

(2008) 03 GAU CK 0025
In the Gauhati High Court

Debajit Chakraborty

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Citation : (2008) 2 GLT 439

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Heard Ms. B. Dutta, learned Counsel for the petitioner and Mr. T.N. Srinivasan, learned Counsel for the respondents.

2. The petitioner who, at the relevant time, was an Assistant Grade-III(D) in the Regional Office of the FCI at Guwahati has assailed an order dated 01.06.2002 (Annexure-8) by which the penalty of recovery of Rs. 1.50 lacs from his monthly salary in 35 equal installments has been ordered. The aforesaid penalty has been imposed on the petitioner in exercise of powers conferred by Regulation 60 of the FCI (Staff) Regulations which empower the authority to impose a minor penalty without holding an enquiry if deemed fit and proper. It may also be put on record at this stage that under Regulation 54 of the aforesaid Regulations, recovery of amount of pecuniary loss caused to the Corporation by negligence of mis-conduct of an employee has been incorporated as a minor penalty.

3. The facts in brief may be noticed at the outset:

A Memorandum of Charges dated 07.09.2001 was furnished to the petitioner asking him to file his reply to the allegations contained therein. Along with the aforesaid Charge Memo a statement of imputation of misconduct or misbehaviour in respect of the charges levelled was also furnished to the petitioner. According to the respondents and as mentioned in the aforesaid statement of imputation of misconduct, in Shed No. 3/4 of the FCI City Depot under the District Office, Guwahati where the petitioner was posted, the percentage of loss of URS Rice

during the relevant period i.e. 1998 to 2001 had far exceeded the permissible limits resulting in a total loss of 4585.84.710 Quintals of URS Rice amounting to Rs. 25,93,653/-. It was alleged that the petitioner was partly responsible for the aforesaid loss and therefore, he was required to submit his show cause-cause/reply to the said charge.

4. The petitioner submitted his reply on 01.10.2001 taking up several grounds in support of his defence. According to the petitioner, he was a mere Assistant in Grade-111(D) and had worked in the Shed in question from 11.06.2001 under the direct supervision of the In-charge of the Shed. Furthermore, according to the petitioner, the stocks in question were received and issued through the weigh bridge under direct supervision of the Shed in-charge as well as the Depot-in-charge. The petitioner, in his reply, had further mentioned that during the relevant period of time the stock of URS Rice was supervised and checked by the inspecting staff of the District Office and that verification was also carried out by special squads of the Zonal Office from time to time. The records of such inspection and verification were maintained and at no earlier point of time any allegation of shortage was levelled against the petitioner. In the reply submitted, the petitioner had further stated that the necessary technical equipments and medicine were not supplied by the authority to prevent deterioration and down-gradation of the stock of URS Rice. That apart, according to the petitioner, the roof of the shed was damaged resulting in leakage during the rainy season which had also added to the damage and deterioration of the stock.

5. On consideration of the aforesaid reply, the authority of the FCI decided to impose the punishment of recovery by the order dated 01.06.2002, as already noticed. Hence, the writ petition.

6. Before embarking upon the necessary discussion that will be required to be undertaken to appreciate the contentions advanced on behalf of the rival parties, the Court must briefly notice the gist of the provisions contained in the FCI (Staff) Regulations relating to initiation and conduct of a disciplinary proceeding and the power to impose a punishment on an erring employee. Regulation 54 enumerates different shades of minor and major punishments that can be imposed on an erring member of the staff. Under Regulation 58, a major penalty can be imposed only after holding a departmental proceeding the conduct of which is regulated by the detailed provisions contained in Regulation 58, Regulation 60 authorises the disciplinary authority to impose any of the minor penalties without holding an enquiry if dispensing with such an enquiry is considered to be appropriate in the surrounding facts and circumstances.

7. The aforesaid provisions of the Staff Regulations came up for consideration before this Court in a decision of this Court reported in Bipin Rajbongshi Vs. Union of India (UOI) and Others, This Court in Bipin Rajbongshi (supra) after taking note of the detailed provisions contained in Regulation 58 and 60 of the Staff Regulations came to the conclusion that the question as to whether a departmental proceeding should be held or not before a minor penalty is

imposed, has been left to the discretion of the disciplinary authority by Sub-regulation (b) of Regulation 60(1). This Court in the aforesaid decision also took the view that before a minor penalty is imposed without holding an enquiry, the authority must be satisfied that, on the materials available, a satisfaction can be reached that the concerned employee should be held to be liable. Such satisfaction, though need not be recorded in the order imposing penalty, must be reflected either in the note sheets maintained or must be capable of being justified in the context of the facts of a given case in the event the disciplinary authority is called upon to justify its decision to impose the minor penalty without holding any enquiry. The aforesaid is the ratio of the judgment in Bipin Rajbongshi (supra), which ratio is based on the principle that imposition of even a minor penalty has necessarily to be founded on a satisfaction that the charged employee is liable to be punished on the allegations/charges levelled against him. The aforesaid decision of this Court in Bipin Rajbongshi (supra), it must also be noticed, has not been subjected to any appeal by the FCI and, therefore, the said decision has to be understood by the Court to have reached its finality in law.

8. Applying the principles laid down by the Court in Bipin Rajbongshi (supra) to the facts of the present case, what this Court finds is that in the present case, no basis for the decision to impose the penalty of recovery on the petitioner has been indicated in the impugned order dated 01.06.2002. No such basis for the impugned decision is also available in the affidavit filed by the respondents which merely seeks to contend that the explanations offered by the petitioner have not been found to be acceptable without indicating the reasons/grounds for the same. The records in original which were requisitioned by the Court reveal a very cryptic "justification" for the impugned action which is to the effect that the explanations offered by the petitioner are not found to be acceptable. Why such explanations have not been found to be acceptable are nowhere indicated in the records maintained.

9. Availability of the power to impose a minor penalty without holding an enquiry is not a sine qua non for its exercise. The exercise of the power must always be justified on the touchstone of the fairness and reasonableness of its exercise which in the last resort must have a live link to the satisfaction of the disciplinary authority that the undisputed materials available on record, even without holding an enquiry, are adequate and sufficient to record a satisfaction that imposition of penalty will be justified. The action of the authority in issuing the impugned order dated 01.06.2002 does not fulfill the aforesaid requirements which the Court must insist before according its approval to the impugned action taken against the petitioner.

10. The above discussion leaves the Court satisfied that in the present case, the order imposing the penalty of recovery on the petitioner is legally fragile, and, therefore, liable to interference. The impugned order reflects an administrative action arrived at without requisite satisfaction on the basis of acceptable materials. The same, therefore, partakes the character of an arbitrary action

which cannot have any recognition in law. The impugned order dated 01.06.2002, therefore, is set aside with liberty to the respondents to take further action in the matter in accordance with law and after holding an enquiry, if deemed fit and proper. The writ petition consequently is allowed but to the extent indicated above.