
(1999) 11 GAU CK 0002
In the Gauhati High Court
Case No : W.A. No. 587 of 1996

Hindustan Fertiliser Corporation Ltd.

APPELLANT

Vs

Nakul Chandra Borkakoti

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Citation : (2000) 1 GLT 141 : (2000) 2 LLJ 1212

Hon'ble Judges : Brijesh Kumar, C.J.; D. Biswas, J

Bench : Division Bench

Advocate : A.R. Borthakur and P. Borthakur, for the Appellant; J.M. Choudhury, B.P. Bora, J. Borah and J. Sarmah, for the Respondent

Final Decision : Allowed

Judgement

1. This Writ Appeal has been preferred against the Judgment and Order dated October 10, 1996 passed by the learned single Judge allowing the Civil Rule No. 1588 of 1990 whereby the impugned order of punishment has been set aside with consequential relief of reinstatement and other benefits. The respondent-appellants being aggrieved with the aforesaid judgment preferred this appeal on various grounds controverting the legality and validity of the impugned judgment.

2. We have heard Mr. A.R. Borthakur and Mr. P. Borthakur, learned senior counsels for the respondent-appellants and Mr. J.M. Choudhury, learned senior counsel, assisted by Mr. B. P. Bora, Ms. J. Borah and others for the respondents.

3. The respondent-petitioner Shri Nakul Chandra Borkakoti joined the services in the office of the appellant-Corporation as an Agronomist and was eventually promoted to the post of Area Manager with effect from August 12, 1983. On August 3, 1988 the respondent and 7 others were called upon to show cause as to why disciplinary proceedings against them would not be initiated for committing irregularities in the matter of financial transactions in contravention of the Rules of the Corporation. The respondent-petitioner submitted his reply on August 26, 1988 giving reasons for finally clearing the cheques for payment. A

preliminary enquiry was also held against the respondent and others and, thereafter, a statement of imputation was furnished to them covering all the points. It would appear that the statement of imputation of misconduct available at Annexure-A shows that he was indicated in respect of as many as five counts of omission and commission in the matter of financial transactions. Briefly, imputation No. 1 shows that a sum of Rs. 10,000 drawn from the bank by cheque No. 765396 dated February 6, 1987 was not accounted for in the cash book. The second imputation is in respect of a sum of Rs. 10,000 drawn by cheque No. 720359 dated June 26, 1987 which was also not accounted for in the cash book. The third imputation shows payment of Rs. 12,563 and Rs. 4,481.40 against fictitious bills. The fourth imputation shows that a sum of Rs. 6,448 and Rs. 2,288 were paid to one Shri H. Das for supply of fertilizer and chemicals although the bill submitted by Shri Das was for Rs. 4,160 only. A sum of Rs. 2,288 was thus paid in excess. This amount was, however, subsequently deposited back vide cash receipt No. 56 dated November 6, 1987. The imputation further reveals that no person namely Shri H. Das was found available in the area and the payment alleged to have been made was, therefore, fraudulent. The fifth imputation relates to payment in respect of wooden furniture. A sum of Rs. 5,000 was paid to one Shri B. Singh without any purchase order. The imputation further reveals that no furniture was supplied by Shri B. Singh although records have been manipulated to show supply of such furniture.

4. The departmental enquiry was primarily based on documentary evidence. No witness was examined by the Presenting Officer. The report submitted by the Enquiry Officer shows that the Charge Nos. 1 and 2 were not proved, but Charge Nos. 3, 4 and 5 have been held established. Eventually, on the basis of the report submitted by the Enquiry Officer, the respondent was dismissed from service vide letter dated December 26, 1989. The appeal preferred against the order of dismissal before the Board of Directors was also rejected. Resolution adopted by the Board rejecting the appeal was communicated to the respondent vide letter dated June 25, 1990 (Annexure-D).

5. The learned single Judge allowed the writ petition setting aside the penalty imposed by the appellant Corporation since the report submitted by the Enquiry Officer indicates consideration of letters dated May 1, 1989 and May 18, 1989 written by an employee namely, Shri P.K. Phukan, It is admitted that the copies of the said letters were not furnished to the respondent. The learned single Judge further observed that the enquiry was concluded on April 17, 1989 and the letters written subsequent thereto were taken into consideration by the Enquiry Officer. The report submitted on consideration of such letters eventually led to the dismissal of the respondent-petitioner. According to the learned single Judge this was in clear violation of the elementary rules of natural justice and the delinquent was not afforded any opportunity to explain his stand with regard to such documents which were taken into consideration behind his back. Holding, thus, the learned single Judge allowed the writ petition filed by the respondent-petitioner directing his reinstatement with consequential reliefs.

6. There is no denial to the fact that these two letters were written by Mr. P.K. Phukan on May 1, 1989 and May 18, 1989, i.e., after completion of the enquiry. During the course of argument Shri A.R. Borthakur, learned Senior counsel pointed out that these two letters might have influenced the decision of the Enquiry Officer in respect of Charge Nos. 3 and 4, but the decision in respect of Charge No. 5 being completely free from such influence leaves no room for interference with the impugned order of penalty by this Court. According to Shri A. R. Borthakur, learned Senior counsel, the indictment under charge No. 5 for fraudulent payment of Rs. 5,000 is grave enough to warrant dismissal of the delinquent officer.

