
(2017) 01 AHC CK 0245
In the Allahabad High Court
Case No : Writ A No. 57204 of 2012

Krishna Chandra Mishra

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 38 : (2017) 2 AllWC 1929 : (2017) 121 ALR 833

Hon'ble Judges : Vikram Nath and Daya Shankar Tripathi, JJ.

Bench : Division Bench

Advocate : Anil Bhushan and Akhilanand Mishra, Advocates, for the Petitioner;
S.C. and N.P. Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Daya Shankar Tripathi, J.—By way of this writ petition filed under Article 226 of the Constitution, prayer has been made to issue writ of certiorari quashing the impugned orders dated 06.06.2011 and 04.09.2012 and Disagreement Memorandum dated 14.01.2011 passed by respondent No.2 (Annexure No's.12, 01 and 10 to the writ petition). Further prayer has been made to issue writ of mandamus commanding the respondents not to give effect to the orders dated 06.06.2011 and 04.09.2012 and Disagreement Memorandum dated 14.01.2011 and allow the petitioner to resume his duties forthwith with full salary.

2. The facts giving rise to this writ petition are that the petitioner was initially appointed as Assistant General Manager, (Accounts) in Food Corporation of India (here-in-after referred to as "the Corporation"), Regional Office, Guwahati, Assam on 30.08.2000. Further, he was promoted in the year 2005 on the post of Deputy General Manager (F & A) Food Corporation of India, Regional Office, Lucknow. Thereafter, the petitioner was transferred in the year 1999 to Headquarter of the Corporation in New Delhi. Work and conduct of the petitioner remained good and excellent during the service period. Neither there was any complaint against the petitioner nor he had to face any departmental enquiry

except the present enquiry and punishment order of his dismissal. The disciplinary enquiry was instituted against the petitioner by respondent No.2 for some irregularity for not complying the circular of Government of India dated 28.11.1995 and misinterpreting the circular of Government of India dated 23.02.2001. The Enquiry Officer was appointed and following articles of charges were framed against the petitioner.

"Charge No.1:- The petitioner while functioning as Assistant General Manager (F & A). Incharge Regional Office, Guwahati did not comply with the direction of the Government of India dated 28.11.1995 and accorded financial concurrence for payment of reimbursement claim of Government of Arunachal Pradesh at a higher rate than admissible on food grain against 420 bills.

Charge No.2:- Later the petitioner while functioning in the above corporation has violated the instructions contained in the letter dated 25.06.1999 of the Government of India as also a letter dated 28.10.2002 and recommended for approval and allowed for payment in excess of the admissible claim of Government of Arunachal Pradesh in respect of certain bills of sugar.

Charge No.3:- A similar imputation is said in respect of reimbursement bills of Government of Arunachal Pradesh in violation of Government of India instructions contained in letter dated 31.10.1990.

Charge No.4:- The petitioner while working as Deputy General Manager (F & A) in Guwahati, wrongly interpreted the Government of India letter dated 23.02.2001 and overlooked the Government of India letter dated 28.11.1995 and took a wrong decision in according sanction for payment of bills by following the instruction contained in letter dated 23.02.2001.

Charge No.5:- The petitioner had not complied with the instructions issued vide letter dated 27.06.2003 for release of advance in form of "on account payment" of Rs. 10.00 crores in phase manner to the Government of Arunachal Pradesh and also accorded financial approval for payment without checking Utilization Certificate and consequently release excess amount to the Government of Arunachal Pradesh "on account payment" system in violation of instructions contained in letter dated 27.06.2003.

Charge No.6:- The interest liability had arisen as reported by the Controller and Auditor General which worked out to be Rs. 22.29 crores vide Audit Report dated 17.11.2005. It is alleged that the petitioner had failed to maintain devotion to duty and committed gross misconduct and acted in a manner prejudicial to the interest of the Corporation and made himself liable under disciplinary proceedings under Regulation 31(a) (b), 32(A)(5)(9)(30)(38) of Food Corporation of India (Staff) Regulations, 1971."

