(2015) 08 GAU CK 0042

In the Gauhati High Court

Case No : WP(C) No. 4545 of 2006

Babul Chandra Barua APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Citation : (2015) 4 GLT 63

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : D.C. Mahanta, S.B. Gohain, B. Baruah and T.C. Chutia, for the Appellant; L.P. Sharma, R. Bhattacharyya, S. Chakrabarty and M. Dewan, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. T.G. Chutia, the learned counsel appearing for the petitioner. The respondent Assam State Warehousing Corporation (hereinafter referred to as the "Corporation") is represented by the learned advocate Mr. L.P. Sharma. The petitioner was posted as the Corporation''s Warehouse Manager Grade-I in the Benibari Centre on 19.01.2000 and at that stage a disciplinary proceeding was drawn up against him through the show-cause notice dated 30.01.2002 (Annexure-A), under Regulation 46 of the Assam State Warehousing Corporation (Staff) Regulation, 1989 (hereinafter referred to as "the Regulation").

2. Under the first charge it was alleged that during the process of handing over of the Benibari Centre from where the petitioner was transferred to Goalpara, the shortfall of 273.20 MT of Urea in 5464 bags worth Rs. 11,65,854.20 was detected and accordingly the petitioner was charged with misconduct, negligence of duty, breach of trust and misappropriation of stock for personal gain. The 2nd charge pertains to failure to maintain the depositors'' ledger, godown wise transaction registers, railway receipt registers and using unauthorized slips for delivery of fertilizer, without issuing gate pass. The improper stacking fertilizers in the godowns was the 3rd charge for which the Corporation had to spent

additional amount for orderly re-stacking the fertilizers in the Corporation godowns. The last charge relates to temporary misappropriation of the storage money of Rs. 33,243/-, which was belatedly deposited in the Head Office only on 21.12.2000.

3. In his reply of 15.05.2002 (Annexure-B), the delinquent mentioned that multiple godowns at Barpeta Road, Benibari and Howly, which are covered under the Benibari Centre and as the Warehouse Manager, the delinquent relied on the staff in the concerned godowns, for upkeep of records. The excess delivery of fertilizer beyond the godown capacity was cited as the reason for disorderly storage of the fertilizer. He blamed the subordinate staff for the failure to upkeep the records and stated about the illegal nexus of the Chowkidar of the Barpeta Road Centre with one commercial firm. However the petitioner admitted that he is the custodian of the keys of the godowns but stated that since the godowns are located in protected areas, the Warehouse Manager cannot be entirely blamed for the lapses. The delinquent further admitted that he noticed the stock shortage while handing over charge, but according to him, the shortfall was 4824 bags and not 5464 bags of fertilizer, as was shown in the charge memo.

4. Dissatisfied with the reply of the delinquent, Mr. H. Baruah, the Manager (Inspection) was appointed as the Enquiry Officer and accordingly the Enquiry Officer notified both parties to appear before him in connection with the departmental case No. 4/2002. To prove the charges, the Management produced 6 witnesses on different dates and the delinquent examined himself as the only defence witness.

5. In his written statement, the delinquent stated that he is unable to explain the reason for the missing fertilizers but as the Warehouse Manager, he accepted his responsibility. The shortage of stock came to light during the process of handing and taking over charge of the Centre at the stage when the petitioner was proceeding on transfer and the precise shortfall was determined on the basis of the records of the Warehouse and physical stocks found in the godown. The failure of the petitioner to keep proper records of receipt and delivery in the godowns was noted by the Enquiry Officer and improper diversion of fertilizer without proper records was also revealed from the material evidence. The other charges of disorderly stacking of fertilizer and delayed deposit of money in the Head Office were found to have been established and accordingly an adverse report was given against the delinquent, by the Enquiry Officer on 12.01.2005 (page-43).

6. When the copy of the enquiry report was furnished to the delinquent along with the 2nd show-cause notice, the finding on the stock shortage was not categorically denied by the delinquent, in his reply of 10.02.2005 (Annexure-E). However, the actual shortage was projected as 4824 bags and not 5464 bags of fertilizer.

7. The disciplinary authority considered the enquiry report and noted that the

delinquent was given adequate opportunity to defend the charges. The perfunctory defence projected by the delinquent was found to be unacceptable and accordingly considering the gravity of the charges, for which the Corporation suffered heavy financial loss, the penalty of dismissal from service was ordered against the delinquent on 21.03.2005 (Annexure-F). The resultant appeal filed under Regulation 52, was dismissed by the Corporation''s Board of Directors on 02.02.2006 (page-56).

8.1. Assailing the legality of the disciplinary proceeding, Mr. T.C. Chutia, the learned counsel submits that the petitioner had to function with inadequate staff under adverse circumstances and since several godowns are under the Benibari Centre, the Warehouse Manager had no option but to rely on his subordinate staff and therefore the delinquent deserve lenient treatment.

