

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 1783 of 1999 (O&M)
Date of decision : December 14, 2017

Food Corporation of India,

..... Appellant

v.

Shri Swaran Singh,

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. KK Gupta, Advocate
for the appellant.

Mr. GS Bal, Sr. Advocate with
Mr. ADS Bal, Advocate
for the respondent.

Ajay Tewari, J (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and thereby decreeing the suit of the respondent.

Since the controversy in this case lies in a narrow compass, detailed reference to the facts is not necessary. The respondent was working with the appellant-Food Corporation of India and a charge sheet was issued to him. Inquiry was conducted under Clause 58 of the Food Corporation of India (Staff) Regulations 1971 (for short “the Regulations”). Sub clause 19 of Clause 58 of the Regulations is quoted herein below :-

“(19) The inquiry authority may after the completion of the production of evidence hear the Presenting Officer, if any appointed, and the employee, or permit them to file written briefs of their respective

case, if they so desire.”

It is not disputed that under this sub clause, the Inquiry Officer permitted both the parties to submit written brief. For that purpose, as per the respondent, it was required that the respondent would submit his brief within three days of the receipt of the brief of the department. However, the brief of the department was sent to him at a wrong address and was received by him only on 29.4.1986. He gave his own written brief in response and submitted it on 2.5.1986. This was received by the Inquiry Officer on 7.5.1986 but by then the inquiry report had already been submitted on 30.4.1986. In the circumstances, the Inquiry Officer forwarded the brief of the respondent to the Disciplinary Authority. However, that brief was not considered even by the Disciplinary Authority and the order of dismissal was passed on 5.6.1986.

As mentioned above, the trial Court dismissed the suit but the lower appellate Court reversed that finding and that is how the Corporation is before this Court.

To my mind, the most salient fact is that the written brief of the respondent was neither considered by the Inquiry Officer nor by the Disciplinary Authority because even the dismissal order does not reflect the fact that the written brief has been considered.

Counsel for the appellant has argued that the respondent has not been able to prove that the prosecution brief was received by him on 29.4.1986 so that his brief dated 2.5.1986 could be considered in time. From the inquiry file, which has been placed on record as Ex.P55, I find that there is a telegram dated 22.4.1986 which was sent by the respondent to the Inquiry Officer wherein he requested her to advise the Presenting Officer to

submit his brief. It is, thus, clear that the brief was not received by him till that date. To this telegram, no reply was given. Moreover, in the departmental appeal filed by the respondent also he had specifically raised this issue in ground No.4 but no finding thereon was given by the Appellate Authority. Resultantly, in my opinion, the preponderance of probability is that the respondent received the prosecution brief and filed his own written brief within three days thereafter but, as mentioned above, the inquiry report had already been submitted by then. This is a serious infraction because once the Inquiry Officer had permitted the department to file its written brief and had granted time to the respondent also to file his own written brief, the said brief would have to be considered and the report which was submitted without considering the same would have to be held against the principles of natural justice.

Counsel for the appellant has further argued that even if there is some infirmity in the process, the Court should send the matter back so that fresh proceedings are taken from the stage where the infirmity had occurred but the order of dismissal cannot be set aside in such a cavalier manner as has been done by the lower appellate Court.

I find myself in agreement with this argument. In the circumstances, the inquiry report and the dismissal order are set aside. However, that would not result in automatic reinstatement or other consequential benefits to the respondent. The matter is remitted back to the Disciplinary Authority to consider the entire material which has come on the record including the written brief submitted by the department as well as the respondent and then take a decision about the guilt or innocence of the respondent. Thereafter, the Disciplinary Authority will also decide about

the punishment, if any, which may have to be imposed upon the respondent. It will also decide as to how the intervening period is to be treated if it is held that the respondent is not to be dismissed or his services are not to be terminated. For this purpose, the Disciplinary Authority may either apply for return of the original record if it is with the Court or even act upon the copies which, counsel for the appellant states are with them, or with other copies which may be existing. Since the appellant is stated to be 70 years of age, the Disciplinary Authority is directed to take a final decision within four months from the date of receipt of a certified copy of this judgment. It is made clear that in case the necessary order is not passed within four months the appellant shall pay to the respondent a sum of ₹ 10,000/- per month till such time as the order is passed. The Registry is directed to send back the record to the trial Court immediately and the trial Court will return it back to the appellant-FCI after retaining photocopy thereof, in the event the appellant files an application therefor.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

December 14, 2017

`kk'

**(AJAY TEWARI)
JUDGE**

**Whether speaking/reasoned:
Whether Reportable:**

**Yes/No
Yes/No**