

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

RSA-255-1999

Reserved on: 04.10.2017

Pronounced on : 13.10.2017

Food Corporation of India & another

....Appellants

vs.

Kulvinder Singh (since deceased) through his LRs.

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ish Puneet Singh, Advocate,
for the appellants.

Mr. G.S. Bal, Senior Advocate, with
Ms. Loveinder Kaur Brar, Advocate,
for the respondent through his LRs.

MAHABIR SINGH SINDHU, J.

The present regular second appeal, for short “Second Appeal” has been filed by Food Corporation of India for short 'FCI' against the impugned judgment and decree dated 14.10.1998 passed by learned Additional District Judge, Amritsar, hereinafter referred as “1st Appellate Court”, vide which the appeal preferred by the plaintiff-respondent against the judgment and decree dated 24.09.1991 rendered by learned Sub Judge IIIrd Class, Amritsar, for short “Trial Court” thereby dismissing his suit for declaration, had been allowed and as a result suit of the plaintiff-respondent stood decreed.

2. The brief facts of the case are that plaintiff-respondent filed a suit for declaration to the effect that order of punishment dated 16.12.1986 (Ex.P-1) vide which he was removed from service as well as the order dated 23.07.1987 (Ex.P-2) passed by the appellate authority were void, illegal, arbitrary and inoperative against the plaintiff.

3. Plaintiff-respondent pleaded that initially he was appointed with FCI as Assistant Grade-III (Depot) on 29.09.1971 and later on his cadre was changed to Technical Assistant Grade-III vide order dated 11.02.1977 by Zonal Manager (North), FCI, New Delhi, for short "Z.M." and thereafter, he was promoted as Technical Assistant Grade-II w.e.f. 14.12.1977 by the order of Z.M. and was posted in Regional Office in the State of Haryana and thereafter transferred in the Punjab Region. It is further submitted that while working as Technical Assistant Grade-II at Mandi Lopoke, District Amritsar (Punjab Region), he was charge sheeted by defendant-appellant No.2-Senior Regional Manager, FCI, for short "SRM" vide memo dated 07.01.1984 and the charges read as under:-

(i) That the said Shri Kulwinder Singh TA-II while functioning as such failed to maintain absolute integrity and due devotion to duty in so much so that during Kharif, Shri Kulwinder Singh, TA-II of LOPOKE MANDI despatched a truck load of 180 bags of paddy against gate pass No.926/98 through truck No.PUK-5145, but the said truck never reached in the depot whereas the receipt of this was acknowledged by Shri Raj Kumar Gill, Assistant Godown-III (D) of A.R.D.C Butari-II and the same was also not acknowledged in the depot account and in the inward gate pass register maintained by the watchman on duty.

(ii) Thus, it proves beyond any reasonable doubt that he in connivance with S/Shri Raj Kumar Gill, AG-III(D) and Vaishno Dass made an attempt to defraud the Corporation by way of fake receipt/dispatch of one truck of paddy and thus contravened regulation 31 & 32 of FCI Staff Regulations, 1971".

The plaintiff denied the allegations levelled in the charge sheet and consequently, Mrs. S. Chaudhary, Joint Manager (Inq.) was appointed as Enquiry Officer, who submitted her enquiry report dated 19/22.09.1986 (Ex.D-1) and proved the charges against the plaintiff-respondent and consequently, SRM-respondent No.2 passed the removal order dated 16.12.1986 under regulation 56 of Food Corporation of India (Staff) Regulations, 1971 for short “Staff Regulations 1971.”

Aggrieved against the order dated 16.12.1986, the departmental appeal was preferred by the plaintiff-respondent against the order of removal, but the same was dismissed by the appellate authority vide order dated 23.07.1987.

4. Thereafter, the suit for declaration was filed by the plaintiff-respondent on 29.09.1989 and both the orders dated 16.12.1986 and 23.07.1987 were challenged; but learned trial Court dismissed the suit vide judgment and decree dated 24.09.1991.

The plaintiff-respondent preferred an appeal against the judgment and decree passed by Trial Court and which was allowed by Ist Appellate Court vide impugned judgment and decree dated 14.10.1998 and suit of the plaintiff was decreed.

Hence, the present second appeal by FCI.