8.2. The petitioner contends that he was denied a fair opportunity to defend the charges and therefore the enquiry proceeding is vitiated.

8.3. As the Money Suit No. 68/2007 filed by the Corporation against the delinquent, to recover the lost amount was dismissed by the Trial Judge on 10.11.2014, Mr. Chutia argues that the suit having been dismissed for lack of evidence, the petitioner should not be held responsible for the stock shortage in the Corporation godowns.

9.1. On the other hand, Mr. L.P. Sharma, the learned counsel submits that the Corporation has filed the RFA No. 22/2015 to challenge the dismissal of the Money Suit No. 68/2007 and the same is now pending in the High Court.

9.2. The respondent submits that the standard of proof required in a departmental proceeding is different and the dismissal of the Corporation''s suit for want of adequate evidence cannot vitiate the enquiry finding. The records of the departmental proceeding are produced by Mr. Sharma to project that the delinquent admitted to the stock shortage when the petitioner was handing over charge of office upon his transfer to Goalpara, through his letter dated 12.05.2001 and accordingly it is argued that when the major charge of stock shortage is admitted and is corroborated through other material evidence, the interference by the appellate Court with the conclusion in the enquiry finding, would be wholly improper.

9.3. The learned counsel for the Corporation submits that the delinquent was afforded a fair opportunity to defend the charges and in fact he admitted to the huge shortfall of about 4824 bags of Urea from the Corporation godowns while he was the Warehouse Manager.

9.4. On the lesser charges, the delinquent has referred to certain mitigating factors like staff shortage, lack of electricity, multiple godowns under his jurisdiction, but it is argued by Mr. Sharma that these difficulties cannot dilute the responsibility of the Warehouse Manager, who was the custodian of the stocks in the Corporation godowns.

10. In domestic proceedings, the Management is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt and in the instant case the delinquent through his letter of 12.05.2001 and also in the enquiry proceeding, had admitted to the major charge of shortage of stock. It is also admitted by the charged officer that he was the custodian of the godown keys and there was a tacit admission on improper maintenance of stock registers, receipt registers and despatch registers in the Corporation godowns. But his explanation was that the delinquent had to rely on the subordinate staffs for upkeep of the records. But reliance on subordinates cannot entirely absolve the petitioner of his overall responsibility as the Warehouse Manager.

11. The records of the enquiry reveals that the conclusion of the Enquiry Officer are based on documentary and oral evidence and also the clear admission of the delinquent in his handwritten letter of 12.05.2001 (Exbt-9), which was taken into account by the Enquiry Officer. This letter being relevant, the same is extracted herein for ready reference:--

"To

The Managing Director, Assam State Warehousing Corporation, Guwahati-5.

Sub:-- Shortage of stocks in A.S.W.C. Benibari Centre matters relating thereof.

Sir,

With reference to the subject cited above, I have the honour to inform you that the following stocks are found short at the time of handing over charges to the Benibari Centre by me to Shri Bhaskar Batsav Bhuyan, W/Manager Grd II.

In this connection, I beg to state that, I find it very difficult to understand the reason of occurrence of such shortages of stock. However, being the custodian of stocks and Incharge of the Centre I am to bear the responsibility of the said shortage irregularities and I undertake to compensate the value thereof in a suitable manner.

The statements made herein above are true to the best of my knowledge and belief and it is earnestly requested that your honour would be kind enough to consider my case favourably and for which act of your kindness, I shall remain ever grateful to you.

Yours faithfully, Sd/-1.5.01 (Babul Ch. Baruah) W/Manager Grd I ASWC Benibari Centre"

12. Of course, there could be some mitigating factors for taking a lenient view on the 3rd and 4th charge pertaining to disorderly stacking and late deposit of the amount in the Corporation Head Office. But the major charges pertaining to shortfall of stocks of huge number of fertilizer bags and non-maintenance of proper receipt and delivery registers, cannot certainly be excused for the Warehouse Manager, who was charged with dereliction of duty, breach of trust, misappropriation, deceitful activities and violation of procedure for maintenance

of records. Since the misconduct of the delinquent resulted in huge loss to the Corporation and they continue to seek recovery from the delinquent through the pending RFA No. 22/2015, I am of the view that mitigating factors cannot exonerate the delinquent, in the face of the major charges proved against him. Here the delinquent was afforded due opportunity in the enquiry proceeding but he failed to rebut the evidence of the management. In fact the huge missing stock was admitted by the Warehouse Manager. Such misconduct which led to loss of about Rs. 11.65 lakh to the Corporation is bound to shake the employer''s confidence and therefore the punishment of dismissal is not found to be illogical. In view of the forgoing discussion, I find that this case is devoid of merit and the same is accordingly dismissed. No cost.