
(2012) 12 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8420 of 1994

Kiran Singh

APPELLANT

Vs

Punjab State Warehousing Corporation and Others

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 SCT 451

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : Manu K. Bhandari, for the Appellant; A.D.S. Sukhija, for the Respondent

Final Decision : Allowed

Judgement

R.P. Nagrath, J.—The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India seeking to quash the order dated 29.8.1989 (Annexure P-5) passed by the punishing authority by which the petitioner was dismissed from service also treating the period of suspension as non-duty and order dated 5.3.1992 (Annexure P-1) of the Appellate Authority partly allowing his appeal converting the punishment from dismissal to compulsory retirement. The petitioner was working as Warehouse Manager in the respondent-Corporation. He was served with a charge-sheet, containing 11 charges constituting mis-conduct out of which charges No. 1 to 4 are as follows:

1. That he in connivance with Sarvshri S.P. Singh, GA; J.S. Mann, GA and Nirmal Singh, Accounts Clerk defalcated 2427 bags of KRIBHCO Urea causing loss to the Corporation equivalent to the cost of the said stocks;
2. That he in connivance with Sh. Lila Singh, TA defalcated 120 bags of rice at the time of delivery of stocks from G. No. 1 (Godown No. 1) and 4 and thus, caused financial loss to the Corporation equivalent to the cost of the said stocks;
3. That he in connivance with Sh. Lila Singh, TA showed excess shrinkage of 261

quintals in the rice stocks of 21301 bags delivered from G. No. 1, 3, 4 and 6 during 1987, and thus, caused financial loss to the Corporation equivalent to the cost of the said stocks;

4. That he in connivance with Sh. Harbans Lal, GA, defalcated 9 bags of KRIBHCO Urea out of G. No. 2 and 50 bags of IFFCO DAP out of G. No. 8 causing financial loss to the corporation.

2. The petitioner was suspended in the year 1988. He sent reply to the charge-sheet. A regular inquiry was held against him and on similar allegations against S/Sh. JS Mann, Godown Assistant (for brevity GA); S.P. Singh, GA; Nirmal Singh, Accounts Clerk. The Inquiry Officer submitted report dated 25.5.1989 (Annexure A-7) in respect of charges against the petitioner and dated 29.5.1989 (Annexure A-8) the joint inquiry report relating to other three officials. The Inquiry Officer held the charges against the petitioner to be proved. The petitioner was served with a show-cause notice of dismissal apart from proposal for imposition of Rs. 6,60,609/-as recovery towards the loss suffered by the respondent-Corporation. The petitioner filed representation against the said notice. After hearing the petitioner personally, the Punishing Authority, passed the order of dismissal of the petitioner and directed that the loss suffered by the respondent-Corporation be recovered from the dues available with the Corporation and for balance a civil suit be instituted. The period of suspension was treated as non-duty.

3. The petitioner preferred appeal Annexure P-6 against the order of punishment. The Appellate Authority, came to the following conclusions:-

1. Regarding charge No. 1, even though there is no proof of his connivance with official incharge of the godown, he, as Warehouse Manager and immediate incharge of the Centre, remains responsible, hence 25% of the total bags should come to his share as there were four officials involved.

ding charge No. 2, there was no actual loss as the reported deliveries to the depositors were O.K. and no shortage claim was raised by the depositor nor any shortage is on record. But a case of attempt of defalcation and perhaps, real defalcation is indicated and it is not that defalcation gets reflected as shortage in overall deliveries due to spillage factor and other factor. On this charge, Lila Singh, TA was the prime accused along with the appellant. As there is no loss, question of recovery does not arise.

3. On charge No. 3, the shortage is exaggerated due to notional addition of 120 bags of charge No. 2. If that is subtracted, the net shortage per qtl. comes down although even then it is on the higher side compared to normal shrinkage/shortage. However, it is not unusual. Such shrinkage/shortages have been reported in several cases and all such cases are yet to be settled with the FCI. Normally it is hoped that these are got settled with proper justification. In other cases of same nature, I stayed the recoveries on the ground that there was no actual loss to the Corporation as the same still remained to be settled. Therefore, the recovery on this account is not justified at this stage. Let the

outcome of settlement process be awaited and in that the fact of erroneous addition of 120 bags to the total quantum of shortage should be subtracted to see the per quintal shortage.

4. Recovery liability was already fixed on and recovered from Harbans Lal, GA so far as charge No. 4 is concerned.

4. The respondent-Corporation in the written statement contended that the inquiry proceedings were conducted at length by affording reasonable opportunity to the petitioner and there has not been any violation of principles of natural justice. The petitioner was even heard in person before passing the final order. It is not disputed in the written statement that the order of punishment was ultimately passed by the Appellate Authority on proof of article of charge No. 1 against the petitioner. The petitioner also filed rejoinder to the written statement.

5. Learned counsel for the petitioner and that of the respondent-Corporation have been heard.

6. It was vehemently contended for the respondent that this Court in exercise of its writ jurisdiction cannot re-appraise the evidence led in the inquiry before Departmental Authorities. In fact, there has been meticulous compliance of the principles of natural justice. The argument appears to be impressive but does not help the respondents in the peculiar facts of this case.

