

(1992) 09 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.P. No. 1189 of 1987

Nand Kumar Jham

APPELLANT

Vs

Food Corpn. of India and Others

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Citation : (1993) 1 LLJ 1132 : (1993) 38 MPLJ 56 : (1993) MPLJ 56

Hon'ble Judges : V.D. Gyani, J; A.R. Tiwari, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant; A.H. Khan, for the Respondent

Judgement

A.R. Tiwari J.

This is a petition filed under Article 226 of the Constitution of India praying that a writ be issued quashing the order dtd. November 19, 1986 (Annex "G") and declaring the petitioner to be entitled to continue in service with ancillary reliefs connected with the office.

Briefly stated the facts leading to the filing of this petition, are. That on September 30, 1983, the petitioner was working as Technical Assistant, Grade I at Indore, when he was suspended in contemplation of the disciplinary proceedings. On February 14, 1984 a charge sheet was served on the petitioner filed along with petition as Annexure "B". An Enquiry Officer for the purpose was appointed by order dtd. April 29, 1984 and an enquiry was conducted pursuant to the aforesaid charge-sheet, lasting from November 12, 1984 to January 31, 1985. The Enquiry Officer, on conclusion of the enquiry, submitted the enquiry report on February 23, 1985 holding the petitioner guilty of behaviour unbecoming of a Corporation employee and of violation of Regulations 31 and 32 of the F.C.I. Regulations, 1971. On April 25, 1985, the Disciplinary Authority, the Sr. Regional Manager, imposed the punishment of removal from service of the corporation. The disciplinary authority thus agreed with the findings of the Enquiry Officer and issued an order dtd. April 25, 1985 marked in this petition as

Annex. "D" thereby inflicting the punishment of removal from service of the Corporation with immediate effect. The petitioner preferred an appeal on May 9, 1985 against this order to the Regional Manager (West), FC.I. The petitioner was required to send reminders, prodigious in number, praying for early disposal of the appeal. The appeal, however was allowed to hibernate and finally the appeal was rejected on November 19, 1986 (Annex. G) without hearing the petitioner in this behalf. The order of the Disciplinary Authority Annex. "D" thus got merged in the Appellate Order in Annex. G. The petitioner, aggrieved by the order of removal from service, as confirmed by order Annex. G has preferred this petition.

The petitioner has assailed the aforesaid order of removal from service on number of grounds, but during the course of arguments, pressed only two grounds i.e. (1) the charges framed did not constitute the misconduct as such and (2) the Appellate Authority passed the order Annex. G, without hearing the petitioner and without considering whether the penalty was proportionate to the charge, found proved against him.

The respondents have filed the return and submitted that the petitioner was given fair opportunities to defend the charge levelled against him and the charge constituted the misconduct on fee part of the petitioner. Controverting the allegations made in the petition, the respondents prayed for dismissal of the petition.

We have heard Shri J. W. Mahajan, learned counsel for the petitioner and Shri A.H. Khan, learned counsel for the respondents.

The charge framed against the petitioner is extracted below:

"Shri N.K. Jham, TA Gr. I while working in IRT Godown, Indore under the pay control of District Manager, Indore was on medical leave with effect from September 20, 1983 to October 10, 1983 reporting self sickness, duly supported by a medical certificate from doctor. While on the said medical leave, Shri N.K. Jham, TA Gr. I was found loitering and creating a preplanned nuisance and boisterous scenes between 13.00 hrs to 13.15 Hrs. in the back side of the Regional Office, Bhopal on September 29, 1983. Thus the said Shri N.K. Jham, T A Gr. I has produced a false medical certificate reporting self-sickness and also behaved in the manner unbecoming of a Corporation employee. The said Shri N.K. Jham, has thus violated Regulations 31 and 32 of FCI (Staff) Regulations, 1971".

The essence of the aforesaid charge was that while on medical leave, the petitioner was found loitering and creating a pre-planned nuisance and boisterous scene between 13.00 hours to 13.15 hours in the back side of the Regional Office, Bhopal. He has produced medical certificate about his sickness. His aforesaid conduct was categorised as a behaviour unbecoming of a Corporation employee.

The aforesaid allegation has no nexus with the duty of the petitioner. There is

complaint against him about creation of nuisance while he was on leave. It is submitted at the Bar that this was being done by the petitioner as espousing the grievance of the Union against the department. He was found guilty of the aforesaid charge and eventually an order of removal from service was passed against the petitioner.