3. Aforesaid articles of charges were served to the petitioner to which he tendered his reply. Enquiry was conducted by the Enquiry Officer who submitted his report dated 09.03.2010, in which finding was recorded that the charges

levelled against the petitioner are not proved. The Disciplinary Authority did not agree with the findings of the Enquiry Officer regarding charge No.1 and instituted a fresh enquiry regarding the aforesaid charge. The subsequent Enquiry Officer submitted his report dated 02.12.2010 in which again finding was recorded by the subsequent Enquiry Officer that the charge levelled against the petitioner is not proved.

4. The Disciplinary Authority recorded his disagreement with the findings of Enquiry Officer regarding the charge No. 1, 4 and 6 vide Disagreement Memorandum dated 14.01.2011 (Annexure No.10 to the writ petition). A show cause notice was issued to the petitioner for submitting his reply to the effect as to why major penalty should not be awarded to him. The petitioner submitted his reply to the show cause notice. Disciplinary Authority (respondent No.2) passed order dated 06.06.2011 by which petitioner was dismissed from service along with complete forfeiture of his gratuity. Relevant portion of the order dated 06.06.2011 passed by respondent No.2 is reproduced below:

"Therefore, the undersigned in exercise of powers conferred by FCI (Staff) Regulations, 1971 hereby imposes penalty of dismissal from the services of FCI, upon Shri K.C. Mishra along with a complete forfeiture of any gratuity amount payable to him so as to partially recover the loss caused by his actions.

If Shri K.C. Mishra is aggrieved with this decision, statutory appeal lies with Chairman, FCI within 45 days acknowledgment of this order."

5. Appeal was preferred by the petitioner against the aforesaid impugned order dated 06.06.2011. The Appellate Authority (Board of Directors) decided the appeal vide order dated 10.05.2012 and remitted the case back to the Disciplinary Authority to decide the matter afresh, keeping in view the disparity of the penalty imposed upon the petitioner and the other similarly situated Officer Sri Mathura Prasad. The Disciplinary Authority passed a fresh order dated 04.09.2012 with a finding that there is no merit in the matter and the impugned order dated 06.06.2011 remained unchanged. Relevant portion of the order dated 04.09.2012 is reproduced below:

"So, therefore, I, Dr. Amar Singh, Managing Director, FCI, find no merit to interfere with the Order of the then Disciplinary Authority in case of Shri K.C. Mishra, EX. DGM (Finance). The representation of Shri K.C. Mishra dated 14.05.2012 is also devoid of merit hence does not merit consideration. The Order of the then Disciplinary Authority of even number dated 06.06.2011 i.e. Dismissal along with complete forfeiture of gratuity, therefore, stands."

6. Being aggrieved by the aforesaid orders dated 06.06.2011 and 04.09.2012 and Memorandum of Disagreement dated 14.01.2011, the petitioner has preferred this writ petition.

Counter and rejoinder affidavits have been exchanged.

With the consent of learned counsel for both the parties, the case is taken up for

final disposal.

We have heard the rival arguments advanced by Sri Anil Bhushan, learned Senior Advocate assisted by Sri Akhilanand Mishra, learned counsel for the petitioner and Sri N.P. Singh, learned counsel representing the respondents.

7. Learned counsel for the petitioner has submitted that payment sanctioned by the petitioner to the Government of Arunachal Pradesh was in accordance with the notification dated 23.02.2001 which was having overriding effect to the notification dated 28.11.1995. The previous Enquiry Officer did not find any of the charges proved against the petitioner and the subsequent Enquiry Officer also did not find the charge No.1 proved against the petitioner, but in spite of that the Disciplinary Authority recorded the memorandum of disagreement and proceeded to issue show cause notice against the petitioner. The Disciplinary Authority was determined to pass major penalty against the petitioner and in the light of facts and circumstances of the case it is proved that the Disciplinary Authority was biased with the petitioner. He has further submitted that no opportunity of personal hearing has been provided by the Disciplinary Authority to the petitioner, which has resulted into severe prejudice to the petitioner. His further submission is that the impugned penalty order passed against the petitioner is harsh and disproportionate to the facts and circumstances of this matter. He has lastly submitted that the impugned orders passed by the Disciplinary Authority are liable to be quashed.

8. Learned counsel for the respondents has submitted that a proper enquiry has been conducted against the petitioner and the Disciplinary Authority has recorded a reasoned memorandum of disagreement against the findings recorded by the Enquiry Officer, proper opportunity of hearing has been provided to the petitioner and considering the gravity of misconduct of the petitioner, the impugned order of dismissal has been passed against the petitioner. The Disciplinary Authority was not at all biased with the petitioner. The writ petition being devoid of merit is liable to be dismissed.

