**(2013) 08 P&H CK 0412**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 8341 of 1991 (O and M)

Jaswant Singh APPELLANT

Vs

The State of Haryana and Others RESPONDENT

**Date of Decision :** 13-08-2013

**Acts Referred:**

**Citation :** (2013) 08 P&H CK 0412

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** R.K. Malik and Mr. Kohal Dev, for the Appellant; Arvind Seth, Advocate for the Respondent-HAFED and Mr. Kunal Garg, AAG, Haryana, for the Respondent

**Final Decision :** Allowed

## Judgement

K. Kannan, J.—Both the writ petitions are at the instance of the same petitioner filed against two independent orders terminating him from service from two different establishments. CWP No. 8341 of 1991 brings a set of facts that started with removal from service by an order dated 09.05.1975. This was challenged through a writ petition when the termination was quashed by an order of this Court on 12.09.1982. It appears that the operation of the order of dismissal on 09.05.1975 had been actually suspended in the writ petition and when the writ petition was ultimately allowed quashing the termination, it did not specifically require any order of reinstatement. Curiously, in spite of the suspension of order of dismissal, the petitioner had been retrenched from service during the pendency of writ petition on 11.09.1978 which fact not informed to the Court at the time when the writ petition was allowed. The petitioner did not make any issue about it only because he was readjusted after his retrenchment in yet another organization on 16.12.1978 itself. The fact that he was not reinstated pursuant to the order passed by the High Court in the writ petition that was disposed of on 12.09.1982 did not actually cause any prejudice to the petitioner on account of an obvious benefit that he had obtained by readjustment in another establishment and, therefore, he did not challenge the same. This has been brought for a challenge in the year 1991 only when, in the new establishment, he was proceeded against independently on certain charges attributed to him. The enquiry itself had been constituted on 21.06.1989 and the writ petition has been filed in the year 1991. The writ petitioner was barred by laches in challenging the retrenchment order passed on 11.09.1978. The fact that he taken up employment in another establishment itself proved that he had waived his right to challenge the retrenchment. No relief would be possible in this writ petition and consequently, the writ petition in CWP No. 8341 of 1991 is dismissed. The point that would fall for consideration is only that is urged by the employee that the order of termination made pursuant to the domestic enquiry that resulted in termination of service was justified or not. The proceedings against the petitioner came at two different stages: (i) when he was posted as a Storekeeper at HAFED godown, a charge-sheet had been levied against him on 24.11.1987 on charges of misappropriation and embezzlement. An enquiry was conducted and a show cause notice was issued on 12.09.1989. It appears, a report had also been made but the petitioner had his objection that the entire enquiry and the report that had not been furnished, and he was not given an opportunity to defend himself. No further action was taken and the matter dropped there. Yet another enquiry was constituted on another charge levied against him on 07.12.1988. The Enquiry Officer found the charges laid against the workman had not been established and submitted a report. The Managing Director to whom the report had been submitted disagreed with the report of the Enquiry Officer and served a show cause notice reiterating the charges that were originally laid on the basis of which the enquiry was conducted. The appointing authority, namely, the Managing Director issued a show cause notice on 11.01.1993, which records the following facts:-

2. The charge-sheet issued to the workman on 07.12.1988 consisted on an imputation that there had been shortages of wheat entrusted to him for Rabi-1985 against 10,938 bags of wheat measuring 10,391.10 quintals. The actual weight of delivery on re-delivery by the petitioner was 10,241.37 that showed a shortfall of 149.73. There were shortages found also at the time when the wheat was transferred to CFP, Rohtak at the time when the auction had been made and a still later time when wheat stocks were assessed under dara operated category. The total shortfall was said to be of 1,977.18 quintals. The other substantial charge was that he was liable for ''excess replacement'' (sic) of 36,161 gunny bags amounting to Rs. 2,64,013/- over and above the norms fixed by HAFED. The show cause notice further stated that the Enquiry Officer''s report was dispatched to the petitioner recording his own dissent to the Enquiry Officer''s report and containing imputations by him on the following terms:-

i) You being custodian of stocks were fully responsible for the safe custody and proper health of wheat stocks.

ii) Since you were working as F.I. (store) at Cheeka since April, 1983 and you know well about the low lying area and the stocks should not have been stored on a patch of phar which was a low lying.

iii) At no time you protested to the District Manager, Hafed, Kaithal showing your inability to hold the stocks.

iv) There were sufficient number of poly. covers and other stock articles at Cheeka for the safe preservation of stocks.

v) The Committee was constituted for dara operation of wheat stocks and not to justify the shortages found during dara.