Before going into the final aspect of the matter, we may refer to Ramachandra's case as reported in 1986-II-LLJ-334 wherein it has been laid down as under: (Head note)

"It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case, (1985) 2 LLJ 206 that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

We find that Annexure "G" does not show that the order was passed after giving reasonable opportunities to the petitioner of being heard. We also noticed that the same has been passed on the basis of some case, initiated by the police without any advertence to its intent, object and purpose. We also find that in Annex. "G" there is no consideration whether the penalty of removal from service imposed on the aforesaid charge, which is trivial in nature, was proportionate or not. These infirmities associated with Annex. "G" are certainly of serious nature and make Appellate order rather untenable in law.

There is yet another decision reported in Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, Rasiklal Vaghajibhai Patel v. Ahmedabad Muncl. Corporation and Anr. wherein it has been held that

"It is well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct."

Keeping the aforesaid criteria in mind, we find that the misconduct alleged against the petitioner does not strictly fall in the category of misconduct enumerated in the relevant Regulations. At this stage we may refer to A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., at 193 A.L. Kalra v. The Project and Equipment corporation of India Ltd. observing as under:

"Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so

that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Where one of the rules of a public sector company relating to conduct and discipline of its employees provided for maintaining "absolute integrity" and to do nothing which is unbecoming of a public servant held that the rule was vague and of a general nature what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Failure to keep to high standard to moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the misconduct, specifically enumerated in the conduct and discipline rules."

There is not generosity in the position of law. It appears that the respondent was perhaps displeased with the petitioner as a result of which such a severe penalty was imposed on him. In normal course, minor penalty in any case should have served the purpose.

In a petition under Article 226 of the Constitution, this Court is entitled to examine whether charge is covered by the relevant regulations and whether the principles of Natural Justice have been followed. In view of the aforesaid facts Annexure "D" as also Annexure "G" deserve to be quashed, being contrary to law and as being violative of the principles of Natural Justice.

To sum up, we hold that the order of removal passed by the Disciplinary Authority and subsequent order passed by the Appellate Authority, filed in the petition as Annexure "D" are illegal and invalid. Accordingly we quash both the orders.

The next question then is as to what relief the petitioner is entitled to? Once the order of removal from service is held to be invalid and illegal and the petitioner being in the employment of the Respondent No. 1 the necessary declaration must follow that he continues to be in service without break. This aspect does not present any difficulty and the requisite declaration is hereby granted.

Consequential to this, the next question that crops up for our decision is whether the petitioner, the victim of such action, is entitled to back wages? Ordinarily it is trite law that if termination of service is held to be invalid, no other punishment in the denial of back wages should be imposed. However, we find that the petitioner has not shown the behaviour expected of an employee of a Corporate Body. The nuisance, created outside the premises, evidently caused obstruction in due discharge of the duty by other employees.

The employees are expected to maintain certain norms and ensure smooth function in the office or establishments. Corporate culture needs to be adhered to assiduously. To this extent the petitioner's attitude cannot be said to be totally fault-free, albeit this cannot be said to be equivalent to misconduct in terms of the Staff Regulations. An employee is required to behave properly. The

respondents however exhibited very harsh attitude in initiating proceedings of such an enormity on the linchpin of activity, dubbed as unpalatable and unbecoming lasting for less than 15 minutes (between 13.00 Hrs. to 13.15 Hrs.). The employer in a democratic setup should have live- concern for its employees. In fact Article 43A of the Constitution of India, incorporated by 42nd Amendment Act, 1976, speaks of need to ensure participation of workers in the management and suggests spirit of reciprocity. In flagellating by impugned order it was overlooked that other participants were treated differently and lightly. It is well to remember that "like should be treated alike". Even a sick person, as the petitioner was could have been driven to participate in a cause. He seems to have submitted to this urge, perhaps to save his ostracism. The different treatment is this additional ground to anaesthetise the order on the peculiar chronicle of the case on hand.

We feel misconduct it was not, yet the manner is found to be somewhat reprehensible. Sequel to our disapproval of such attitude, we have felt, following Kalra's case (supra), that there should be disallowance of 50% back wages in the facts and circumstances of the case so that the petitioner gets the surge of an urge to atone and opt to become a more responsible employee. Scurrilous system needs to be curbed. Tumultuousness claims its price. In this view of the matter penalty stands set aside but equities are adjusted.

On a careful consideration of facts and circumstances in their totality, we, therefore, consequent upon the order of quashment of Annexure "D" and Annex. "G" and the declaration of continuity in service, as ordered above, direct the respondents to pay 50% back wages from the date of removal till date of reinstatement in compliance of declaration within a period of three months from today.

The petitioner thus succeeds and is allowed in terms indicated above. In the facts and circumstances of the case, parties are left to bear their own costs. Security cost is ordered to be refunded.

Let a writ be issued accordingly.