

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 1213 OF 2002**

M. V. Rao, S/o Shri V Rao, aged about 48 years, Technical Assistant, Grade I, Food Corporation of India, Mandir Hasod, Raipur (C.G.)

---- Petitioner**Versus**

1. Zonal Manager, Food Corporation of India, Raipur, (C.G.)
2. Food Corporation of India, through Regional Manager, Bhopal, (Madhya Pradesh)
3. District Manager, Food Corporation of India, Raipur (C.G.)

----Respondents

For Petitioner	:	Mr. Anmol Sharma, Advocate.
For respondents	:	None

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****12/07/2016**

1. This petition has been filed by the petitioner assailing validity and correctness of order dated 29/11/2001 passed in appeal affirming the order of penalty of removal from service imposed upon the petitioner by the Disciplinary Authority vide order dated 07/07/2000.

2. quintessential facts for adjudication of controversy involved in this petition are:-

2.1 During the period, petitioner was posted and working as Technical Assistant, Grade-I in the office of respondents at Basna Depot, on an allegation of misconduct, charge sheet was issued to the petitioner and a departmental inquiry was instituted against him by issuance of the charge sheet dated 06/08/1998. As many as five charges were levelled against the petitioner. Petitioner submitted his reply to the charge sheet, which was not found satisfactory and the Disciplinary Authority proceeded to appoint Inquiry Officer. The Inquiry

Officer held departmental inquiry, in which, employer produced as many as 9 prosecution witnesses and 15 documents. Thereafter, the petitioner was granted opportunity to lead defence. In addition to documentary evidence relied upon by the petitioner, the petitioner in rebuttal of the charges, examined 3 defence witnesses namely Shri R. N. Nagwanshi, Shri H.N. Singh and Shri B.L. Das.

2.2 The Inquiry Officer, upon conclusion, prepared an inquiry report dated 07/07/2000 (Annexure P-2), in which, he concluded that all the charges, five in number, are proved against the petitioner. The Disciplinary Authority, agreeing with the inquiry report held the petitioner guilty of charges and vide impugned order dated 29/11/2001 imposed penalty of removal from service. It was further held that suspension period shall be treated as period not spent on duty.

2.3 Aggrieved by the order of penalty, petitioner preferred appeal which was dismissed vide order dated 29/11/2001, affirming the order of the Disciplinary Authority, giving rise to this petition.

3. Assailing correctness and validity of impugned orders passed by the Disciplinary Authority and Appellate Authority, learned counsel appearing for the petitioner contended that the inquiry report and the orders passed by the Disciplinary Authority as well as the Appellate Authority on the said inquiry report are vitiated on the ground of unfairness inasmuch as the defence of the petitioner has not been considered at all by any of the authorities.

4. Learned counsel for the petitioner argued in extenso to submit that the charges levelled against the petitioner were serious in nature, which eventually resulted in an order of extreme penalty from removal of service but none of the authorities have touched the defence of the petitioner. The

allegation pertains to false preparation of report regarding quality of rice, false entry of less quantity as also false weighment, which all constituted serious allegations. The inquiry was initiated on the basis of certain preliminary report based on inspection made in the store and stock during that period the petitioner was on sanctioned leave. In reply to the charge sheet, the petitioner vehemently denied each and every allegation. He not only cross-examined prosecution witnesses but also led oral and documentary evidence in his defence but none received consideration. Therefore, this has vitiated the entire inquiry and consequential orders impugned in this petition.

5. Next submission of learned counsel for the petitioner is that the Appellate Authority as well as Disciplinary Authority have mechanically accepted the inquiry report without applying its independent mind to the material available on record of the inquiry. Orders of penalty are under challenge on further ground that as more than one employee including petitioner were alleged to have committed misconduct of similar nature in the same transactions, common proceedings were required to be drawn under the Rules, which was not done. Therefore, for this reason also, the inquiry is illegal. Lastly, it is submitted that the finding against the petitioner that he was In-charge of preservation of food grains is perverse because even as per records and documents of the prosecution, petitioner was only In-charge of procurement and other employees were holding charge of work of preservation of food grains. Once the procurement was made, job of the petitioner was over and if there is any discrepancy found in the quantity, quality or storage, petitioner could not be held responsible.

6. In support of his submission learned counsel for the petitioner placed reliance upon **Anil Kumar v. Presiding Officer and others**¹, M/s.

¹ (1985) 3 SCC 378

Mahabir Prasad Santosh Kumar v. State of U.P. and others² and Narinder Mohan Arya v. United India Insurance Co. Ltd. and others³.

7. None appeared for the respondents even in the second round.

8. After hearing learned counsel for the petitioner, in the considered opinion of this Court, this petition deserves to be allowed for the reasons as stated infra:-

9. A perusal of the charge sheet shows that number of serious charges were levelled against the petitioner. Four charges leveled against the petitioner were, in substance, founded on serious allegation that the petitioner had prepared false documents with regard to quality and quantity of received food grains. Serious allegations were levelled that the petitioner deliberately under weighed receipt of food grains. Not only this, there were allegation that the petitioner failed to supervise proper stacking of food grains, which resulted in waste of food grain and consequent loss to the corporation. Thus, each charge itself constituted serious misconduct.

10. The reply on record read conjointly with the inquiry report goes to show that during inquiry, prosecution presented as many as 15 documents and as many as 9 prosecution witnesses, and the petitioner was also given opportunity to cross-examine those prosecution witnesses. The reply of the petitioner also discloses that the petitioner had substantial defense which he sought to establish by filing as many as 28 documents and examining 3 defence witnesses.