More significantly, after setting out the imputations, the Managing Director had also observed as follows:-

However, being taking into consideration (sic) some problems like heavy volume of stocks, period of storage and problems regarding labour and transportation etc. I still hold you liable for the shortages of 915.68 qtls. which were found at the time of delivery of stocks to FCI, transfer to Hafed Cattle Feed Plant, Rohtak and also at the time of delivery of stocks auctioned to the private parties. It was only due to your negligence, good quality stocks were declared in C&D category.

Towards the end of the show cause notice, the Managing Director observed he was provisionally of the opinion that a penalty of dismissal from service along with recovery of cost of 915.68 qtls. Viz. Rs. 1,07,640.12 were required to be imposed. The representation given by the petitioner against the show cause notice was rejected and the order of termination was passed. This termination order was challenged on a reference to the Labour Court, which has upheld the punishment imposed and held that the workman was not entitled to any relief. It is this order of the Labour Court passed on 07.05.2002 which is in challenge in the writ petition.

3 The learned senior counsel for the petitioner contends that when the Enquiry Officer had exonerated him of the charges and the punishing authority did not approve of the report, there was a liberty to the punishing authority to strike his dissent, set out the reasons for such a different opinion formulated by him and direct through a show cause notice why the report ought not to be accepted and the charges taken as proved. The learned senior counsel would argue that the show cause notice of the authorities did not set out the reasons why he was taking a different opinion or why he was making a dissent to the report but had provisionally come to a conclusion that the petitioner was himself guilty and the show cause notice was to explain why he should not be dismissed from service. This, according to the counsel, constituted pre-judging the issue and made the show cause notice itself an empty formality that offered no scope for a workman to dislodge a pre-judged opinion. The learned counsel would refer to me to the decision of the Supreme Court in State Bank of India and Others Vs. K.P. Narayanan Kutty, that set out the procedure as to how a disciplinary authority, who proceeded to consider the case in a situation where he did not agree with

 

the report of the Enquiry Officer. Referring to Regulation 7(2) of the Punjab National Bank Officer Employees'' (Discipline and Appeal) Regulations, 1977 that set out a particular procedure which I believe expounds a fundamental principle of a natural justice and, therefore, will have to be taken as incorporated where a disciplinary authority decides to deal with a situation of a difference of opinion from the Enquiry Officer''s report, unless there are any other specific regulation that governed the issue. I have not been shown through any particular procedure to be adopted in a case of a dissent with a finding of the Enquiry Officer and I would, therefore, see the decision of the Supreme Court as relevant since it was expounding law in a case where the argument that the Bank''s Regulation 7.2 did not provide for any opportunity to a work man to state objections before a decision was taken. The Supreme Court held thus,

Regulation 7(2) does not expressly state that when the disciplinary authority disagrees with the finding of the enquiring authority an opportunity is to be given. After referring to various decisions including the decisions relied on behalf of the Bank, this Court has clearly held that where the disciplinary authority disagrees with the report of the enquiring authority in regard to certain charges, providing of an opportunity is necessary to satisfy the principle of natural justice. Paragraph 19 of the said judgment (in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, reads thus:-

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer....

