

(2001) 07 MP CK 0025

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 286/96

Central Ware Housing Corporation

APPELLANT

Vs

J.S. Brah

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Central Warehousing Corporation (Staff) Regulations, 1986 — Regulation 39
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 2 JLJ 350 : (2001) 3 MPHT 449

Hon'ble Judges : N.G. Karambelkar, J; Mr. S.P. Srivastava, J

Bench : Division Bench

Advocate : Shri J.P. Gupta and Mr. Anoop Nigam, for the Appellant; Shri R.D. Jain and Shri S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Feeling aggrieved by the judgment and order passed by the learned Single Judge whereunder allowing the writ petition filed by the contesting respondent the punishment of removal from service imposed upon him has been set aside substituting reversion for the same for one step below the post held by him with a further directing requiring the appellant to pay him fifty per cent of the back wages which he would have earned on the reverted post, the employer has now come up in Letters Patent Appeal seeking redress praying for the reversal of the impugned order.

2. We have heard the learned counsel for the appellant as well as the learned counsel representing the contesting respondent and have carefully perused the record.

3. The facts in brief, shorn of details and necessary for the disposal of this appeal lie in a narrow compass. A common disciplinary proceeding under the provisions of the Central Ware Housing Corporation (Staff) Regulations, 1986, was initiated against the respondent, Shri J.S. Brah, holding the post of Superintendent of the Central Ware House, situate at Mullanpur, as well as against Shri D.S. Eraich,

Technical Assistant; Shri Tarsem Lal, Warehouse Assistant Grade I and Shri Inderjit Singh, Chowkidar posted there and working under the administrative control of Shri J.S. Brah, the Superintendent by serving separate charge-sheets levelling various charges against them. The aforesaid disciplinary proceeding had been initiated against the aforesaid employees after the receipt of a complaint about misappropriation of the stock at Central Ware House, Mullanpur, after holding a preliminary inquiry.

4. The charge levelled against Shri J.S. Erah was that he colluded with Shri Tarsemlal and other staff members and suppressed material information of misappropriation of 141 bags of wheat from godown No. 31 and pilferage of 29 bags of urea from godown No. 30 at Mullanpur and had also allowed Shri Tersemlal, Warehouse Assistant Grade I to make good the misappropriated stock accepting the same with lesser weight as against the original weight and thereby had put the Corporation to a loss of about 1021 kgs of wheat keeping the higher authorities i.e., Head Office/Regional Office in dark about the same. The other charge was to the effect that he had failed to ensure that the staff working under his control maintained absolute integrity and performed their duties with devotion and thus he had contravened Regulation 39 (ii) of the CWC (Staff) Regulations, 1986.

5. The Enquiry Officer after carefully considering the evidence produced by the parties came to the conclusion that Shri Brah could not establish that any information about the incident dated 11-8-1986 when the loss had been detected was given to the Head Office/Regional Office. The case set up by Shri Brah that a copy of the written complaint sent by him to the police was also sent to the Regional Office was disbelieved holding that nothing else was done and it could not be proved that copy of the said complaint was depatched to the Regional Office and in fact there was nothing to indicate that the aforesaid alleged written complaint was ever received or recorded by the police as claimed. It was also found that such a serious incident of misappropriation should not have been dealt within the manner it was done by Shri Brah on whom a duty stood cast under the Standing Instructions to give telegraphic information to the Regional Office/Head Office besides lodging insurance claim which should have been done on the date of occurrence which in the present case was 11-8-1986. It was also found that Shri Brah had not sought for any clarification in writing either from Shri Tarsem Lal or Inderjit Singh. The assertion of the delinquent that he had sought oral explanation was held to be unacceptable. The Enquiry Officer came to the conclusion that the delinquent official suppressed the incident, which was detected only when the investigation was started and the incident had come to light. The delinquent did not bother himself much about it. The case set up by the delinquent that Shri Tarsem Lal might have made a duplicate key for opening the almirah was also disbelieved holding that there could be no question of making a duplicate key while the almirah key was kept with him by Shri Brah throughout. The Enquiring Officer found Shri Brah guilty of the charges levelled against him.

6. Shri D.S. Braich, Technical Assistant, was, however, not found guilty of one of the charges levelled against him. He was found guilty of the second charge which related to the shortage of 20 bags of urea. Shri Tarsem Lal, Ware House Assistant was found guilty of the charges levelled against him. Shri Inderjit Singh, Chowkidar was found guilty of the charges levelled against him.

7. The Disciplinary Authority, after supplying copy of the enquiry report to the delinquents and affording them an opportunity of hearing agreed with the conclusions reached by the Enquiry Officer and came to the conclusion that good and sufficient reasons existed to impose upon all the delinquent officials a major penalty. Shri J.S. Brah, the Superintendent; Shri Tarsem Lal, Ware House Assistant and Inderjit Singh, Chowkidar were ordered to be removed from the service of the Corporation. So far as Shri D.S. Braich Technical Assistant was concerned the Disciplinary Authority imposed upon him the punishment of reversion to the post of Junior Technical Assistant providing that his pay will be fixed as per the rules on reversion.

8. The contesting respondent challenged the order imposing punishment of removal on him by filing an appeal. The other employees on whom punishment had been imposed also challenged the order passed against them by filing separate appeals. The appeals were heard and disposed of by the Executive Committee, the Competent Authority. The Executive Committee came to the conclusion that it was the main responsibility of Shri J.S. Brah to ensure security. It was further found that non-reporting of misappropriation to the Regional Manager and the police showed his collusion with Shri Tarsem Lal who had drawn the keys from office almirah and had opened the godown in the night. The Appellate Authority agreed with the findings returned by the disciplinary authority that the recovery of the stock later without mentioning date and stack no. did not absolve the appellant of the charge of collusion and concealment or misappropriation. It was observed that as a Ware House Manager, the appellant was expected to call the explanation of the staff indulging in misappropriation of stock and report the matter to the Regional Manager for taking suitable action. The shortage of 20 bags of urea was found out from the second layer from top which could not have been the case of faulty stacking. The Executive Committee did not find any violation of principles of natural justice during the disciplinary proceedings and holding that the penalty imposed upon the appellant was commensurate with the gravity of the misconduct, the appeal filed by the contesting respondent was dismissed.

