(2004) 01 DEL CK 0059

In the Delhi High Court

Case No : CW No. 2556 of 1984

Mr. Bhagwan Singh	APPELLANT
Vs	
Food Corp. of India	RESPONDENT

Date of Decision : 16-01-2004

Acts Referred:

Citation : (2004) 73 DRJ 32

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Writ petition was filed in the year 1984. Rule was issued on 18.4.1985. Writ petition came up for hearing on 26.9.2002. None appeared for the petitioner. Writ petition was dismissed in default. CM 4852/2003 was filed for restoration. Writ petition was restored. It has reached for final hearing today. None has appeared for the parties. I have two options: to dismiss the writ petition for default; or alternatively deal with the issue raised on merits. I choose the latter in view of the fact that the writ petition was dismissed for default once and has been restored. Dismissal for default a second time is likely to result in the same fate as the earlier dismissal. This court has been observing that counsels are not appearing in old matters, I, Therefore, dispose of the writ petition on merits.

2. Petitioner challenges the report of enquiry dated 28th December, 1979 and the order imposing penalty dated 15th February, 1982 as well as the order dismissing the appeal filed by the petitioner being order dated 6.4.1984. Punishment imposed upon the petitioner is reduction to the lower stage of time scale by five years. Period of suspension was directed to be treated as period spent on duty. Except that, for purposes of pay and allowances, it was directed that the amount already drawn i.e. the subsistence allowance would be the entitlement for the period of suspension and regular pay would not be paid.

3. Petitioner was working as Assistant Grade (1) (D) at Hapur in September, 1973. He was placed under suspension on 21.9.1973. Charge-sheet was issued to the petitioner on 22.4.1974. As per the charge-sheet, 3 charges were listed against the petitioner. The charges being that while posted as Assistant Grade (1) (D) at F.S.D. Modi Nagar during August, 1971 to August, 1972, petitioner failed to maintain integrity and devotion to duty in as much as when petitioner took charge from Sh.Hargoo Lal, hundred bags of wheat were found excess in stack No. 5/2. These were taken charge of by the petitioner but were not accounted for in the master ledger. Without reporting to the higher authorities, petitioner got loaded hundred bags of wheat on 15.1.1972 in Truck No. USD 6525 and issued a chit instead of a gate pass in favor of M/s Krishna Flour Mills. Records of the godown at Sikri showed that no issue was made on 15.1.1972. Second charge listed was that physical verification of stock at Modi Nagar conducted during January, 1972 showed 125 excess bags. It showed that the existing stock was being transferred to excess number of bags by re-filling. Charge No. 3 was that Sh.J.N. Singh Tyagi, Assistant Manager during examination noticed abnormal storage loss in two units under the charge of the petitioner. Enquiry officer conducted the enquiry and submitted his report which has been impugned. After analysing the evidence, the enquiry officer as per the enquiry report returned the following findings:-

"Article of Charge 1:-

Regarding issue of 100 bags wheat on 15.1.72 through truck No. USD 6525 from Sikri godown and accounting from Garhi Godown, the matter has been carefully examined after going through the case submitted by prosecution as well as defense, it is clear beyond any doubt that gate pass No. 189/58 dated 15.1.72 was issued from Garhi godown, to M/s Krishna Food Products, containing 100 bags. Now the question is, if the stocks were actually issued from Sikri Godown, why the gate pass was issued from Garhi godown, which does not seem appropriate and no rule has been shown to justify that the gate pass can bear the name of some appropriate and no rule has been shown to justify that the gate pass can bear the name of some godown wherefrom stock has not been actually issued, but of some other godown. If we accept the statement of defense even then it is absolutely clear that the stock was actually issued from some other godown i.e. from Sikri godown, but the issue was accounted for from Garhi godown from where no stock was issued. It is clearly proved that gate pass has been issued wrongly and entries in the godown register of Garhi godown have been made falsely. The reasons mentioned for this serious irregularity, by the defense are weak and not convincing and in all fairness, cannot be accepted by any reasonable person. The justification of defense that the entry was corrected by a counter entry by reversing the issues on 2.2.72 when the stocks were issued to M/s Krishna Food Products for which defense has submitted that stocks were actually issued from Garhi godown and accounted for from Sikri godown to balance the entry. This plea is also not reasonable this is another mistake rather than correction of mistake. This clearly proves that wrong entries were again made in the relevant records of the godown to shield wrong done earlier on 15.1.72. Even if it is believed as submitted by defense, that issue of a chit was covered by issue of a regular gate pass on the same day, even then the gross-mistake committed in falsification of account remains as it is. With fair application of mind, it can be very well determined as to why gate pass was not issued from the godown wherefrom stocks were actually issued and why the entries were not make in the records of the same godown from where stocks were issued and why entries were made in the records of other godown wherefrom the stocks were not issued. No sane person will believe any sort of justification against this fact.

