

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Appeal No.444 of 2016

JUDGMENT: *(per Hon'ble Sri Justice V. Ramasubramanian)*

Aggrieved by the judgment of the learned single Judge in allowing the writ petition filed by the respondent-employee, setting aside the order of penalty, the Management of the Food Corporation of India, has come up with the above appeal.

2. Heard Sri Dantu Srinivas, learned counsel for the appellants and Smt. K.Udayasri, learned counsel for the respondent.

3. Disciplinary proceedings were initiated against the respondent, through a charge memo dated 27.11.2001. The only article of charge framed against the respondent was that while he was functioning as Assistant Grade III (Tech.), at Devarapalli, he had accepted a consignment of 600 bags of Raw Rice Grade 'A' from a Trader, not only exceeding rejection limits in respect of the refraction of dehusked grain by 7% and in respect of the refraction of admixture of inferior grain by 0.3% but also beyond issuable limits.

4. An enquiry followed and the Enquiry Authority, by a report dated 25.07.2002, held that the charge was not proved. But the Disciplinary Authority chose to take a different view and issued a show cause notice. After the respondent submitted his explanation, the Disciplinary Authority held that the charge was proved and imposed upon the respondent a penalty of reduction of pay to the bottom most stage in the time scale of pay, which will have effect of postponing the increments for three consecutive years. Against the said penalty, the respondent an preferred appeal and a review petition, which were dismissed. Then the respondent came up with a writ petition. The writ

petition was allowed on the sole ground that the sampling procedure prescribed by the Department had not been followed by the Vigilance squad to come to the conclusion that the quality of food grains received by the respondent exceeded the rejection limits. Aggrieved by the said order, the employer is on appeal.

5. There has never been any dispute about the fact that whenever a consignment of more than 500 bags are received and the consignment is suspected to be of a inferior quality, a true representative sample had to be drawn from 80 bags. It is also admitted that in this case the sample was drawn only from 20 bags with poker.

6. Once the very procedure for drawing the sample to come to the conclusion that an employee was guilty of receiving a consignment beyond rejection limits, is found to be faulty, then it would follow automatically that the very foundation of charge will be in doubt. It is with this doubt, the Enquiry Officer as well as the learned single Judge of this court, has come to the conclusion that the respondent-employee is not guilty of the charge.

7. Violation of sampling procedure was attempted to be overcome by the Disciplinary Authority as well as the Appellate Authority, on the ground that even according to the respondent-employee, the possibility of human error cannot be ruled out while judging the 1/4th surface area of the bran layer on kernel for assessing dehusked grains content. In the circumstances, we are of the considered view that the Department cannot substitute a new procedure for the one prescribed by law for finding the employee guilty. Therefore, we find no reason to interfere with the order of the learned single Judge.

8. Hence, the appeal is dismissed. There is no order as to costs. Miscellaneous petitions pending if any this appeal, shall stand closed.

V.RAMASUBRAMANIAN, J

A. SHANKAR NARAYANA, J

Date: 04.07.2016
BSS

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