9. Before the learned Single Judge it was urged on behalf of the present respondent that he would be satisfied if he is accorded the same treatment as was given to D.S. Braich. It was urged that for similar lapses, different punishments had been imposed and further that two different functionaries had been dealt with differently. The contention was that such an action could not fall within the parametres contained in Articles 14 and 16 of the Constitution of India. It was further urged that the misconduct of the petitioner and D.S. Braich

ought to have been judged by the same standard.

10. The learned Single Judge found merit in the contentions urged and pressed on behalf of the petitioner/respondent. It was observed that two officers were involved with regard to the shortage of 141 bags of wheat. D.S. Braich was proceeded with in another matter also, i.e., shortage of 29 bags of urea and if D.S. Braich had been dealt with leniently then there could be no justification for not according the same treatment to the petitioner/respondent.

11. The learned Single Judge was however, of the view that this was a matter where a direction could be given straight away. Parametres for awarding of punishment laid down in the case of Shri D.S. Braich and the case of the petitioner was not different. The misconduct ought to have been judged with the same standards, and therefore, the petitioner/respondent should also be visited with a penalty of reversion.

12. The learned Single Judge further clarified that the reversion should be one step below the present post held by the petitioner/respondent.

13. On the question as to whether the petitioner/respondent was entitled to backwages or not, the learned Single Judge came to the conclusion that it would be just and proper to direct the employer/respondents in the writ petition to pay 50% of the backwages which the petitioner/present respondent would have earned on the reverted post.

14. The writ petition filed by the petitioner/respondent was in the aforesaid circumstances allowed in the manner indicated hereinabove.

15. The learned counsel for the appellants has strenuously urged that the learned Single Judge had exceeded the jurisdiction envisaged under Article 226 of the Constitution of India while issuing the impugned directions. It has further been urged that firstly according to the findings returned by the Enquiry Officer, which had been affirmed by the Disciplinary Authority as well as the Appellate Authority, Shri D.S. Braich stood exonerated from the first charge although the said charge was found to have been proved so far as the respondent-petitioner was concerned and secondly, even if the lesser punishment had been awarded to Shri D.S. Braich erroneously that fact could not furnish a ground for perpetuating the mistake by reducing the penalty imposed upon the petitioner-respondent.

16. It has further been urged by the learned counsel for the appellants that taking into account the nature of the duties attached to the office of the petitioner-respondent and his remissness and gross neglect as well as taking into account the findings returned against him, there could be no justification for interference in the quantum of punishment adjudged to be fit one by the Disciplinary Authority which was approved by the Appellate Authority especially when taking into consideration the overall effect of the misconduct attributed to the petitioner- respondent, the punishment imposed could not be held to be disproportionate to the gravity of the misconduct and in any case the present

one was not a case where the punishment imposed could be held to be so disproportionate to the gravity of the misconduct which could shake the conscious of the Court.

17. The learned counsel for the petitioner-respondent on the other hand has tried to support the impugned order on the strength of the reasonings contained therein.

18. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties.

19. In its decision in the case of State of Orissa and others Vs. Bidyabhusan Mohapatra, rendered by a Constitution Bench of the Apex Court reported in State of Orissa Vs. Bidyabhusan Mohapatra, , it had been indicated that the reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the order of dismissal can be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the penalty on the employee. It was further indicated that the Court had no jurisdiction if the findings of the Enquiry Officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice. It was also indicated that the Court in a case in which an order of penalty on the employee, is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established.

20. In another decision rendered by a Constitution Bench of the Apex Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , it was observed that "it is well settled law that a certiorari lies only in respect of a judicial or quasi-judicial act as distinguished from an administrative act."

21. Further, in its decision in the case of B.C. Chaturvedi Vs. Union of India and others, , in Paragraph 18 at page 762, a Three-Judges Bench of the Apex Court had observed that "the disciplinary authority and on an appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it could appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in

exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

22. In its decision in the case of Balbir Chand Vs. Food Corporation of India Ltd. and others, , the Apex Court had clarified that merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and take appropriate decision according to law.

23. In its another decision in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, , the Apex Court had observed as follows:--

"Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose.

24. In the present case, the charges levelled against the petitioner/ respondent we're clear enough and do not suffer from any such vagueness which could have prejudiced him in his defence. The findings returned against him were amply supported and warranted by the evidence and the materials as brought on-record. There had not been any violation of the principles of natural justice and and the petitioner/respondent had been given the reasonable opportunity to defend himself.

25. The ratio of the decisions of the Hon"ble Apex Court referred to hereinabove stand squarely attracted to the facts and circumstances of the present case. Moreover, the petitioner/respondent it is apparent had lost the confidence of the employer.

26. The grounds on which the learned Single Judge based his decision and issued the impugned directions cannot be held to be acceptable in law. The findings returned by the learned Single Judge, therefore, cannot be held to be sustainable.

27. Sufficient ground has been made out for the interference in the impugned order passed by the learned Single Judge.

28. In the result, this appeal succeeds. The impugned order passed by the

learned Single Judge is set aside and the writ petition filed by the petitioner/respondent is dismissed.

29. There shall however be no order as to costs.

30. Letters Patent Appeal allowed.