5. Learned counsel for the FCI-appellants had submitted that as per Regulation 56 of the Staff Regulations 1971, the defendant-appellant No.2-SRM was fully competent to pass the order of removal of the plaintiff-respondent and as such the impugned judgment and decree dated 14.10.1998 passed by Ld. 1st Appellate Court is not legally sustainable and in support of his contention, he has cited the judgment of Coordinate Bench of this Court titled as **Bikkar Singh vs. Food Corporation of India**, 2005

(1) SLR 131 and a Division Bench judgment of this Court titled as **Boota Ram vs. Food Corporation of India**, 2000 (2) RSJ 611.

It is further argued that enquiry proceedings were conducted after following the due procedure as prescribed under the Staff Regulations 1971 and according to which, there is no requirement of supply of Inquiry Report and issuance of any show cause notice before passing the order of punishment under Regulation 56. He has also argued that all the material documents were supplied to the plaintiff-respondent and as such the impugned judgment and decree passed by the Ist Appellate Court are based on surmises and conjectures and liable to set aside.

It is also argued that plaintiff-respondent never made any request for asking any question(s) in terms of the Regulation No. 58(18) of the Staff Regulations 1971.

On the other hand, learned Senior counsel for the plaintiff-respondent has opposed the contentions of learned counsel for the FCI-appellants and submitted that the judgment and decree passed by Ist Appellate Court is perfectly legal and valid and does not require any interference by way of the present second appeal in as much as the findings of facts have been recorded to the effect that material documents were not supplied to the plaintiff-respondent and the order of punishment was passed by SRM/defendant-appellant No.2 and not by the competent authority i.e. Z.M. and as such the same is in breach of the Staff Regulations, 1971 and in support thereof, he has cited judgment of a coordinate bench of this court in **Ram Singh vs. Food Corporation of India and others**, 2009 1 SCT, page 360.

6. Heard learned counsel for both sides and perused the paper book alongwith its record carefully and after considering the same, the following substantial questions of law were culled out with the consent of both the parties for adjudication by this Court:-

(i) Whether as per Regulation 56 of the Staff Regulations 1971, it was the SRM or Z.M. as the competent authority to pass the removal order dated 16.12.1986 (Ex.P-1) against the plaintiff-respondent?

(ii) Whether the plaintiff-respondent had not been supplied the material documents including the gate pass No.926/98 and the same has vitiated the inquiry proceedings or not?

(iii) Whether in view of the Regulation 58(18) of the Staff Regulations 1971, it was obligatory upon the FCI-appellants to put the entire material before the plaintiff-respondent and to ask the questions with regard to the circumstances appearing against him during the inquiry proceedings?

(iv) Whether 1st Appellate Court was legally justified while setting aside the impugned order of removal as well as the order of appellate authority on account of non-supplying of inquiry report as well as show cause notice to the plaintiff-respondent?

7. A perusal of the judgment and decree passed by Trial Court reveals that on the basis of pleading of the parties, four issues were framed and which read as under:-

(i) Whether the impugned order dated 16.12.1986 removing the plaintiff from service is void, and ultravires? OPP.

(ii) Whether the suit is not maintainable ? OPD.

(iii) Whether this court has no jurisdiction to entertain and try this suit ? OPD.

(iv) Relief.

Plaintiff-respondent appeared as PW-1 in order to prove his case and produced on record the order dated 16.12.1986 and 23.07.1987 as Ex. P-1 & P-2 respectively. On the other hand, the FCI-appellants produced the enquiry files to support their case as Ex.D-1 and D-2.

The judgment passed by Trial Court reveals that various points were raised on behalf of plaintiff-respondent under issue No.1 and in substance were inter alia as under:-

(i) That competent authority for passing the removal order was Z.M. and not the SRM-defendant No.2 and as such the order was passed by the authority subordinate to the authority by whom the plaintiff-respondent was appointed/promoted.

(ii) Copies of material documents including gate pass No.926/98 relied upon by the Presenting Officer while conducting enquiry proceedings, were not supplied to the plaintiff-respondent and as such reasonable opportunity of hearing was denied to him.

(iii) Copy of enquiry report was not supplied before passing the removal order and which was even non-speaking.

The Trial Court after taking into consideration, rejected all the contentions raised on behalf of the plaintiff-respondent and decided issue No.1 against him. Issues No.2 and 3 were decided against the defendants-appellants being not pressed; but ultimately in view of the findings recorded on issue No.1, the suit of the plaintiff-respondent was dismissed vide judgment and decree dated 24.09.1991.