7. There has indeed been a serious prejudice caused to the petitioner by the manner in which the Appellate Authority has proceeded to reach its conclusions. The Appellate Authority adopted a very strange procedure of calling Mr. J.S. Bedi, District Manager, Ludhiana, who conducted the preliminary inquiry, during the course of personal hearing of the petitioner. The Appellate Authority was not in the process of recording evidence to reach its conclusions. It is recorded by the Appellate Authority in the order Annexure P-1 that during the course of personal hearing of the petitioner, Mr. J.S. Bedi, deposed that in fact on re-conciliation of accounts with KRIBHCO authorities a difference of 2927 bags was found but subsequently this figure was reduced to 2427 bags as 500 bags stood delivered to Punjab Land Development Reclamation Corporation (PLDRC). It is further observed that Mr. J.S. Bedi, contended that the appellant intentionally did not account for 2427 bags in the books and connived with his supporting staff allowing them to acknowledge receipt of these bags without taking them in the Warehousing Books, with a view to defalcate this quantity for personal ends. During face to face arguments between the appellant and Mr. J.S. Bedi the then District Manager, the Appellate Authority noticed that the petitioner lost all his vigor in making arguments which he had shown in the day during hearing. Mr. J.S. Bedi, emphasized that it was the responsibility of the Warehouse Manager, to ensure the counting of 2427 bags, on which Mr. Kiran, the petitioner, kept mum.

8. It was thus concluded that ultimately, it is the duty of the Warehouse Manager to have knowledge of stocks. It was also observed that Sh. Nirmal Singh,

Accounts Clerk, had admitted that he gave acknowledgments for different trucks to M/s. Dash-mesh Trasport under the verbal directive of Warehouse Manager. The Appellate Authority used a word of caution while concluding on charge No. 1 as under:

I understand that W/Manager is not physically holding charge of godowns/stocks but as an overall superior of the centre he cannot pose himself ignorant about the inward/outward transaction papers dealt in office by accounts clerk under his nose, H & T bills were prepared and signed by him. He should have checked up the truck No. from G. No. at the time of preparation of H & T Bills/other record. There remain many doubts and from the liability.

9. On charge No. 2 the Appellate Authority observed that the petitioner has not been able to prove his innocence, though ultimately it was concluded that there was no loss, the question of recovery does not arise but as a misconduct, charge No. 2 was held to be proved. The Appellate Authority while discussing charge No. 2, relied upon the statements of certain Helpers and Dusting Operator but those persons were not produced. The Appellate Authority, however reiterated that there was a clear reference of these officials in the statement of Sh. J.S. Bedi. The other charges were found by the Appellate Authority as insignificant.

10. There is no denial of the fact that the preliminary inquiry report and statement of these witnesses recorded by Sh. J.S. Bedi, were not supplied to the petitioner, though relied upon while reaching a finding and there is thus violation of principles of natural justice. In para 14 of the written statement the respondents stated that preliminary inquiry report has not been relied upon by respondent No. 1 while disposing of the appeal of the petitioner which is contrary to the observations made in the order. In view of the above, there is no escape from coming to the conclusion that the order of Appellate Authority suffers from serious infirmity inasmuch as it admitted on record the version put forth by Mr. JS Bedi and thus prejudiced the petitioner.

11. The bone of contention by the petitioner's counsel, however, is that all other employees who were proceeded against on the similar charges were re-instated in service by setting aside the dismissal orders. The Appellate Authority in a separate case against Sh. S.P. Singh, GA, vide order dated 16.8.1992 (Annexure P-9) directed a fresh departmental inquiry. In the fresh inquiry held against the above official, the inquiry report is dated 18.1.1996 (Annexure P-12) exonerating him of the charges and finding that he was not responsible for the alleged shortage of KRIBHCO Urea bags.

12. Sh. Nirmal Singh, Accounts Clerk, filed a civil suit challenging the order of his dismissal which was decreed vide judgment dated 31.8.1998 (Annexure P-13). The Department did not challenge this judgment which has thus attained finality. Sh. J.S. Mann, GA was also re-instated in service by ordering recovery of Rs. 20,620/- in easy installments vide order of the Appellate Authority dated 7.3.1990 (Annexure P-10). The Civil Suits filed by the Department against the

petitioner and other employees for recovery of the loss suffered on account of the alleged act of defalcation of the stock lying in the Warehouse, of which the petitioner was the Manager, have also been dismissed. The judgments passed in those Civil Suits are dated 27.3.1998 (Annexures A-1 and A-4). The Civil Appeals filed by the Department were also dismissed vide judgments dated 16.4.2001 and 12.4.2001 (Annexure A-2 and Annexure A-5 respectively). The Regular Second Appeals were also dismissed by this Court vide order dated 1.8.2006 (Annexure A-3).

13. The above record coming into existence subsequently could not have been considered by the Appellate Authority but may have direct bearing on the petitioner's plea.

14. Therefore, in the fitness of the things the appeal is allowed to the extent that the order dated 5.3.1992 (Annexure P-1) stands set aside and the matter is remitted to the Appellate Authority for fresh decision taking into account the above subsequent events in the nature of documents/judgments and to pass fresh order in accordance with law/rules. The needful shall be done within a period of 4 months from the date of receipt of certified copy of this order. Allowed in the above terms.