

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APO 205 of 2019 with
WP No. 882 of 2011**

**SWAPAN KAR
Versus
FOOD CORPORATION OF INDIA AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Partha Chakraborty, Adv.*
Mr. Archisman Chakraborty, Adv.

For the Respondent : *Mr. Pratick Dhar, Sr. Adv.*
Mr. Aniruddha Bagchi, Adv.

HEARD ON : 27.06.2024 & 25.07.2024
DELIVERED ON : 25.07.2024

DEBANGSU BASAK, J.:-

- 1.** The appeal is directed against the judgment and order dated July 29, 2019 passed in WP No. 882 of 2011.
- 2.** By the impugned judgment and order, the learned Single Judge dismissed the writ petition.
- 3.** The appellant before us filed the writ petition assailing the order passed by the Disciplinary authority, affirmed by the Appellate Authority.

4. Learned advocate appearing for the appellant submits that, appellant was the Depot-in-charge, Food supply Depot, Jhorthang within the jurisdiction of District Manager, Food Corporation of India, Gangtok. A disciplinary proceeding was initiated against the appellant in respect of alleged misdeeds of the appellant. The appellant was served with the charge-sheet dated November 26, 2005 where it was alleged that the appellant committed gross misconduct or irregularities by misappropriating 6,456 quintals of food grains causing a financial loss in excess of Rs. 81 lakhs to the Food Corporation of India, amongst others.

5. Learned advocate appearing for the appellant submits that, the charge-sheet was issued with a pre-determined mind without conducting an enquiry against the appellant; even the appellant was not given an opportunity to reply the charge-sheet. He refers to the proceedings undertaken in the Disciplinary proceedings. He submits that, in respect of self-same incidence, a criminal proceedings was initiated. In the criminal proceedings, the appellant was acquitted.

6. Learned advocate for the appellant submits that, since the appellant was acquitted in the criminal proceedings, and since such criminal proceedings was based upon some evidence and same issues as that of the disciplinary proceedings with the acquittal of the appellant in the criminal proceedings, the disciplinary proceedings as against the appellant should be dropped.

7. Learned advocate for the appellant relies upon **(2024) 1 Supreme Court Cases 175 (Ram Lal vs. State of Rajasthan and Ors.)** in support of the

proposition that where the criminal proceedings result in acquittal, the disciplinary proceeding should also be dropped.

8. Learned senior advocate appearing for the Food Corporation of India submits that, the appellant suffered the order of dismissal from service on November 23, 2009 after all due enquiries in the disciplinary proceeding being held. The order passed by the Disciplinary authority was challenged by the appellant before the Appellate Authority, which concurred with the Disciplinary authority on March 22, 2011.

9. Learned senior advocate appearing for the Food Corporation of India submits that acquittal in criminal case does not necessarily mean setting aside of the disciplinary proceeding. He draws the attention of the Court to the scope and ambit of the disciplinary proceeding and the criminal proceedings. He submits that neither the charges in the two proceedings are identical nor are the witnesses and the evidences therein are identical. Consequently, he submits that the appellant is not entitled to be discharged from the disciplinary proceedings upon the acquittal in the criminal proceedings.

10. Learned senior advocate appearing for the Food Corporation of India submits that, the ratio laid down in ***Ram Lal (supra)*** does not assist the appellant since, the charges are different. He also relies upon ***2013(1) Supreme Court Cases 598 (State of Tamil Nadu vs. S. Samuthiram)*** to contend that mere acquittal by the Court does not confer the employee with a right to claim any benefit including reinstatement.

11. Relying upon **2021 SCC Online SC 4 (Deputy General Manager (Appellant Authority) and Ors. Vs. Ajai Kumar Srivastava), (1997) 3 Supreme Court Cases 72 (Indian Oil Corporation Ltd. and Anr. Vs. Ashok Kumar Arora)** and **(2021) 12 Supreme Court Cases 569 (State of Rajasthan and Ors. Vs. Heem Singh)** learned senior advocate appearing for the Food Corporation of India submits that, although Court retains the power of judicial review in matter of disciplinary proceeding, such powers are required to be exercised within the parameters laid down. He submits that in the facts and circumstances of the present case, order passed by the disciplinary authority as affirmed by the appellate authority does not warrant the Court to exercise its power of judicial review.

12. A disciplinary proceedings was initiated as against the appellant. A charge-sheet was issued to the appellant in such disciplinary proceedings. The appellant replied to such charge-sheet. Appellant participated in the disciplinary proceedings. Disciplinary proceedings resulted in order of dismissal dated November 23, 2009. Appeal preferred by the appellant was dismissed by the order dated March 22, 2011. Order by the Disciplinary authority as affirmed by the appellate Authority is one of dismissal from services of the appellant.

13. Appellant also faced criminal proceedings. Such criminal proceedings resulted in an order of acquittal dated March 31, 2014.

14. In the interregnum, after the order of the disciplinary authority dated November 23, 2009, as affirmed by the Appellate Authority dated March 22, 2011, the appellant filed the present writ petition in 2011.

15. The point urged in the appeal is, since the appellant was acquitted in the criminal proceedings, appellant should also be exonerated in the disciplinary proceedings also.

16. In ***Ram Lal (Supra)*** the Supreme Court in the facts of that case found that the charges in the disciplinary proceedings as well as in the criminal proceedings were not just the same but identical and the evidences, the witnesses and circumstances were the same.

17. In the facts of the present case, the disciplinary proceeding and the criminal proceeding were initiated in respect of incidents relating to the appellant while he was functioning as the Depot-in-charge of the same unit. Despite the requests, the charge-sheet in the criminal proceeding was not placed before us. We were, however, taken through the judgment passed in the criminal proceeding. In such judgment of the criminal proceeding, we found that, learned Judge considered Exhibit-14 as an exhibit which, the learned Judge disbelieved on the ground that the appellant did not acknowledge the liability in such document. We requested the learned advocates for the parties to draw our attention to Exhibit-14 of the criminal case. Exhibit-14 was not placed before us.

18. We were also taken through the orders of the Disciplinary authority as affirmed by the Appellate authority. We find from the order of the Disciplinary authority that the appellant acknowledged his wrongdoing in writing. There neither the Disciplinary authority nor the appellant before us contended that, he disowned the writing acknowledging his liability in the disciplinary proceedings. Although the charge-sheet in the criminal proceedings was not placed, from the

tenor of the judgment of the criminal proceeding, we find that the charges in the disciplinary proceeding as also in the criminal proceeding were not identical. The quantum of alleged misdeeds was much higher in the disciplinary proceeding than in the criminal proceeding.

19. Given the materials placed before us, we are not in a position to return a finding that the charges in the two proceedings were same and that the evidences, witnesses and circumstances were the same.

20. Since, such parameters as noted in ***Ram Lal (supra)*** are not met, we are of the view, the ratio of ***Ram Lal (supra)*** does not assist the appellant.

21. So far as power of judicial review is concerned, no doubt, a Writ Court when approached, is empowered to look into the grievances relating to a disciplinary proceeding.

22. Since we are not with the submission of the appellant that the judgment of acquittal in the criminal proceeding resultantly should exonerate the appellant in the disciplinary proceeding, we are not minded to discuss the authorities cited on behalf of the FCI in respect of the scope of judicial review.

23. In view of the discussions above, we find no merit in the present appeal. APO 205 of 2019 is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

24. I agree.

(MD. SHABBAR RASHIDI, J.)