9. The first and foremost argument advanced by learned counsel for the petitioner is that the Enquiry Officer was predetermined to impose major penalty against the petitioner as he was biased with the petitioner.

Learned counsel for the petitioner has submitted that the allegation against the petitioner is that notification dated 23.02.2001 was wrongly interpreted by him and notification dated 28.11.1995 was not followed which resulted into excess payment to the Government of Arunachal Pradesh, whereas the petitioner understood that the notification dated 23.02.2001 was having overriding effect over the notification dated 28.11.1995. He has further submitted that after audit report, the excess payment was refunded back by the Government of Arunachal Pradesh, hence no loss was caused to the Corporation. His further submission is that all the six charges levelled against the petitioner were not found to be proved by both the Enquiry Officers, but the Disciplinary Authority recorded

memorandum of disagreement to the reports of the Enquiry Officers on his own assumptions and presumptions. His further submission is that the Disciplinary Authority was predetermined to impose major penalty against the petitioner. Matter of Sri Mathura Prasad was similar to the matter of the petitioner. He was successor of the petitioner and he had also dealt with the situation as dealt by the petitioner but penalty for recovery of Rs. two lakh was imposed against Sri Mathura Prasad while harsh and severe penalty of dismissal and forfeiture of gratuity has been imposed against the petitioner. Appeal was preferred by the petitioner against the impugned order dated 06.06.2011 which was decided by the Disciplinary Authority and the matter was remitted back to the Disciplinary Authority to decide the matter afresh keeping in view the similar matter of Sri Mathura Prasad. Relevant portion of the observations made by the Appellate Authority are reproduced below:

"The BOD deliberated the petitioner's contentions regarding factual position about his role in forming the interpretation of 2001 instructions, technical infirmities in the disciplinary proceedings and disparity in penalty imposed upon other accused officials (prima facie the disparity particularly between the petitioner and his predecessor DGM(A/Cs) Shri Mathura Prasad is quite substantial) etc, and it is observed that there appears some substance in the contentions as far as disparity in penalty imposed upon the petitioner and other similarly placed co-accused official which calls for re-evaluation of the matter.

Therefore, the penalty imposed upon the petitioner, needs to be decided afresh in view of circumstances observed above. The Board, therefore, in terms with the Regulation 72 (2) (c) (ii) of the FCI Staff Regulations, decided to remit the case back to the Disciplinary Authority to decide the case afresh keeping in view above observations."

10. It has been submitted that in spite of the aforesaid directions of the Appellate Authority, the Disciplinary Authority was determined to impose major penalty against the petitioner. The facts and circumstances of the matter itself speak that the Disciplinary Authority was biased against the petitioner.

11. Learned counsel for the respondents submitted that superannuation of Sri Mathura Prasad was due only after a period of 11 months and in such a situation disciplinary proceedings for major penalty against Sri Mathura Prasad could not be completed within such a small span of period, hence minor penalty of recovery of Rs. two lakh was imposed against Sri Mathura Prasad, without conducting any enquiry. Accordingly, it has been submitted by learned counsel for respondents that it is for this reason the case of Sri Mathura Prasad was distinguished from the case of the petitioner. Thus, the penalty imposed against the petitioner and Sri Mathura Prasad cannot be said to be discriminatory. This argument advanced by learned counsel for the respondents does not appeal to us, as it cannot be made sole basis to impose different penalty to different delinquent officers who are facing similar charges.

12. In the case of *The Director, Eastern Railway v. S.N. Chatterjee* reported in 1981 (1) Cal. LJ 305, it has been held that no actual bias need to be proved, a real likelihood of bias is sufficient. In the aforesaid case it has been further held that the question of bias is at both the stages, at the stage of initiation of disciplinary proceedings and also at the stage of imposing the punishment.

Looking into the facts and circumstances of this matter and material brought on record, we are of the opinion that the Disciplinary Authority was biased to the petitioner, while passing the impugned order of punishment for dismissal of the petitioner.