11. However, perusal of the inquiry report shockingly reveals that there is no mention at all, as to what was the defence of the petitioner, what defence documents were produced by him and why the oral evidence and defence was rejected and the prosecution evidence, documentary and oral

² AIR 1970 SC 1302

³ (2006) 4 SCC 713

evidence both were preferred to hold for charges proved against the petitioner. The inquiry report is completely unilateral. It nowhere considers the defence of the petitioner. The Inquiry Officer proceeded to examine only prosecution evidence and recorded a finding of guilt against the petitioner. This clearly establishes beyond all pale of doubt that the Inquiry Officer was completely biased and had actually prejudged each and every charge against the petitioner. This also reflects that the inquiry was only a farce. Otherwise, there was no reason why there is no whisper of defence evidence in the inquiry report. The inquiry report, therefore, was only an out come of most unfair attitude of the Inquiry Officer.

12. A disciplinary inquiry is a serious matter. It attains much more seriousness where charges are serious so much so which ultimately lead to imposition of major penalty like removal or dismissal from service. When an employee loses employment, he loses his source of livelihood, earning, bread and butter. It needs no authority for settled legal position that the departmental inquiry is a quasi-judicial proceedings. Strictly speaking, it is not completely civil nor completely criminal but it has been held to be quasi criminal in nature. Though it is not the requirement of law that charges of misconduct should be proved by a high degree of proof beyond all reasonable doubt, it is equally well settled that charges can be proved by applying the principle of preponderance of probability. In the process of judicial application of mind, the inquiry officer, in the very nature of exercising quasi judicial function, is obliged under the law to take into consideration the entire material collected during inquiry which consists not only all the prosecution evidence but equally, defence evidence also. The duty of the Inquiry Officer not only to allow the prosecution and defence, full opportunity to lead their respective documentary and oral evidence but also to apply its objective mind to each and every oral and documentary evidence collected

during inquiry before it reaches a conclusion of fact that charges are either proved, partly proved or not proved. The Inquiry Officer is required to examine the defence evidence and record clear finding why it gave preference to the evidence led by prosecution and reasons for disbelieving the defence.

13. In the case of **Anil Kumar (supra)** the Supreme Court emphasized upon the duty of Disciplinary Authority in a disciplinary inquiry as below:-

“6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

14. Applying the aforesaid principles, if inquiry report is scanned, it is completely biased document and to say the least, it can not be said to be “inquiry report” in its true sense but it is more in the nature of prosecution brief.

15. Unfortunately, the Disciplinary Authority as well as Appellate Authority, despite the ground raised on behalf of the petitioner, completely failed to appreciate that so called inquiry report could not be acted upon against the petitioner. A perusal of the order passed by Disciplinary Authority shows that it mechanically accepted inquiry report little realizing that the defence of the petitioner was nowhere considered, much less appreciated in its proper perspective. The Appellate Authority, to say least, only completed last stage of formality by dismissing the appeal.

16. True it is that the Disciplinary authority and the Appellate Authority

while agreeing with the inquiry report may not be required to record very detailed reasons, but nevertheless the order must reflect due application of mind on material on record with specific reference to the defence of the delinquent employee. Both Disciplinary Authority as well as Appellate Authority failed to perform duty while acting in their quasi-judicial capacity, rendering the petitioner vulnerable to extreme hardship of losing his source of livelihood.

17. The inevitable conclusion, therefore, is that the orders passed by the Appellate Authority as well as the Disciplinary Authority are vitiated. The logical conclusion of the aforesaid discussion is that the inquiry proceeding from the stage of preparation of the inquiry report are vitiated as illegal, arbitrary, irrational and in utter violation of principles of natural justice on facts. The inquiry report is also quashed.

18. The question which now arises for consideration is whether at this stage, the case should be remanded back to the Disciplinary Authority to get a fresh inquiry report prepared on the basis of oral and documentary evidence collected during inquiry.

19. Present is a case where the petitioner was subjected to departmental inquiry by issuance of charge sheet as back as on 06/08/1998. The departmental inquiry finally culminated in order of removal passed on 07/07/2000 and dismissal of appeal vide order dated 29/11/2001. It is also informed that the petitioner has already attained the age of superannuation.

20. Considering aforesaid circumstances, this Court is inclined to follow the course of action as adopted by the Supreme Court in the case of **G. Vallikumari v. Andhra Education Society & Ors.**⁴, wherein, in the similar circumstances, it has been held as under:-

⁴ 2010 (2) SCC 497

21. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course.

22. In *Supdt. (Tech I) Central Excise v. Pratap Rai*, 1978 (3) SCC 113, this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the authority concerned is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge.

23. In *Bhagwan Lal Arya* case, a somewhat similar approach was adopted by this Court by recording the following observations: (SCC p. 566, para 14)

“14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.”

21. Weighing balance on both the sides i.e. interest of the Institution as also hardship of the petitioner and complication which may arise in sending

the matter back for preparation of fresh inquiry report in such an old and stale matter, interest of justice demands that the chapter should be closed here.

22. In the result, the impugned orders are set aside. The petitioner shall be deemed to have continued in service and the benefit of retirement shall accrue to the petitioner. As far as loss of wages are concerned, considering that there were serious charges levelled against the petitioner, I am inclined to grant only 25% of back wages to the petitioner.

23. The petition is accordingly partly allowed in the manner and to the extent indicated herein-above.

Sd/-
(Manindra Mohan Shrivastava)
Judge