8. A further perusal of the impugned judgment and decree passed by 1st Appellate Court reveals that the appeal preferred by the plaintiff-respondent was accepted primarily on the following points:-

(i) Since the plaintiff-respondent was promoted as Technical Assistant Grade-II by the Z.M., but the order of removal dated 16.12.1986 has been passed by SRM-defendant-appellant No.2 and as such, he was not competent to pass the order of removal of the plaintiff-respondent being junior to the competent authority and the same was violative of Staff Regulations, 1971.

(ii) A copy of enquiry report was not supplied to the plaintiff-respondent before passing the impugned order of removal and the same was supplied alongwith the order of punishment only.

(iii) Material documents including gate pass No.926/98 were not supplied to the plaintiff-respondent.

(iv) Regulation 58(18) of the Staff Regulations, 1971 was violated which is akin to Section 313 Cr.P.C. and according to which the entire incriminating evidence was to be put to the plaintiff-respondent during enquiry proceedings, but that was not done.

(v) The order of punishment is discriminatory in as much as for the same act, one Vishnu Dass-Watchman was awarded punishment for forfeiture of only two increments, whereas the plaintiff has been ordered to be removed from service.

Point No.1:-

9. The first point for consideration in this case is that in view of the provisions of Regulation 56 of the Staff Regulations, 1971 whether it was the SRM or ZM as the competent authority to impose the penalty of removal from service of the plaintiff-respondent from the post of Technical Assistant Grade-II.

10. Regulation 56 of the Staff Regulations, 1971 at the relevant time being material to decide the above point reads as under:-

56. Disciplinary authorities:

The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix-2) empowered in this behalf by general or special order of the Board, may impose any of the penalties specified in Regulation 54 on any employee.

Provided that the penalties of reduction in rank, compulsory retirement, removal from service or dismissal from service specified in clauses (v) to (ix) of Regulation 54 shall not be imposed on any employee by an authority lower than the appointing authority.

Explanation 'Appointing Authority' in relation to an employee for the purpose of this regulation shall be read as under:-

“(i) the authority empowered to make appointments to the post/grade which the employee for the time being holds; or

(ii) the authority which appointed the employee to such post/grade as the case may be; whichever authority is the higher authority.”

A perusal of the proviso to Regulation 56 clearly reveals that

the penalty of removal from service shall not be imposed on any employee by an authority lower than the appointing authority. The word “appointing authority” is further explained in the explanation appended to Regulation 56 itself which inter alia stipulates that “appointing authority” in relation to an employee for the purpose of this Regulation shall be “the authority which appointed the employee to such post/grade as the case may be; whichever authority is the higher authority”. The plaintiff-respondent while appearing as PW-1 in his cross-examination had specifically stated that his appointment by way of promotion to the post of Technical Assistant Grade-II was made by Z.M. and he was the punishing authority at the time of his removal. Even otherwise there is no dispute by the FCI-appellants that in the present case, the plaintiff-respondent was promoted on the post in question by Z.M. and he is the higher authority than the SRM and still further there is no dispute that the order of removal has been passed by the SRM and not by the Z.M. Consequently, it can be safely concluded that the order of removal dated 16.12.1986 had been passed by the SRM while exercising powers Regulation 56 of the Staff Regulations 1971, but in view of the discussion above, it is clearly established that at the relevant time, it was the Z.M. who was the competent authority to pass the order of removal against the plaintiff-respondent and as such the same was passed in breach of the Regulation 56 of the Staff Regulations, 1971.

Furthermore, this precise question was involved and decided by a Coordinate Bench of this Court in Ram Singh’s case (supra) and in which the judgment of Bikkar Singh's case (supra) was also considered and held that proviso to Regulation 56 as well as its “explanation” were not brought to the notice of this Court while deciding the Bikkar Singh's case and as

such the judgment was explained and distinguished and ultimately concluded that the petitioners in that case were appointed to the post by Zonal Manager (North) and as such the disciplinary authority to impose the penalty would be the Z.M. and not the SRM.