13. The next argument advanced by learned counsel for the petitioner is that the Disciplinary Authority has not afforded opportunity of personal hearing to the petitioner while passing the impugned punishment order. He has further submitted that the petitioner would have been able to demonstrate the facts and circumstances of the matter in a better way before the Disciplinary Authority, if he had been provided opportunity of personal hearing. Prejudice has been caused to the petitioner by not providing opportunity of personal hearing before the Disciplinary Authority, resulting in passing the impugned order of major penalty. Perusal of impugned orders dated 06.06.2011 and 04.09.2012 reveals that nothing has been recorded by the Disciplinary Authority in the impugned orders that any opportunity of personal hearing was provided to the petitioner and he did not prefer to appear before him for personal hearing. Accordingly, it has been argued that proper opportunity of hearing has not been provided to the petitioner to defend his case which amounts to violation of principles of natural justice.

14. In the case of *State of Uttar Pradesh and another v. C.S. Sharma* reported in AIR 1968 SC 158, It has been held by the Apex Court that principles of natural justice are violated where no adequate opportunity has been provided to the respondent to present his defence.

In the case of *K.L. Shinde v. State of Mysore* reported in 1976 AIR 1080, It has been held by the Supreme Court that it is well settled that whether the delinquent has a reasonable opportunity of effectively defending himself is a question of fact depending upon the circumstances of each case and no hard and fast rule can be laid in that behalf.

In the case of *S.L. Kapoor v. Jagmohan* reported in (1980) 4 SCC 379, it has been held by the Apex Court that non observations of natural justice is itself prejudice to the delinquent employee. The relevant portion of the report is reproduced below:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person

who has been denied justice is not prejudiced."

15. In the case of *Swadeshi Cotton Mills v. Union of India* reported in (1981) 1 SCC 664. Principles of natural justice to the delinquent employee have been observed by the Apex Court. The relevant portion of the report is reproduced below:

"It was contended on behalf of the respondent that it was a case where a prior hearing to the Company could only be a useless formality because the impugned action had been taken on the basis of evidence, consisting of the Balance sheet, account books and other records of the Company itself, the correctness of which could not have been disputed by the Company. On these premises, it was submitted that nonobservance of the rule of *audi alteram partem* would not prejudice the Company, and thus make no difference. This contention was rejected by the Supreme Court following the decisions in *Ridge v. Baldwin* (ibid) and *S.L. Kapoor v. Jagmohan* (ibid). The passage quoted above from, the case of *S.L. Kapoor v. Jagmohan* was expressly approved in this decision (para 89). The relevant passages are set out herein below:-

"In the renowned case, *Ridge v. Baldwin* (ibid) it was contended before the House of Lords that since the appellant police officer had convicted himself out of his own mouth, a prior hearing to him by the Watch Committee could not have made any difference; but on the undeniable facts of that case, no reasonable body of men could have reinstated the appellant. This contention was rejected by the House of Lords for the reason that if the Watch Committee had given the police officer a prior hearing they would not have acted wrongly or unreasonable if they had in the exercise of their discretion decided to take a more lenient course than the one they had adopted."

16. Looking into the entire facts and circumstances of this matter and material brought on record, we are of the view that the violation of the principles of natural justice in this case has resulted in causing actual prejudice, to the charged officer as he did not get a reasonable opportunity to defend himself as no opportunity of personal hearing was provided by the Disciplinary Authority while passing the impugned order of dismissal against the petitioner.

It has been lastly submitted by learned counsel for the petitioner that in the facts and circumstances of this matter the punishment order imposed against the petitioner is harsh and disproportionate. He has submitted that it is alleged that the petitioner misinterpreted the notification dated 23.02.2001 and notification dated 28.11.1995 was not taken care of, at the time according sanction to the Government of Arunachal Pradesh, while the petitioner understood that the notification dated 23.02.2001 was having overriding effect to the notification dated 28.11.1995. It has been further submitted that after audit report, the excess amount paid to the Government of Arunachal Pradesh, was refunded back. Accordingly, no loss was occurred to the Corporation.

17. Further submission of learned counsel for the petitioner is that alleged

amount was not sanctioned to any individual, rather it was sanctioned to Government of Arunachal Pradesh. There is no allegation against the petitioner that he was personally benefited by the alleged sanction. Neither any question mark to the integrity of the petitioner has been found nor it is alleged.

