

(1997) 02 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7841 of 1996

Devinder Singh Grover

APPELLANT

Vs

The Food Corporation of India and Another

RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Food Corporation of India Staff Regulations, 1971 — Rule 59

Citation : (1997) 116 PLR 296

Hon'ble Judges : R.S. Mongia, J;M.L. Singhal, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant; Hemant Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia and M.L. Singhal, JJ.—This order shall dispose of CWP Nos. 7841 and 9161 of 1996. In CWP No. 7841 of 1996 the petitioner was working as Assistant Manager (General) in the Food Corporation of India (in short FCI) whereas in other writ petition, the petitioner was working as Assistant Grade-II in the FCI. A joint domestic enquiry on certain allegations against both the petitioners alongwith 11 other officials was held. It is not necessary to observe anything regarding other 11 officials. Suffice it to say, that the petitioner were exonerated by the Enquiry Officer of the charges levelled against them. The enquiry report as submitted by the Enquiry Officer was furnished to the petitioners and since they had been exonerated by the Enquiry Officer, they wrote to the Disciplinary Authority that they had noting to say against the enquiry report as no findings had been recorded against them by the Enquiry Officer and the enquiry report should be accepted qua them as it is. However, the Disciplinary Authority (it is the same qua both the petitioners) disagreed with the findings recorded in favour of the petitioners by the Enquiry Officer and vide order dated 2.11.1995 (Annexure P-5) in the first writ petition and order dated 2.11.1995 (annexure P-6) in the latter writ petition, imposed punishment of dismissal. In the said orders the reasons as to why the Disciplinary Authority was

disagreeing with the Enquiry officer have been given. The petitioners filed appeals before the appellate authority but they were unsuccessful and their appeals were dismissed vide order dated 23.4.1996 (Annexure P-7) in the first writ petition and order dated 23.4.1996 (Annexure P-II) in the latter writ petition.

2. It was argued inter alia on behalf of the petitioners that the reasons for disagreement with the enquiry report were not supplied by the Disciplinary Authority to the petitioners to afford them an opportunity to persuade and convince the Disciplinary Authority that his disagreement with the enquiry report was not well based and rather findings of the Enquiry officer were correct.

3. It is not disputed on the part of the respondents that reasons for disagreement by the Disciplinary Authority were not supplied to the petitioners before passing the orders of dismissal. Reference at this stage may be made to Regulation 59 of the Food Corporation of India (Staff) Regulations, 1971 which deals with the action on the enquiry report and it reads:

"59 Action on the enquiry report: (1) The Disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold the further inquiry according to the provisions of Regulation 58 as far as may be.

(2) The disciplinary authority, shall if it disagrees with the findings of the inquiring authority on an article of charge record its reasons for such disagreement and record" its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge its of the opinion that any of the penalties specified in clause (i) to (iv) of Regulation 54 should be imposed on the employee, it shall, notwithstanding anything contained in Regulations 58, make" an order imposing such penalty.

(4) If the disciplinary authority having regarding to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry, is of the opinion that any of the penalties specified in clause (v) to (ix) of Regulation 54 should be imposed on the Corporation employee, it shall make an order imposing such penalty and it shall not be necessary to give the Corporation employee any opportunity of making representation on the penalty proposed to be imposed.

(5) x x x x x x x ;"

4. Learned counsel for the petitioners argued that non-supply of the reasons of disagreement by the Disciplinary Authority with the findings of the Enquiry Officer has prejudicially affected them as the impugned orders of dismissal are in violation of the principles of natural justice. Learned counsel for the petitioners have cited a judgment of Andhra Pradesh High Court by Mr. Justice K.

Ramaswamy (now Judge of the Supreme Court) reported as *Rajasekhara Rao v. Food Corporation of India* 1989(7) SLR 688 (A.P.) where the aforesaid regulation came up for consideration and it was held that in Regulation 59(2) principles of natural justice would be read and it would be incumbent on the Disciplinary Authority to supply reasons for disagreement to the delinquent official. This judgment of Andhra Pradesh High Court was relied upon by a learned Single Judge of this Court in *B.M. Sharma v. State Bank of India*, C.W.P. 12459/92 dated 8.5.95 1995(5) S.L.R. 11 where same regulation came up for consideration. The letters patent appeal against the aforesaid judgment also stands dismissed. Further reliance has been placed on the judgment of Hon''ble the Apex Court in *Ram Kishan Vs. Union of India and others*, , where in a show cause notice issued to the delinquent official as to why particular punishment be not imposed, the Disciplinary Authority had not mentioned the reasons for disagreement with the enquiry report. In these circumstances it was held that the show cause notice was not proper as it was violating the right of the delinquent official to show to the Disciplinary Authority that the reasons for disagreement were not well based. According to the Apex Court this violated the principles of natural justice.