It is also necessary to be noted that Ram Singh's case was further challenged in an appeal bearing LPA No.370 of 2009 titled as **FCI and others vs. Ram Singh**, and which was decided on 09.10.2009 alongwith LPA No.365 of 2009 titled as **FCI and others vs. Sadhu Singh** by a Division Bench of this Court and ultimately concluded that if the promotion was made by the Zonal Manager, then the appropriate disciplinary authority will be the Zonal Manager and in case, the promotion is made by SRM, then the competent authority would be the SRM and para 4 of the judgment reads as under:-

“Accordingly, this appeal is partly allowed and impugned order is modified to the extent that appellants will be at liberty to proceed in accordance with law, as mentioned above. It is clarified that if promotion of the respondent was by Senior Regional Manager, and not by Zonal Manager, as observed in the impugned order of the learned Single Judge, appropriate authority will be the Senior Regional Manager. If the promotion was by the Zonal Manager, the authority will be the Zonal Manager. This fact can be verified by the appellants after giving hearing to the respondent.”

Thus, in view of the Division Bench judgment in LPA No.365 also, this Court has no option; but to follow the same being a binding precedent and as such this question is decided against the appellants and in favour of the plaintiff-respondent.

So far as the Division Bench judgment relied upon by the

defendants-appellants in **Boota Ram vs. FCI, 2000(2) RSJ 611** is concerned, the same is not helpful and distinguishable to the facts of the present case. In that case, the petitioner was issued a charge sheet and enquiry report was submitted against him and he filed reply to the show cause notice, but no final decision had been taken by the Corporation and as such the stage of Regulation 56 had never reached. Even the petitioner in that case had neither challenged the initiation of enquiry by the SRM; nor he had made any prayer for quashing of the same and only a show cause notice was under challenge as is clear from para No.8 of the judgment in **Boota Ram (supra)** and relevant part reads as under:-

“Proviso to Regulation 56 and its explanation are relevant only at the stage of punishment and not before that. Therefore, the competence of the Senior Regional Manager, who is empowered to impose minor as well as major penalties by virtue of Entry-2 of Appendix-II on a person holding Category-III post cannot be questioned and as a matter of fact, the petitioner has neither challenged the initiation of enquiry by the Senior Regional Manager vide Memorandum Annexure P-2 nor he has made a prayer for quashing of the same.”

Thus, the factual position in **Boota Ram's** case was entirely different as compared to the present case, inasmuch as compared to the case in hand, there is a final order of removal dated 16.12.1986 passed by SRM while exercising the powers under Regulation 56 of Staff Regulations, 1971 and as such clearly distinguishable.

Point No.2:-

11. The plaintiff-respondent has consistently pleaded that material documents including gate pass no.926/98 were not supplied to him, but his plea was turned down by Trial Court, however, the 1st Appellate Court after

taking into consideration the entire material available on record, came to a definite conclusion that the findings recorded by Trial Court were not correct inasmuch as the material documents were not supplied to the plaintiff-respondent and consequently caused a great prejudice to him and the findings of facts recorded by 1st Appellate Court in para No.8 of its judgment reads as under:-

“In the present case, the material document is the gate pass No.926/98 and this material document was not supplied to the plaintiff. The learned counsel for the respondent has drawn my attention towards page No.85 of the enquiry file Ex.D2 wherein it is mentioned that the plaintiff had inspected the listed documents available with the Presenting Officer and had taken photo state copies of those at his own expenses and he has appended his signatures at the foot of the order sheet and therefore, the trial Court has held that all the documents were supplied to him but this fact is not correct because in this very order, it is mentioned that the plaintiff was also required to file additional list of documents indicating the names of the custodian of these documents and relevancy with the case and in compliance with this order, the plaintiff filed an application which is at page 34 of the enquiry file Ex.D2 and so many documents including the gate pass have been mentioned in this document but there is no order in the enquiry file that these documents were ever supplied to him. So, non-supply of the material documents has also prejudiced the case of the plaintiff.”

There is no material brought to the notice of this Court on behalf of the FCI-appellants that the above findings of fact recorded by 1st Appellate Court are without any basis or result of any perversity and consequently, this Court is fully in agreement with the findings recorded

above.

Even otherwise, the law is well settled that if there can be two views possible on the findings of fact and the view taken by 1st Appellate Court is the possible view, then generally same should not be interfered in a second appeal by the High Court until and unless the same is based upon no evidence or is the result of any perversity. Thus, on account of the non-supply of material documents including the gate pass No.926/98, the enquiry proceedings stood vitiated and resulted into a great prejudice to the rights of the plaintiff-respondent.

Point No.3:-

12. To decide this point, it is appropriate to reproduce Sub Regulation 18 of Regulation 58 of the Staff Regulations which reads as under:-

58. Procedure for imposing major penalties:

(18) The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.”

