
(2004) 10 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 2921 of 1990

Dnyaneshwar Dadaji Waradkar

APPELLANT

Vs

Maharashtra State Co-operative Cotton Growers Marketing
Federation Limited

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : (2005) 3 ALLMR 120 : (2005) 2 BomCR 748

Hon'ble Judges : Sinha D.D., J;Joshi A.H., J

Bench : Division Bench

Advocate : M.M. Agnihotri, for the Appellant; Gopal Mishra, for the Respondent

Judgement

Sinha D.D., J.—Heard Shri Agnihotri, learned Counsel for the petitioner, and Shri Mishra, learned Counsel for the respondent.

2. The petition is directed against the orders dated 13-3-1990 and 4-9-1990 passed by the respondent whereby petitioner is dismissed/removed from service after departmental enquiry. The controversy in issue, in nutshell, is as follows:

The petitioner was appointed as apprentice by the respondent Maharashtra State Co-operative Marketing Federation on 25-1-1975. After completion of apprenticeship, the petitioner was appointed as junior grader by the respondent in 1976-77. The petitioner was promoted to the post of senior grader in the year 1979. In the year 1984, the State Maharashtra decided to register respondent Federation as its Chief Agent for purchase of raw cotton and as per direction of the State Government, the petitioner and other State employees were taken on deputation by the respondent federation and thereafter were absorbed in service of the respondent federation. The petitioner continued to be governed by the Service Rules framed by the Marketing federation till the respondent federation framed its own Rules. For the purpose of present petition, Rules framed by the federation are relevant. In the year 1987-88, petitioner was working as centre in-charge at Dudhgaon and had three assistants and watchman.

3. The petitioner was suspended on 25-3-1988. On 4-4-1988, as per directions of the Managing Director of the respondent, the Zonal Manager of Flying Squad, Aurangabad visited Dudhgaon twice and made enquiry of alleged malpractice in purchase of cotton. The allegation was that loss of Rs. 5,14,191/- was caused to the federation. On 10-4-1988, offence was registered by the Sub-Zonal Manager against petitioner and others. On 1-8-1988 petitioner was charge-sheeted, which contained five different charges. On 25-8-1988, petitioner submitted written statement. On 26-9-1988, petitioner appeared before the Enquiry Officer and denied all the charges and claimed to be tried. On 4-10-1988, department supplied copies of relevant documents and list of witnesses to be examined by the federation to the petitioner. On 17-4-1989, evidence was closed by the federation. On 3-5-1989 Presenting Officer as well as delinquent filed their statements. The enquiry report dated 20-6-1989 reveals that Charge Nos. 1, 2 and 5 were not proved and charge Nos. 3 and 4 were proved. On 1-12-1989, show cause notice under Rule 38(d)(1) and (2) of the Service Rules was issued by the Disciplinary Authority. The Disciplinary Authority disagreed with the finding of the Enquiry Officer and held that all the five charges against petitioner stand proved and, therefore, penalty of dismissal was proposed by the Disciplinary Authority. On 22-12-1989, petitioner submitted his reply to the show cause notice dated 1-12-1989. On 13-2-1990. Disciplinary Authority passed the impugned order dismissing the petitioner from service, which was received by the petitioner on 16-2-1990. On 13-3-1990 petitioner filed appeal against order of Disciplinary Authority and Appellate Authority vide impugned order dated 4-9-1990 dismissed the same. Hence, petitioner has filed the present petition.

4. Shri Agnihotri, learned Counsel for the petitioner, states that order passed by the Appellate Authority dated 4-9-1990 is an order without reasons and, therefore, in view of Rule 49 of the Maharashtra State Co-operative Marketing Federation Servants" (Conduct, Discipline and Appeal) Rules (hereinafter referred to as "the Rules"), which deals with consideration of appeal to be observed by the Appellate Authority. It is contended by the learned Counsel that the Appellate Authority is required to pass speaking order recording its reasons as well as findings on each point as required by Rule 49 of the Rules. However, the impugned order passed by the Appellate Authority not a speaking order and the appeal of the petitioner has been rejected by passing a non-speaking order, which cannot be sustained in law.