As regards excess of 100 bags in stack No. 5/2 taken over by C.O. in charge from his predecessor these were not accounted for in the Master Ledger. defense has not submitted any reason for this. The plea of defense that this excess of 100 bags was mentioned in charge report and thus not concealed, is a point which required examination. The charge was taken over during Aug'' 71 while the matter was reported during Feb.''72. This leaves a period of about 6 months and no reasons have been mentioned for this delay. No evidence has been produced by defense as to when copy of the charge report mentioning 100 bags excess was sent to Distt.Manager regarding taking over of charge by C.O. of Modinagar depot from Shri Hargoo Lal during Aug.''71- Similarly no evidence has been produced that these 100 bags were accounted for in Master Ledger and on what date as these entries were not shown or exhibited by the defense during the course of proceedings. From the above, it is clear that excess of 100 bags although shown in the charge report during Auig.''71, but was not reported to Distt.Manager promptly and was only reported after a lapse of 6 months and whether it was accounted for in the Master Ledger has not been shown."

Further finding returned is:-

"In view of the above discussions and the material produced during the proceedings, it can be concluded that there was in fact an excess of 100 bags in Ram Vilas godown in stack No. 5/2. But there was no shortage in Garhi godown stack No. 21/68 and it is a fabricated subsequent entry of 100 bags adjusted to swallow the excess which was actually in existence and should have remained in the godown register and Master Ledger as excess. Circumstances in this case also require due consideration side by side the evidence, documentary, oral, produced which also reveal that there is no probability as per preponderance that no genuine issue was made from Sikri godown, Therefore, this question does not require any further examination.

As per the statement of PW-3 Shri Trilok Chand W/Man dated 15.6.79 and his earlier statement Ex.P2 dated 9.4.73 as well as the chit dated 15.1.72, it is clearly proved that one truck containing 100 bags of wheat was removed dishonestly and referred by CO., since the stock was removed, but no entries were made in the records of Sikri godown which clearly proves misappropriation on 15.1.72. On the same date i.e. on 15.1.72 another truck containing 100 bags of wheat was issued vide gate pass No. 189/59 - Ex.D7, through truck No. USD 6525 from Garhi godown, stack No. 21/5 which is a genuine issue of stocks duly accounted for and recorded. Now it can be concluded that out of these two trucks each containing 100 bags wheat which were removed from godown, one was genuine from Garhi and one was for personal gain (from Sikri godown) respectively. In order to misguide and cover up the misappropriation a fictitious entry of adjustment was made in Garhi godown stack No. 21/68 wherein a shortage of 100 bags was declared and covered up with excess of 100 bags found in another godown, Ramvilas, stack No. 5/2. It is for the reason of misappropriation that adjustment entries were made in two different godowns and in two different stacks. Thus the above examination leads to the conclusion that misappropriation of 100 bags was done on 15.1.72. defense side tried to link issue of 100 bags from Sikri godown on 2.2.72 from stack No. 20/4. If it was an adjusting entry there should have been a corresponding entry in Garhi Godown as on 15.1.72. On 15.1.72 no gate pass was issued in respect of issues of 100 bags of wheat from Sikri godown nor there is any entry, but actually the stocks were removed from Sikri godown which is a clear evidence that this issue was not genuine and was a case of pilferage and mis-appropriation. Correspondingly 100 bags were also issued on 15.1.72 from Garhi godown against stack No. 21/5 for which proper gate pass is available and relevant entries are existing in Garhi Godown register which is a clear evidence that this issue from Garhi godown was genuine one and in the cover of this issue another truck load of 100 bags of wheat was removed dishonestly from Sikri Godown through a chit duly confirmed by the watchman on duty at the Sikri Godown."

