of copies of the documents. In that circumstance, the Supreme Court held that respondents could not be able to satisfy that no prejudice was occasioned to the appellants of that case. Judgment in case of Kashi Nath Dixit Vs. Union of India (supra) is clearly distinguishable on facts of this case.

13. The Supreme Court in case of S.B.I. Vs. Bidyut Kr.



Mitra reported in (2011) 2 SCC 316 considered the necessity of showing prejudice, caused to an employee in a disciplinary proceeding, which in fact resulted in miscarriage of justice because of non-supply of list of documents. The Supreme Court negated the plea that a disciplinary proceeding stood vitiated because of non supply of documents as the delinquent had failed to point out as to what prejudice had been caused during the course of enquiry. In the present case also, I do not find any pleading in the writ application as regards prejudice caused to the petitioner in course of departmental enquiry, because of non-supply of those documents.

14. Mr. Prabhakar Tekriwal, learned counsel appearing on behalf of the Food Corporation of India appears to be right in his submission, while relying upon Supreme Court decision in case of Union of India and ors. Vs. P. Gunasekaran (supra) regarding the scope of exercise of power by the High Court under Article 226 of the Constitution of India over the findings of the disciplinary authority. It is settled law that the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India will normally not re-appreciate the evidence and will interfere with the findings arrived at by the disciplinary authority only when such findings are based on no evidence or based on such evidence which are irrelevant and no person of ordinary prudence, on the basis of same material would

reach to the same conclusion as arrived at by the Disciplinary Authority. The High Court while exercising such power will normally not go into the adequacy of evidence.

15. Having held thus, and keeping in mind the fact that the petitioner has not elected to challenge the order of the appellate authority, I do not find any merit in this application.

16. This application is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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