5. Learned Counsel Shri Agnihotri submits that in the memorandum of appeal, the petitioner had given detailed reasons for challenging order passed by the Disciplinary Authority. It is contended that when the Disciplinary Authority disagreed with the conclusion recorded by the Enquiry Officer and passed the order of dismissal dated 13-2-1990, it was all the more necessary for the Appellate Authority to pass a detailed speaking order giving reasons as to why the order of Disciplinary Authority is sustainable in law and as to why appeal needs to be dismissed. It is submitted that in absence of reasons recorded by the Appellate Authority, impugned order dated 4-9-1990 passed by the Appellate

Authority cannot be sustained in law. In order to substantiate the contentions, reliance is placed by the learned Counsel on the judgment of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., as well as Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad, .

6. It is further submitted by learned Counsel Shri Agnihotri that order dated 13-2-1990 passed by the Disciplinary Authority also suffers from same vice as same is also a non-speaking order and, therefore, cannot be sustained. It is submitted that when the Disciplinary Authority disagreed with the findings and conclusion recorded by the Enquiry Officer in respect of charge Nos. 1, 2 and 5, it was incumbent on the Disciplinary Authority to give detailed reasons for the same and in absence thereof, the order of Disciplinary Authority is unsustainable in law in view of law laid down by the Apex Court referred to hereinabove.

7. Shri Mishra, learned Counsel for the respondent, supports the impugned order passed by the Disciplinary Authority as well as Appellate Authority. It is submitted that so far as order of Disciplinary Authority dated 13-2-1990 is concerned, there is no specific challenge to validity of the same. The petitioner has neither challenged the procedure adopted by the Enquiry Officer nor ground is raised in the petition about breach of any Rule or procedure by the Enquiry Officer while conducting departmental enquiry against the petitioner. It is, therefore, contended that so far as request of the petitioner for quashing of order dated 13-2-1990 passed by the Disciplinary Authority is concerned, in absence of any specific ground in this regard, may not be entertained.

8. So far as appellate order dated 4-9-1990 is concerned, it is submitted by the learned Counsel for the respondent that Appellate Authority after taking into consideration pros and cons of the issue involved, findings recorded by the Disciplinary Authority as well as grounds raised by the petitioner in the memo of appeal came to the conclusion that the findings recorded by the Disciplinary Authority are just and proper and need no interference and, therefore, dismissed the appeal of the petitioner. It is submitted that so far as Rule 49 of the Rules is concerned, the Appellate Authority in fact has taken into consideration all the circumstances involved in the light of provisions of Rule 49 and it is only thereafter came to the conclusion that there was no merit in the appeal and hence, dismissed the same. It is contended that appellate order is, therefore, sustainable in law. It is further contended that the charges framed against the petitioner were of serious nature and because of malpractices committed by the petitioner in purchase of cotton, loss of Rs. 5,51,468.90 was caused to the federation and, therefore, taking into consideration the evidence available on record, Disciplinary Authority was justified in holding that all the charges against the petitioner stand proved and Appellate Authority was also justified in dismissing the appeal of the petitioner.

9. We have given anxious thought to the various contentions canvassed by the respective learned Counsel for the parties and perused the impugned orders as well as decision of the Apex Court relied on and cited by the learned Counsel for

the petitioner. In the instant case, the order dated 4-9-1990 passed by the Appellate Authority is challenged on the ground that the same is non-speaking order and inconsistent with the procedure mentioned in Rule 49 of the Rules. The provisions of Rule 49 of the Rules read thus :

"Rule 49-On receipt of the appeal, the Appellate Authority shall consider-

(a) Whether the procedure prescribed in these Rules has been complied with and if not, whether non-compliance has resulted in failure of justice.

(b) Whether the facts on which the order was based have been established.