4. The learned senior counsel would argue that whenever the disciplinary authority disagrees with the Enquiry Officer, it must record its tentative reasons for such disagreement and given to the delinquent officer an opportunity to represent before it records its findings. The disciplinary authority cannot, therefore, record a finding and give a show cause notice only to explain why the punishment shall not be imposed removing him from service. I find that the notice issued by the disciplinary authority the details of which I have extracted above clearly show a pre-judged conclusion against the workman and authority could not have stated any more than his dissent with the Enquiry Officer''s report, set out his own reasons as to how the findings were not properly made and then calling upon the workman to state why his report ought not to be rejected for the reasons which he had brought out in his show cause notice. The disciplinary authority did none on them. The decision, which he was taking, showed his bias and offended the principles of natural justice. Justice should not

 

only be done, but should also be seen to be done, as the cliche? goes. The show cause notice gave no room for a workman to feel convenient that his reply could break any ice. He was certainly being a stonewalled against a hard stand taken by a Management requiring to only show cause notice why he shall not be removed from service. There is no even a reference in his show cause notice asking him why the authority shall not reject the Enquiry Officer''s report for whatever reasons stated. The show cause notice was only to explain why he shall not be removed from service.

5. There is also another reason why this order cannot be supported. The disciplinary authority having ascertained that some losses had been occasioned which was the subject of charge, directed independent surcharge proceedings to be taken for recovery of the alleged losses. The surcharge proceedings ultimately resulted in a finding that he was not reliable for recoveries for the alleged shortfall, which was the basis of the charge, the constitution of the enquiry and the punishment of dismissal. The Enquiry Officer''s report and the surcharge proceedings initiated u/s 161 has been placed as Annexure P1. The Chief Auditor has observed as follows:-

These charges form part of disciplinary proceedings also. A thorough enquiry was conducted and prosecution witnesses were examined. Earlier, I did not call for the papers concerning this enquiry since I wanted to have independent and unblemished view of the whole affair. Now, I have perused the papers of disciplinary enquiry and enquiry report. The cross-examination of almost all the prosecution witnesses agreed with Shri Jaswant Singh that wheat stocking was done in low lying area. The boundary wall has to be broken to clear the area from water. Some of the crates were lost in earth these could not be brought out because of being eaten by termites and being too damp. The statement of Shri Jaswant Singh submitted during the disciplinary enquiry looks more an emotional and verbose speech of a trade unionist rather a defence of one case. His nine page reply submitted before me revolves on the main planks of unscientific storage and Hafed complex Cheeka where the wheat was stored being in low lying area on the bank of one of the tributary of Gaghar River. He has referred freely from the replies of prosecution witnesses during cross examination in his reply. His assertion that wheat grains is living organism and is affected by the temperature variation and humidity holds truth. None of the prosecution witnesses held him negligent of duties including Shri Shri V.K. Tandon wheat incharge of centre Hafed Cheeka. It is also mentioned that during 1986 to 1996 a huge sum has been spent to construct godown and to raise plinth. He demanded the documents relating to this expenditure, Hafed authorities did not reply to the point even in replication what to talk of supplying the information. Shri Jaswant Singh enumerated three reasons for the shortages:-

i) Volume of wheat stocks

ii) Storage arrangements

 

iii) Miscellaneous problems.

He ultimately came to conclusion that the petitioner was not guilty of any negligence and the surcharge proceedings against him cannot be proceeded with and they were bound to be dropped. This was by a very responsible officer of the rank of the Chief Auditor of the Cooperative Societies, Haryana, Chandigarh. The report clearly vindicated the petitioner''s own innocence and this was surely the circumstance which the authority was to take note of. No doubt, the surcharge proceedings came about subsequent to the award passed by the Labour Court, but I am convinced that the reasoning as found by the Auditor Officer that the petitioner did not have a fair deal with the disciplinary authority who took a harsh decision without fully giving the benefit to the petitioner of poor storage facility in the godown, which the petitioner was complaining of. It is really not a case of any misappropriation of stocks. On the other hand the gravamen of the charges was that there had been "less grain" and the stocks had not been left uncovered in open yard. There had been inundation of water in low lying areas; that the workman did not complain of poor storage or state that he could not receive the stocks in the godown where he was maintaining control. As the surcharge proceedings also revealed, there was just no case of misappropriation. The removal from service was wrong and the impugned order is set aside.

The award of the Labour Court is set aside and the petitioner is entitled to reinstatement with all consequential benefits. The writ petition in CWP No. 14343 of 2002 is allowed with costs. Counsel''s fee Rs. 20,000/-.