"Article of charge 2:-

As regards detection of 125 bags excess and 38 bags short by PV party during January 1972 the defense has submitted that all the shortages of 38 bags were found nil during actual issue/release of stocks. Out of 125 bags excess, 100 bags were adjusted in stack No. 21/6 B of Garhi Godown where a shortage of 100 bags was shown subsequently and this stack was not physically counted being not in countable position. For the remaining 25 bags defense has mentioned that no difference was found after actual issues. Prosecution has not submitted the point about the excess of 125 bags in the brief. It is part and parcel of Article II, in which shortage of 38 bags is mentioned. Under the circumstances, the plea of defense that there was no discrepancy at the time of actual issues against the discrepancies found by PV, is to be given weightage, except 100 bags of Ramvilas godown stack No. 5/2 which were found excess while the C.O. took over charge, but were later on adjusted in Garhi godown stack No. 21/68 which appears a fictitious entry to cover up the misappropriation done on 15.1.72."

Article of charge 3:-

"Finding returned is that no doubt there were abnormal losses in the stocks stored in the depot but it was difficult to categorically make responsible the petitioner for the huge heavy losses, it was held that though direct involvement of the petitioner was not established but the petitioner could not escape from the responsibility being the overall in charge of the depot."

4. Record of the enquiry has been filed by the petitioner himself. Grievance of the petitioner as laid in the petition is that the enquiry officer has arrived at wrong conclusions. The writ petition is replete with averments which require re-appreciation of the entire evidence. Second grievance of the petitioner is that complete documents sought by the petitioner were not produced and the enquiry officer completed the enquiry in haste. Petitioner''s right to lead complete evidence stood violated. There is, Therefore, a denial of natural justice.

5. As regards the first grievance raised in the petition that the evidence on record does not justify the conclusions arrived at, it is to be noted that the enquiry officer has exhaustively dealt with the evidence led before him. The enquiry report runs into 25 pages. Indeed, cogent reasons have been given and evidence has been analysed in support of the findings arrived at. This court, exercising power under Article 226 will not re-appreciate the evidence to arrive at conclusions of fact. I have gone through the writ petition and there is no averment that any document has been misread. If that was the contention, I would have certainly looked into the documents because inference from a document is a question of law and not a question of fact. However, whether a fact exists or not as a matter of fact is a pure question of fact and where determination of the fact is based on appreciation of other facts, unless it is shown that the conclusion arrived at is perverse, consideration within the field would be a consideration of questions of fact. In this restricted area, it would be impermissible for me to re-appreciate the matter under Article 226. Coming to the second issue, namely grievance of the petitioner as pleaded that all documents on which the petitioner relied were not brought on record, pleadings are to be found in para 18 (i). Petitioner claims that on 10th October, 1975 he had filed an application/letter seeking production of record in his defense. The said letter is ''Annexure W'' (Pages 147-148) of the writ petition. 15 documents were summoned by the petitioner, which documents were in the possession of the department. Further grievance of the petitioner is to be found in para 19 of the writ petition wherein it is averred that at the hearing held on 18th July, 1979, part of the record was produced and the enquiry was closed. Case of the respondent as pleaded in the counter affidavit on this aspect of the matter is that on 18th July. 1979, the department produced all the documents. Petitioner produced one witness and the documents which were got exhibited through this witness out of the documents listed in the letter dated 10th October, 1975 were exhibited. Thus, grievance of the petitioner that all documents were not produced is incorrect. It is to be noted that 9 documents Ex.D1 to D9 came to be exhibited during course of the evidence of the sole witness produced by the petitioner.

6. Since documents taken on record and proved came to be exhibited the only means to establish whether all the documents which were sought to be produced

were or were not produced can be gathered at this stage from the conduct of the parties. Indeed, it may happen that a party may summon through an official witness 20 documents, but in evidence may prove only 15. Obviously, in such circumstances only 15 documents would be taken on record. Fortunately in the instant case, we have on record the written brief submitted by the petitioner on 23rd July, 1979. From the same, I do not find any grievance being raised that the enquiry officer closed the evidence in spite of the fact that complete records as were sought to be got produced under the cover of letter dated 10.10.1975 were not produced. Contemporaneous conduct of the petitioner shows that the petitioner had no grievance regarding non-production of the records sought by him under cover of his letter dated 10.10.75 and the plea now being urged is clearly an after-thought.

7. I, Therefore, find no merit in the writ petition. Same is dismissed. In the facts and circumstances of the case, since none has appeared for the parties at the hearing, there shall be no order as to costs.

