
(2002) 08 AHC CK 0137
In the Allahabad High Court
Case No : C.M.W.P. No. 26819 of 2002

Deo Kumar Ojha	Vs	APPELLANT
Board of Directors, U.P. State Warehousing Corporation and Others		RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 AWC 2992 : (2003) 1 UPLBEC 33 : (2002) 3 UPLBEC 2646

Hon'ble Judges : N.K. Mehrotra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : G.K. Singh, V.K. Singh and S.N. Singh, for the Appellant; Rajendra Kumar Srivastava, S.C., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This writ petition under Article 226 of the Constitution has been filed for quashing the impugned order dated 20.12.2001 (Annexure-12 to the writ petition) passed by respondent No. 2, order dated 16.5.2002 passed by respondent No. 1 and for issuing a writ of mandamus restraining the respondents from recovering any amount from the petitioner.

2. We have heard learned counsel for the petitioner at length at the admission stage.

3. The petitioner was Senior Warehouse Superintendent. He remained in-charge of several godowns. He used to look after those godowns through godown keepers. The responsibility of the Senior Warehouse Superintendent and godown keepers are laid down in the order dated 1.5.1978 issued by the Managing Director, U. P. State Warehousing Corporation. During his tenure as Senior Warehouse Superintendent/ Warehouse-in-charge, Ghazipur, it was found that there was some shortage in the stock of food grains in the godowns, which were in his charge. Consequently, a charge-sheet was served upon him on 16/17th

March, 1998. In the charge-sheet, the petitioner was held responsible for the loss which has been caused to the godown. Admittedly, full opportunity of hearing was given to the petitioner in the regular enquiry.

4. Another charge-sheet dated 20.9.1999 was also served upon the petitioner levelling same charges in respect of some other godowns which were under his control. In this enquiry also, full opportunity of hearing was given to the petitioner.

5. Further, a supplementary charge-sheet was also served on the petitioner on 9th/10th October, 2002. On all three charge-sheets, separate enquiries were held by two different enquiry officers. On receiving the two reports, two separate show-cause notices were served upon the petitioner. The show-cause notices were duly replied by the petitioner. After taking into consideration the replies given by the petitioner, the Executive Committee of the Corporation passed order dated 20.12.2001, dismissing the petitioner from the service and ordering recovery of Rs. 4,18,280.27 from the petitioner. The petitioner filed an appeal before the Board of Directors on 15.1.2002. Thereafter, petitioner filed a Writ Petition No. 13217 of 2002 in which the direction was issued by this Court that the appeal of the petitioner may be decided within four months. The appeal of the petitioner has been decided vide order dated 16.5.2002 and the Board of Directors has dismissed the appeal.

6. The petitioner has assailed the order of dismissal on the ground that it is arbitrary and discriminatory, because the godown keeper who was directly responsible for the loss and against whom also the enquiries were held, has been let off while the enquiry officer was of the view that all of them are responsible. It is also contended that the punishing authority has failed to record any reason for this discrimination. It is also alleged that the respondent authorities failed to consider the order dated 1.5.1978, whereby the duties of the employees had been fixed. It is also contended that the punishment awarded to the petitioner is too harsh, and disproportionate to the guilt found against him.

7. The impugned order goes to show that enquiry officer had assessed the total loss to the Corporation at Rs. 8.36,560.54 and besides the order of dismissal, half of the said amount of loss has been directed to be recovered from the petitioner and the remaining half has been directed to be recovered from the other godown keeper.

8. Learned counsel for the petitioner has argued that apportionment of the loss between the petitioner and the godown keeper was not within the jurisdiction of either the enquiry officer or the Executive Committee or the Board of Directors. It is the civil court where the liability can be apportioned. In support of his contention learned counsel for the petitioner has relied on the judgment in General Manager, North East Frontier Railway and Others Vs. Dinabandhu Chakraborty, It was a case of deduction of the amount of loss from the provident fund. The Supreme Court held that under the Provident Fund Rules, no authority

is constituted for deciding any dispute that might arise between the subscriber and the Government. Therefore, the only forum in which these disputes can be decided is the civil court. This decision relied on by the learned counsel for the petitioner is not relevant, because in the instant case, there is no deduction of loss from the provident fund. The appointing authority was competent to recover the loss in proportion to the responsibility of the officer found negligent.

9. Learned counsel for the petitioner has assailed the impugned order on the ground of discrimination and argued that by letting of the godown keeper and by dismissing the petitioner, the appointing authority has shown discrimination while both the Superintendent of Warehouse and the Godown Keeper were equally responsible for the loss. In support of his contention, the learned counsel has relied on a decision in *The Director General of Police and Others Vs. G. Dasayan*, but in this case, no such law was laid down by Supreme Court that there will be equal punishment, even if the responsibility of the co-delinquent is different. The award of punishment can be held to be discriminatory only when the misconduct is the same and responsibility in the loss is also equal. In the instant case, the responsibility and the charges against the petitioner and co-delinquents are not similar.

10. Learned counsel for the petitioner has also contended that the appellate authority has not applied the mind while passing the order in appeal. This argument has also no force because the impugned order of dismissal is full of reasons and appellate authority after taking into consideration the grounds of the petitioner and considering the same at length has decided the appeal.

11. We find that it is not such a case in which the findings have been recorded without framing specific charge against the petitioner. The contention of the learned counsel is that no action was taken against godown keeper, Saudagar Singh, even after his recommendation for action against him. We find that there is no force in this contention, because there is specific charge of collusion between the petitioner and Saudagar Singh, the godown keeper and the enquiry officer after considering the evidence, has recorded the specific findings.

12. Learned counsel for the petitioner has also argued on the excessiveness of punishment. We are of the view that imposition of the proper punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it, but not to the High Court. The power under Article 226 of the Constitution of India is one of the judicial review. This view was taken by Supreme Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, The relevant extract of the said decision is as follows :

"However, judicial review under Article 226 cannot be converted into appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In *Chief Constable of the North Wales Police v. Evans* (1982) 1 WLR 1155. refers to the merits-legality distinction

in judicial review. Lord Hailsham said :

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court."

Lord Brightman observed :

"..... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made....."

And held that it would be an error to think :

".....that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

13. In State of Orissa Vs. Bidyabhushan Mohapatra, the same view was taken by the Constitution Bench of the Supreme Court, which was followed in State Bank of India and Ors. v. Samarendra Kishore Endow and Anr. 1994 (1) SLR 517.

14. In B.C. Chaturvedi Vs. Union of India and others, it was held by the Supreme Court that the finding of the disciplinary authority must be based on some evidence. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural Justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. Strict proof of legal evidence and findings thereon are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the High Court/Tribunal.

15. We find that this is not a case of no evidence in support of the charges levelled against the petitioner and there is no allegation of violation of principles of nature justice or statutory rules dealing with the disciplinary enquiry.

16. In view of the aforesaid decision and facts of the instant case, we are of the opinion that this writ petition is liable to be dismissed at the admission stage.

17. The writ petition is dismissed at the admission stage.