A perusal of Regulation 58(18) reproduced hereinabove makes it apparently clear that the Enquiry officer was under obligation to put questions to the plaintiff-respondent with regard to the circumstance(s) appearing against him in the evidence so as to enabling him to explain any such circumstance(s), but the same has not been followed; rather the only excuse given by FCI-appellants is that plaintiff-respondent himself did not ask for the same. This plea of the FCI-appellants is not acceptable by this Court being in breach of Sub Regulation 18 reproduced hereinabove.

Furthermore, in the opinion of this Court, 1st Appellate Court has rightly observed that this provision is akin to Section 313 of Cr.P.C. and the plaintiff-respondent was not asked any question by the FCI-appellants and there is no dispute that the plaintiff-respondent had not appeared as a witness in this case uptill the stage of Sub Regulation 18. Thus, the point No.3 also deserves to be decided against the FCI-appellants and in favour of the plaintiff-respondent.

Point No.4:-

13. The plaintiff-respondent while appearing as PW-1 has clearly deposed that he was not given any opportunity against the proposed punishment and the removal order was passed straightway by the SRM. There is no denial by the FCI-appellants that copy of the enquiry report was not supplied to the plaintiff-respondent before passing the punishment order or any show cause notice was issued to him. Even learned counsel for the FCI-appellants conceded this factual position before the 1st Appellate Court that copy of the enquiry report was supplied to the plaintiff-respondent only alongwith the removal order and reference in this regard can be made to para 8 of the judgment passed by 1st Appellate Court. This Court has also carefully gone through the order of removal dated 16.12.1986 (Ex.P-1) and it nowhere discloses that copy of enquiry report was ever supplied to the plaintiff-respondent; rather the order is absolutely silent.

Consequently, this Court is of the firm view that impugned order of removal as well as order of appellate authority were passed without supplying the copy of enquiry report as well as show cause notice to the plaintiff-respondent and the action of the FCI-appellants was in violation breach of principles of natural justice and consequently the 1st Appellate

Court was justified while setting aside the order of removal as well as the order passed by the Appellate Authority. Resultantly, this point is also decided against the FCI-appellants in favour of the plaintiff-respondent.

14. Still further, there is no dispute that other co-employee, namely, Vaishnu Dass-Watchman who was also charge sheeted alongwith the plaintiff-respondent had only been awarded the punishment of forfeiture of two increments and thus, on that count also, the action of the FCI-appellants is discriminatory.

Even as per the charges levelled against the plaintiff-respondent, there was only an attempt to defraud the Corporation and there was no allegation(s) that he had actually defrauded the Corporation and as such, factually no embezzlement had taken place at the hands of the plaintiff-respondent.

15. In view of the discussion made hereinabove, it is apparently clear that the FCI-appellants had neither followed the Regulation Nos.56 as well as 58(18) of the Staff Regulations, 1971 in letter and spirit; nor observed the principles of natural justice while imposing the punishment against the plaintiff-respondent while removing from the post of Technical Assistant Grade-II and as such, this Court is fully in agreement with the judgment and decree passed by the 1st Appellate Court and not inclined to interfere by way of the present regular second appeal.

Although, in view of the Constitution Bench of Hon'ble Supreme Court in **Managing Director ECIL vs. B. Karunakar** 1993 (4) SCC 727, in such types of cases, the matter generally should be remanded back to the authority right from the stage of submission of enquiry report, but in the present case, this Court has come to the conclusion that in view of

the violation of Regulation 58(18) of Staff Regulations, 1971 as well as on account of non-supply of the material documents, the enquiry proceedings itself stood vitiated and resulted into a great prejudice to the plaintiff-respondent. Still further, there is one distinguishing feature in this case that as a matter of record, the plaintiff-respondent has already expired on 20.03.2009 during the pendency of the present regular second appeal and his wife being legal representative was brought on record vide order dated 19.05.2009 to pursue the present second appeal. Thus, on that count also, there would be no justification to remand the matter back to the authorities-FCI-appellants for taking fresh decision in the matter.

16. In view of the above, the present regular second appeal is dismissed being devoid of any merit(s) and consequently, the impugned judgment and decree dated 14.10.1998 passed by learned Additional District Judge, Amritsar are affirmed.

17. Both the parties shall bear their own costs.

(MAHABIR SINGH SINDHU)
JUDGE

13.10.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No