(c) Whether the findings are justified and the facts established afford sufficient ground for taking action, and

(d) Whether the penalty imposed is excessive or inadequate.

After considering the appeal in the light of the above, the Appellate Authority shall pass the order."

Perusal of the memo of appeal shows that petitioner had challenged the order of the Disciplinary Authority on various ground and also mentioned that Disciplinary Authority had overlooked the breach of certain mandatory procedure mentioned in the Rules while conducting departmental proceedings against the petitioner. As per Rule 49 of the Rules, the Appellate Authority undoubtedly is required to consider whether procedure prescribed in the Rules has been complied with by the Enquiry Officer as well as by the Disciplinary Authority and if there is non-compliance of some Rules, whether same has resulted in failure of justice. It is therefore, statutory duty of the Appellate Authority to consider these aspects and give reasons for the same. It is also necessary for the Appellate Authority to consider as to whether facts on which order of the Disciplinary Authority is passed are duly established in the departmental enquiry conducted against the delinquent and the Appellate Authority is also required to record reasons for the same. Similarly, the Appellate Authority needs to consider whether findings are justified and facts established afford sufficient ground for taking action and is also required to give reasons as to whether penalty imposed is excessive or inadequate. It is, therefore, evident that Appellate Authority is under statutory obligation to consider appeal in the light of above referred facts and circumstances and is required to pass a detailed order giving reasons on all counts referred to hereinabove and mentioned in Rule 49 of the Rules to justify conclusions arrived at by the Appellate Authority.

10. We have perused the impugned order dated 4-9-1990 passed by the Appellate Authority in order to find out whether it satisfies requirement of Rule 49 of the Rules. The order passed by the Appellate Authority reads thus:

"Maharashtra State Co-operative Cotton Growers Marketing Federation, Head Office, Nagpur

No. Est/Inq/DDW/89-90/2333/6190 Dated : 4-9-1990

To

Shri Dnyaneshwar Dadaji Waratkar, r/o Selu, Taluq Selu, District Wardha.

Subject: Appeal against the order of dismissal.

You were dismissed from the services of the Federation vide Officer Order dated 13-2-1990 and you had filed an appeal against the said order on 13-3-1990. The said appeal was placed before the Staff Committee on 10-8-1990.

You are informed that the Staff Committee has dismissed your appeal and confirmed the punishment of dismissal as awarded by the Managing Director.

Sd/- Managing Director (Admn.), and Secretary, Staff Committee."

Bare perusal of the appellate order shows that same is not only cryptic and slipshod, but is passed without giving any reason whatsoever. The above referred order passed by the Appellate Authority reveals that the same is passed without taking into consideration various facts required to be considered by the Appellate Authority enumerated in the Rule 49 of the Rules and, therefore, there are no reasons forthcoming in the order in this regard. The impugned order dated 4-9-1990 shows complete non-application of mind on the part of the Appellate Authority and appears to have been passed mechanically without justification whatsoever. It only reveals that appeal filed by the petitioner against order of Disciplinary Authority was placed before the Staff Committee and by the impugned order dated 4-9-1990, petitioner was only communicated that the Staff Committee dismissed the appeal of the petitioner and confirmed the punishment of dismissal awarded by the Managing Director. There are no reasons whatsoever mentioned in the communication dated 4-9-1990 as to why Staff Committee has reached such conclusion and on what basis, in absence thereof, impugned order dated 4-9-1990 is not only de hors of the provisions of Rule 49 of the Rules, but same is even otherwise unsustainable in law for want of necessary reasons. In this regard, observations of the Apex Court in the case of A.L. Kalra (cited supra) are relevant, which read thus :

