
(1996) 01 SC CK 0224

In the Supreme Court Of India

Case No : Civil Appeal No. 1499 Of 1993

Fertilizer Corporation of India Ltd. and Others

APPELLANT

Vs

Rangadhar Nayak and Another

RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

Citation : (1997) 11 SCC 565

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.C. Agrawal and; G.T. Nanavati, JJ.-This appeal by special leave is directed against the judgment dated 17-9-1992 passed by the Orissa High Court in writ petition (OJC No. 4057 of 1990) filed by Rangadhar Nayak, Respondent 1 (hereinafter referred to as "the petitioner").

2. The petitioner was employed as Assistant Engineer (Civil) with the Fertilizer Corporation of India Limited (hereinafter referred to as "the appellant-Corporation"). Disciplinary proceedings were initiated against him in respect of five charges of misconduct. The Inquiry Officer, after conducting an inquiry into the charges, found that Charges Nos. 1, 2, 4 and 5 were established. After considering the report of the Inquiry Officer the disciplinary authority accepted the findings recorded by the Inquiry Officer in respect of Charges Nos. 1, 2 and 4 and by order dated 16-4-1987 the penalty of removal from service was imposed on the petitioner. The appeal filed by the petitioner against the said order of removal from service was dismissed by the appellate authority by order dated 14-10-1987.

3. The petitioner filed a writ petition (OJC No. 3512 of 1987) in the High Court challenging the said order of removal. In the said writ petition the respondent raised various contentions to challenge the said order. The said writ petition was disposed of by the High Court by its judgment dated 11-1-1990. The High Court

held that the scope of the jurisdiction of the Court under Article 226 of the Constitution is limited and cannot be equated to that of a court of appeal over decisions of the authorities holding a departmental enquiry against an employee and that it is not the function of the High Court to review evidence and to arrive at an independent finding on the evidence. It was observed that if there was some legal evidence on which the conclusion of the departmental authorities was based, the adequacy or reliability of that evidence was not a matter that could be permitted to be canvassed before the High Court in a proceeding under Article 226 and that the High Court could interfere only if there was total absence of evidence. The High Court, however, found that the forum of review was provided by Rule 35 and the reviewing authority had jurisdiction to consider the adequacy, existence or otherwise of material in justification of the penalty imposed and there is no fetter in its power to make in-depth analysis and evaluation of evidence. The High Court, therefore, disposed of the writ petition with the direction that it was open to the petitioner to make a representation relating to the desirability, quantum and nature of penalty to be imposed, if any, and that on receipt of such representation the authority shall deal with and dispose of the same in accordance with law.

4. In pursuance of the said direction given by the High Court, the petitioner submitted a representation which was considered by the Board of Directors of the appellant-Corporation in the meeting held on 1-11-1990 and after considering the various contentions raised in the said representation, the Board of Directors felt that there was no justification to set aside the order imposing the penalty of removal from service on the respondent or to reduce the said penalty. The representation was, therefore, rejected. Thereupon the petitioner filed the second writ petition which has given rise to this appeal.

5. By the impugned judgment the High Court has held that the copy of the report of the Inquiry Officer was not furnished to the petitioner before the passing of the order of removal by the disciplinary authority and that it is the requirement of the principles of natural justice that the petitioner should have been served with a copy of the said Report. The High Court has, therefore, set aside the order of removal and has remitted the matter back to the disciplinary authority to give an opportunity to the respondent to make submissions and thereafter to dispose of the proceedings in accordance with law as expeditiously as practicable.

6. Shri V.R. Reddy, the learned Additional Solicitor General appearing for the appellants, has submitted that impugned judgment of the High Court cannot be sustained in view of the decisions of this Court in *Union of India v. Mohd. Ramzan Khan*¹ and *Managing Director, ECIL v. B. Karunakar*.

7. In *Mohd. Ramzan Khan*¹ this Court has held that where the enquiry into the charges is conducted by an officer other than the disciplinary authority, a copy of the report of the Inquiry Officer should be furnished to the employee before the order imposing the penalty is passed by the disciplinary authority. It was, however, directed that the said decision would operate prospectively. The matter

was thereafter considered by the Constitution Bench of this Court in *Managing Director, ECIL v. B. Karunakar*² wherein this Court has upheld the view in *Mohd. Ramzan Khan*¹ that where the enquiry into the charges is conducted by an officer other than the disciplinary authority it is necessary to furnish a copy of the report of the Inquiry Officer before the order of penalty is passed by the disciplinary authority and that the said law also governs undertakings in public sector and private sector. It was, however, held that the said law laid down in *Mohd. Ramzan Khan*¹ operates prospectively and that proceedings pending in courts/tribunals in respect of orders of punishment which were passed prior to the said decision in *Mohd. Ramzan Khan*¹, i.e., before 20-11-1990, will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in *Mohd. Ramzan Khan*.

8. In the instant case, the order of removal was passed on 16-4-1987 much before the decision in *Mohd. Ramzan Khan*¹ and, therefore, the order of disciplinary authority cannot be held to be vitiated on account of non-supply of the copy of the Inquiry Report to the petitioner before the passing of the said order. In that view of the matter the impugned judgment of the High Court, setting aside the order of removal dated 16-4-1987, cannot be upheld.

9. Shri Sankar Ghosh, the learned Senior Counsel appearing for the petitioner, has, however, submitted that the petitioner, in his writ petition before the High Court, had raised various other contentions which have not been considered by the High Court since it was setting aside the order of removal on the ground of non-furnishing of the copy of the Inquiry Report. Shri Ghosh has urged that the matter may be remitted to the High Court for consideration of the other submissions that have been raised by the petitioner in the writ petition.

10. A perusal of the impugned judgment of the High Court shows that before the High Court two contentions were urged by the learned counsel appearing for the petitioner. One was that the reviewing authority had misinterpreted and misconstrued the earlier judgment of the High Court and had not applied its mind to the contentions raised by the respondent relating to the violation of the principles of natural justice in its proper perspective and the other contention was regarding non-supply of the copy of the report of the Inquiry Officer. No clear finding has been recorded by the High Court on the first contention and the writ petition has been allowed by the High Court by accepting the second contention. Since the view of the High Court on the second contention cannot be sustained, we consider it appropriate that the High Court considers the submissions of the petitioner on the first contention that the reviewing authority has not applied its mind to the contentions raised by the petitioner relating to the violation of the principles of natural justice.

11. The appeal is, therefore, allowed, the impugned judgment dated 17-9-1992 passed by the High Court in OJC No. 4057 of 1990 is set aside and the matter is remitted to the High Court for consideration of the contention of the petitioner that the reviewing authority has not applied its mind to the contentions raised by

the petitioner relating to the violation of the principles of natural justice in its proper perspective. Since the matter has been pending since long, the High Court is requested to take it up for consideration and dispose it of expeditiously, preferably within a period of six months.