18. Further submission is that the career of the petitioner has been unblemished, having no adverse remarks against him.

Further submission of learned counsel for the petitioner is that no departmental enquiry or punishment order has been passed against the petitioner except the present one.

Accordingly, it has been submitted that the impugned punishment orders passed against the petitioner are harsh and disproportionate. Accordingly, it has been submitted that the Disciplinary Authority has not considered the aforesaid facts of this matter and punishment orders are liable to be set aside, being harsh and disproportionate.

In the case of Director (Inspection and Quality control) Export Inspection Council of India and others v. Kalyan Kumar Mitra and another reported in (1988) 2 SLR 263 (DB), it has been held by the Calcutta High Court that it is open to a Writ Court to interfere with an order of punishment if the same is found to be harsh and disproportionate. The relevant Para No.153 of the Report is reproduced below:

"There is merits in the contention on behalf of the petitioner that the punishment inflicted on him was harsh and disproportionate. In our opinion it is open to a Writ Court to interfere with an order for punishment if the same is found to be harsh and disproportionate. Reference may be made in this connection to R. v. Barely, 1976 (3) All ER 452 at 456 and Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442 : AIR 1983 SC 454 (para 15). As we have pointed out, the case of the petitioner and that of Samar Dey was similar. By this letter dated 4th July, 1979 the Director informed that the appeal would be considered after submission of the report of inquiry against the petitioner. However as pointed out herein above, he disposed of the appeal" as the appellate authority of Samar Dey, one day before passing the order of punishment on the petitioner as his disciplinary authority. On 1st September, 1978, the petitioner asked for stay of the enquiry till the appeal of Samar Dey was disposed of. By his letter dated 25th October, 1978 the Disciplinary Authority turned down this prayer. In this context we may point out that in the order itself no reason has been given as to why such punishment has been imposed. A case is sought to be made out in the affidavit filed in the writ petition to the effect that the petitioner was a class "A" officer whereas Samar Dey was a class "C" officer. As no contemporaneous record or document could be produced before us to support the same such explanation is not acceptable to us. It is not genuine. It is merely an afterthought. The situation was similar. There is no reason why in the petitioner's case such a harsh order was to be passed whereas in the case of

Samar Dey there was only an order of refund of the excess amount drawn and withholding of increment for one year. In this context it may also be pointed out that not only that Samar Dey was favourably treated but he was promoted immediately after the expiry of one year though his appeal was pending at the relevant time. His appeal was kept pending for unknown reason or a length of time but during the pendency of the appeal he was promoted. Though it is stated in the affidavit that he was promoted because he was the senior most eligible candidate but it was not stated that he must be promoted because of such seniority."

19. In the case of *Ranjit Thakur v. Union of India & others* reported in (1987) 4 SCC 611, it has been held by the Apex Court that the sentence has to suit the offence and the offender and it should not be vindictive or unduly harsh. The relevant portion reported in paragraph No.25 is reproduced below:

"....The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concert of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

20. In the case of *Kailash Nath Gupta v. Enquiry Officer, (R.K. Rai), Allahabad Bank & others* reported in III (2003) SLT 125, it has been held by the Apex Court that, the Court can direct reconsideration or in an appropriate case indicate the punishment to be awarded, where relevant factors are not taken note of, which have some bearing on the quantum of punishment. Relevant portion of the judgment in paragraph No.11 of the report is reproduced below:

"In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs. 46,000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant

the extreme punishment of dismissal from service."

21. On consideration of the peculiar facts and circumstances of this case, the extreme punishment of dismissal imposed on the petitioner seems to be shockingly disproportionate to the level of misconduct on the part of the petitioner, particularly when Sri Mathura Prasad, who was involved in the similar incident having similar kind of role as that of the petitioner, has been awarded much lesser punishment.

22. For the reasons recorded here in above, we are of the opinion that the writ petition deserves to be allowed. The impugned orders of punishment dated 06.06.2011 and 04.09.2012 are hereby quashed. The matter is remanded to the Disciplinary Authority to reconsider and pass fresh order on the punishment to be awarded to the petitioner, in light of the observations made in the body of this judgment, after giving opportunity of personal hearing to the petitioner.

23. Petition stands allowed as above.