7. We have considered the documents made available along with the pleadings. We have no second opinion that the said two letters written by, Mr. P.K Phukan subsequent to the conclusion of the enquiry have been taken into consideration while arriving at a conclusion in respect of charge Nos. 3 and 4. It is apparent on record that the delinquent officer was neither furnished with the copies of the said two letters nor given any opportunity to explain his stand with regard to the said two letters. Therefore, the rules of natural justice and the principles of law were obviously violated so far the charge Nos. 3 and 4 are concerned.

8. So far charge No. 5 is concerned, the report submitted by the Enquiry Officer shows that the contents of the said two letters have not in any manner influenced the Enquiry Officer and, therefore, it cannot be said that the report in respect of charge No. 5 was in any manner violative of the rules of natural justice. Shri J.M. Choudhury, learned senior counsel for the delinquent officer also could not make out a case of prejudice. We are, therefore, of the opinion that the finding in respect of this charge cannot be said to be bad in law. The materials on record also suggest of some amount of negligence or lack of proper vigilance on the part of the respondent- petitioner.

9. Shri Choudhury, learned senior council further argued that the penalty of dismissal imposed is too harsh and disproportionate to the offence committed. According to him, the indictment in charge No. 5 is purely technical in nature and is not suggestive of any conspiracy between an officer of the rank of Area Manager and his subordinates to siphon of a petty sum of Rs. 5,000/-. Shri Choudhury also argued that the Area Manager signed the cheque after it was cleared by two responsible officers and, as such, the lapses on the part of the respondent-petitioner, if any, is very trifling in nature. Shri Choudhury further submitted that the other two officers, namely, Shri R.P. Sharma, Area Manager, Dibrugarh and Mr. M.N. Barua, Chief Agronomist (R), Guwahati have been exonerated by the Corporation and on this context as well the penalty imposed cannot be sustained.

10. It would appear from charge No. 5 that a sum of Rs. 5,000/- was paid to Shri B. Singh; Contractor for supply of wooden furniture to a service centre. But the wooden furniture mentioned in the bill were not at all supplied. Despite that Shri R.P. Sharma, Area Manager, Dibrugarh made false entry in the stock register and

Shri M.N. Barua, Chief Agronomist (R), Guwahati approved the bill for payment. Thereafter, the respondent-petitioner Shri Borkakoti, Area Manager at Guwahati certified the bill for payment. In the Tribunal-petitioner in his reply (Annexure A(1)) explained that he had no knowledge about the false entry in the stock register. The bill, according to him must have been endorsed and taken into account by Shri R.P. Sharma and, thereafter, approved of by Shri M.N. Barua, Chief Agronomist (R). He had simply acted on the endorsement and approval given by his subordinates. The learned counsel for the appellant Corporation could not, however, point out anything wrong in the aforesaid statement of defence. Considering the nature of transaction, the amount involved and the different stages at which the bill was dealt with by two responsible subordinate officers, we are of the opinion that the action of the respondent-petitioner in signing/clearing the cheque for payment relying upon the endorsement and approval given by his subordinates cannot be treated as so serious offence to warrant the penalty of dismissal. It is pertinent to mention here that the penalty of dismissal was awarded as charges No. 3 and 4 were also found established. But, in view of our findings recorded above regarding charge Nos. 3 and 4, punishment can be imposed only in relation to charge No. 5. This charge is not so grave as to warrant the extreme penalty of dismissal, specially when the other two persons including one making the false entry in the stock register at Dibrugarh have been exonerated. In the above circumstances, award of extreme penalty will not only be harsh but also shocking.

11. In *B.C. Chaturvedi Vs. Union of India and others*, the Supreme Court while dealing with the powers of Court held as follows at p. 1237 of LLJ:

"18. A review of the above legal position would establish that the disciplinary authority, on appeal the appellate authority, being the fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof."

12. Shri Choudhury relying upon the decision in *B. C. Chaturvedi (supra)* submitted that this Court can substitute its own views in respect of penalty imposed and urged that considering the nature of offence alleged to have been committed, the Court may impose minimum penalty that would suffice the cause of justice. Shri A. R. Borthakur, learned senior counsel, referring to the decision of the Supreme Court in *State of U.P. and others Vs. Nand Kishore Shukla and another*, submitted that it is for the disciplinary authority to consider what would

be the nature of punishment to be imposed based upon proved misconduct. The same ratio as regards powers of the High Court to interfere with the penalty imposed has been reiterated by the Supreme Court in Apparel Export Promotion Council v. A.K. Chopra, reported in Apparel Export Promotion Council Vs. A.K. Chopra,

13. Considering the above decisions cited at the Bar, we are of the view that the matter as to imposition of the appropriate penalty other than the penalty of dismissal/removal be left to the disciplinary authority. Accordingly, we decide not to interfere with the impugned judgment and order whereby the learned single Judge directed reinstatement. However, we allow the appeal to the extent that the appellant Corporation shall dispose of the matter relating to imposition of penalty in the light of the observations recorded above. However, if in the meantime, the respondent-petitioner has already retired, all pensionary benefits payable to him in accordance with law be released to him forthwith less the amount of Rs. 5000/- for which he has been found guilty. The appeal accordingly stands disposed of.

14. No order as to costs.