

(1994) 09 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 1312 of 1987

Deepak Laxman Sarnobat

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 70 FLR 164

Hon'ble Judges : S.M. Jhunjhunwala, J; M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—On June 1, 1966, the petitioner was appointed as Godown Clerk by Regional Director (Food), Ministry of Food and Agriculture, Government of India. The petitioner was posted to work under Assistant Director (Food) at Borivali, Bombay, On incorporation of Food Corporation of India which was established by an Act of Parliament, the functions of Regional Director (Food) were taken over by the Corporation. The services of the petitioner was transferred to the Corporation with effect from transferred to the Corporation with effect from March 1, 1969 and the petitioner was given the post of Assistant Grade III (Depot). From April 1, 1972, the petitioner was working as Assistant Grade II (Depot) and was transferred from Madhya Pradesh to Bombay Docks. The petitioner was thereafter working at several units under district Manages, City Godowns.

2. By order dated April 3, 1982, the petitioner was placed under suspension in exercise of powers conferred by sub-regulation 5(c) of Regulation 66 of Food Corporation of India (Staff) Regulations, 1971. The petitioner was served with a charge-sheet on November 29, 1982. The charge against the petitioner was that petitioner while functioning as Assistant Grade II (Depot) in Weigh Bridge, Sewri, recorded the weight of deliveries of wheat to M/s Wallace Flour Mills abnormally less on several occasions during January 1, 1981 and August 18, 1981. The statement of Articles of charges further recites that the petitioner failed to bring

the instance of abnormal variations in weight to the notice of the superior authorities and thereby caused huge loss to the Corporation. Along with the petitioner, three other employees - Tambe, Nayak and Arunraj who were working at the Weight Bridge, were also charge-sheeted. Tambe and Nayak were working as Assistant Grade II, while Arunraj was holding the post of Assistant Grade I. One Vachhaney was superior to these four employees and he was also charge-sheeted. As regards Vachhaney is concerned, Shri Desai, learned counsel appearing on behalf of respondents Nos. 2 to 5, stated that he was found guilty of the charges and was removed from service.

The enquiry against the petitioner, Tambe, Nayak and Arunraj was held jointly by the Enquiry Officer. The Enquiry Officer submitted report dated October 31, 1983 exonerating the petitioner as well as the other three employees from the charges levelled. It is required to be stated that the charges levelled against the petitioner and the other three employees were almost identical. The Disciplinary Authority did not accept the finding recorded by the Enquiry Officer. The Disciplinary Authority came to the conclusion that the abnormal variation in the issue weight was deliberately manipulated. The Disciplinary Authority further held that the defence of the delinquents was not substantiated and on the evidence on record, the charges should be held proved against all the four delinquents.

3. The Disciplinary Authority then proceeded to impose punishment in exercise of powers conferred by Regulation 59 of Food Corporation of India (Staff) Regulation, 1971. As regards Tambe, Nayak and Arunraj, the penalty imposed was reduction of pay by three stages from Rs. 775/- to Rs. 700/- in the time scale of RS. 450-15-555-20-675-25-850/- for a period of three years with effect from June 15, 1986. The Disciplinary Authority also directed that the three delinquents will not earn any increments of pay during the period of reduction and that on expiry of the period, the reduction will have the effect of postponing future increments of pay. The suspension period was ordered to be treated as period not spent on duty for all purposes and pay and allowances for the suspension period will be restricted to the subsistence grant already paid. As regards the petitioner, the Disciplinary Authority passed order removing him from service by observing that he is not fit person to be retained in the service of the Corporation.

The petitioner preferred an appeal before the Zonal Manager (West), but the appeal ended in dismissal by order dated March 20, 1987. The order dated March 20, 1987. The order of removal from service has given rise to the filing of the present petition under Article 226 of the Constitution of India.

4. The Counsel for the petitioner submitted that the Disciplinary Authority as well as the Appellate Authority were in error in holding that the charges against the delinquents were established. The learned counsel was desirous of referring to the enquiry proceedings and the statements recorded. It is not possible to accede to the submissions of the learned counsel. The Disciplinary Authority as

well as the Appellate Authority on appreciation of evidence came to the conclusion that the charges against the delinquents were proved and it is not permissible to disturb the finding of fact in exercise of writ jurisdiction. The Disciplinary Authority had ample material in the shape of entries made by the delinquent in the Weigh Bridge Register to come to the conclusion that the charge that deliberately record was maneuvered to show that the quantity supplied to M/s. Wallace Flour Mills was less. In our judgment, it is not permissible to disturb the finding of the Disciplinary Authority that delinquent was guilty of charges levelled.