"A detailed appeal was submitted by the appellant to the Board of Directors running into about 8 pages. The only order while dismissing the appeal brought to our notice is a communication by a gentleman Anand Krishna whose authority and designation are not stated, but who purported to act on behalf of the Board of Directors, that the Appellate Authority, after going through the records of the case, has decided to uphold the decision of the Disciplinary Authority and to confirm the penalty of removal from service imposed upon the appellant. Rule 35 of 1975 Rules deals with appeals. Sub-rule (ii) of Rule 35 provides amongst others that the Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate order within three months of the date of appeal. In order to ascertain whether the Rule is complied with, the order of the Appellate Authority must show that it took into consideration the findings, the quantum of penalty and other relevant

considerations, There is no material for showing that the Appellate Authority acted in consonance with its obligation under Rule 35. However, in paras 5.14 to 17 of the counter-affidavit, it was stated that full inquiry report with annexure can be shown to the Court at the time of hearing, if desired. If the respondent was anxious to sustain its action, it was obligatory upon it to disclose the full inquiry report. Nothing was shown to us nor any attempt to show the proceedings of the Appellate Authority to disabuse our mind that the Appellate Authority was guilty of utter non-application of mind and discharged its duty under Rule 35. No attempt was made to urge that the three authorities had ever assigned reasons in support of their conclusions. For this additional reason also, the initial order of the Disciplinary Authority as well as the Appellate Authority are liable to be quashed and set aside."

11. When we apply the law laid down by the Apex Court in the above referred judgment to the facts of the present case, though it is contended by the learned Counsel for the respondent that the Disciplinary Authority as well as Appellate Authority have taken into consideration the relevant material circumstances and it is only thereafter recorded their conclusions, however, in absence of any submission or return filed by the respondent, it is not possible for us to agree with the contentions canvassed by the learned Counsel for the respondent in this regard, particularly in view of cryptic non-speaking order passed by the Appellate Authority. Similarly, neither proceedings of the Appellate Authority nor proceedings of enquiry were placed before us to show that procedure contemplated by Rule 49 of the Rules was complied with by the Appellate Authority. On the other hand, perusal of the order of the Appellate Authority shows that same is totally cryptic and there is no material for showing that Appellate Authority acted in consonance with its obligation under Rule 49 of the Rules and, therefore, same is unsustainable in law. Apart from Rule 49 of the Rules, it is even otherwise incumbent on the Appellate Authority to give reasons to justify its conclusion. Failure to give reasons amounts to denial of justice. Right to reason is indispensable part of sound judicial system and reflection of application of mind by the Appellate Authority to the matter before it. Similarly, it is one of the parameters to note as to why decision has gone against the appellant. The reasons for the order made would also show that the principles of natural justice are complied with. In absence therefore, in a given case, order would suffer from violation of principles of natural justice and would be unsustainable in law. In the instant case, the impugned order dated 4-9-1990 passed by the Appellate Authority undoubtedly is not only in breach of Rule 49 of the Rules, but same is also against sound principles of law and, therefore, cannot be sustained.

12. It is no doubt true that petitioner has also raised challenge to order dated 13-2-1990 passed by the Disciplinary Authority. However, there are no specific averments in the petition to indicate on what grounds petitioner is challenging order dated 13-2-1990 passed by the Disciplinary Authority. In ground No. (II) in the petition, only passing reference is made by the petitioner that to avoid

repetition, petitioner relies on the grounds mentioned in the memorandum of appeal for challenging the order passed by the Disciplinary Authority. However, except this passing reference in ground No. (II), there is no averment in the petition nor there is any ground in the petition on which order of Disciplinary Authority is challenged. In absence thereof, it is not possible for us to adjudicate upon validity of the order passed by the Disciplinary Authority. Similarly, no other material is placed before us in this regard. In absence thereof, challenge to the order of the Disciplinary Authority, dated 13-2-1990, must fail.

13. For the reasons stated hereinabove, the impugned order dated 4-9-1990 passed by the Appellate Authority is hereby quashed and set aside. The case of the petitioner is remanded to the Staff Committee of the respondent, which is directed to re-consider the appeal of the petitioner after giving reasonable opportunity of hearing to the petitioner and decide the same on its own merits according to law within a reasonable time.

14. The petition is partly allowed. The rule is made absolute accordingly.

No order as to costs.