5. On the other hand learned counsel for the respondents argued that if the Disciplinary Authority is itself inquiring authority, the report need not be given to the delinquent official and on the basis of enquiry report, the disciplinary authority itself can award punishment and if the disciplinary authority disagrees with the report of the Inquiry Officer and gives its own findings it is as good a holding of enquiry by the disciplinary authority itself and, therefore, the reasons for disagreement are not required to be given to the delinquent official. Moreover learned counsel for the petitioners have not shown any prejudice that may have been caused to the petitioners by non-supply of the reasons for disagreement. Further, the reason-for disagreements is not "material" which is to be supplied to the delinquent official. In support of his contention, learned counsel for the respondent cited a judgment of the apex Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar* 1993(5) S.L.R. 532. In that case, the apex Court observed that the supply of copy of enquiry report is not a mere ritual and it must be shown that prejudice has been caused by the non-supply thereof.

6. After hearing learned counsel for the parties, we are of the opinion that there is sufficient force in the argument of learned counsel for the petitioners. The whole idea of the rules of natural justice is that the delinquent official should know what is against him so that he can meet the same before the disciplinary authority acts on the same. In *Union of India v. Mohd. Ramzan* 1991(1) S.L.R. 159, Hon''ble the apex Court observed that if the Enquiry Officer is not himself the Disciplinary Authority the principles of natural justice require that enquiry report must be supplied to the delinquent official to show to the Disciplinary Authority that he should not agree with the Enquiry Officer. Conversely also, if the Disciplinary Authority is in disagreement with the report of the Enquiry Officer, the rules of natural justice would require that the delinquent official must

know as to why Disciplinary Authority is not agreeing with the findings recorded by the Enquiry Officer and should be given a chance to persuade the Disciplinary Authority not to do so. This is the minimum requirement of the rules of natural justice. We are in respectful agreement with the view expressed by Andhra Pradesh High Court as noticed above, followed by a learned Single Judge of this Court, L.P.A. against which also stands dismissed. The non-supply of the reasons for disagreement with the enquiry report has clearly prejudiced the petitioners inasmuch as before the award of punishment, they never knew as to what has weighed with the Disciplinary Authority to disagree with the Enquiry Officer's report. The report of the enquiry along with the reasons for disagreement with the enquiry would be in the circumstances be the real enquiry report which even according to the judgment cited by the learned counsel for the respondent has to be supplied to the delinquent official.

7. In the circumstances as mentioned above, the reasons for disagreement would be such a material which should be given to the delinquent official as it is he who is to persuade the Disciplinary Authority not to disagree with the findings of the Enquiry Officer. Such a material as observed above, comes into being after the report has been submitted by the Enquiry Officer, which report as stated above, in this case happened to be in favour of the petitioners.

8. It may be observed that the learned counsel for the petitioners also argued that there was discrimination on the award of punishment as compared to other officials who were also charge-sheeted on the same allegations along with the petitioners. We are not going into this point because of our view on the first point raised by the learned counsel for the petitioners.

9. For the reasons recorded above on the first point raised by the learned counsel for the petitioners we find that the appellate authority's orders can also not stand as the hearing by the appellate authority would not amount to hearing by the Disciplinary Authority regarding the acceptance of the view point of the petitioners that it should not disagree with the finding of the Enquiry Officer.

10. In view of the reasons given above, we allow this writ petition and quash the impugned orders dated 2.11.1995 and 23.4.1996 (Annexure P-5 and P-7) in C.W.P. No. 7841 of 1996 and 2.11.1995 (Annexure P-6) and 23.4.1996 (Annexure P-II) in C.W.P. No. 9161-of 1996 leaving it open to the respondent authorities to pass fresh orders in accordance with law keeping in view the aforesaid observations.