5. The counsel then submitted that the imposition of penalty by the Disciplinary Authority on the petitioner is entirely unreasonable and irrational. It was urged that the four employees who were working at Weigh Bridge were charge-sheeted and the common enquiry was held. though the Enquiry Officer found that all the four delinquents were not guilty of the charges, the disciplinary Authority has reversed that conclusion. The Disciplinary Authority passed order assigning reason as to why the recommendation of the Enquiry Officer could not be accepted. It was urged that the Disciplinary Authority was then in error in imposing excessive punishment only on the petitioner. We find considerable merit in the submissions of the learned counsel. As mentioned hereinabove, the punishment imposed on Tambe, Nayak and Arunraj was far less than the penalty of removal imposed upon the petitioner. The charge-sheet served upon the petitioner, the statement of imputation supplied to the petitioner and the reasons recorded by the Disciplinary Authority for not accepting the recommendation of the Enquiry Officer nowhere reflects that the part played by the petitioner was in any manner larger than the other three delinquents. Indeed, the order imposing penalty also does not mention a to why the Disciplinary Authority thought it fit to impose heavier heavier punishment upon the petitioner. The perusal of the order of the Appellate Authority also does not indicate any reason for imposition of higher punishment. The respondents have filed return in answer to the petition and the return nowhere recites that the petitioner was penalised even on earlier occasion so as to warrant higher penalty. In these circumstances, we are unable to appreciate why the petitioner should be treated differently from other delinquents.

6. Shri Desai, learned counsel appearing on behalf of respondents Nos. 2 to 5, submitted that the number of entries made by petitioner are more than other delinquents and, therefore, higher punishment can be sustained. We are unable to appreciate any force in the contention. All the four delinquents were posted along with the superior officer at the Weigh Bridge at the relevant time. The number of entries made by the delinquent depend upon their availability at the Weigh Bridge. The charge about recording of less weighment is applicable to all the four delinquents and the number of entries cannot make any difference to indicate that the offence committed by the petitioner was graver than the others. Shri Desai then submitted that it is not open for this Court in exercise of writ jurisdiction to interfere with the quantum of punishment imposed by the

Disciplinary Authority and in support of the submission reliance was placed upon judgment of the supreme Court in 1994 1 CLR 663 State Bank of India and others v. Samarendra Kishore Endow and another. It is undoubtedly true that while exercising writ jurisdiction, this Court is not entitled to disturb the quantum of punishment imposed by the Disciplinary Authority but when it is found that Disciplinary Authority had not exercised the discretion, nor there is any material on record to indicate why the discretion was exercised to impose heavier punishment on one of the delinquents, then it is impossible to suggest that such an order of disciplinary Authority should not be disturbed in writ jurisdiction. Indeed, refusal to exercise jurisdiction would lead to injustice to the petitioner who has been treated separately from other delinquents without any reason or rhyme. In our judgment, it is, therefore, necessary to exercise the jurisdiction and correct the obvious error committed by the Disciplinary Authority. In our judgment, the penalty to be imposed upon the petitioner should be identical as that imposed upon the other three delinquents.

7. Accordingly, petition succeeds and the order dated June 13, 1986 passed by Senior Regional Maharashtra and the copy of which is annexed as Exhibit "E" to the petition as well as the order dated March 20, 1987 passed by Zonal Manager (West) of Food Corporation of India are varied and instead of order of removal imposed by the Disciplinary Authority, the following penalty is substituted :

"The penalty of reduction of pay by three stages from Rs. 640/- to Rs. 580/- in the time scale of Rs. 450-15-555-20-675-25-850/- for a period of three years with effect from June 15, 1986. The petitioner will not earn any increments of pay during the period of reduction and on expiry of period, the reduction will have the effect of postponing future increments of pay.

Regarding suspension period, it is ordered that the suspension period will be treated as period not spent on duty for all purposes and pay and allowances for the suspension period will be restricted to the subsistence grant already paid. The respondents to reinstate the petitioner in service and pass consequential orders".

8. In the circumstances of the case, there will be no order as to costs.