
(2005) 04 GAU CK 0005
In the Gauhati High Court
Case No : Writ Appeal No. 233 of 2005

Numaligarh Refinery Ltd.

APPELLANT

Vs

Rajab Uddin Ahmed

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Conduct Displine Appeal Rules, 1995 — Rule 6
Penal Code, 1860 (IPC) — Section 408

Citation : (2005) 2 GLT 390

Hon'ble Judges : B.K. Roy, C.J;D. Biswas, J

Bench : Division Bench

Advocate : P.K. Goswami, S.N. Sarma, Y.S. Mannan, I. Ahmed, M. Meera and P. Sarma, for the Appellant; A.S. Choudhury, R. Majumdar, A. Maleque, R. Ali and S. Ali, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This appeal is directed against the judgment and order dated 11.2.2005 passed by a learned Single Judge allowing W.P. (C) No. 3170 of 2002 filed by the Respondent, setting aside/quashing the order dated 31.7.2001 of his dismissal and directing his forthwith reinstatement with such back wages as the Disciplinary Authority may compute after holding a separate proceeding in this regard.

2. The Respondent Md. Rajabuddin Ahmed was selected and appointed as a Graduate Engineer Trainee (Mechanical) by the Appellant to undergo training for aperiod of twelve months vide letter dated 7.8.98. The Respondent was deputed to render service in IBP Company Limited, a co-promoter of NRL. By an order dated 3.11.98, he was appointed in the post of Officer (Retail) in the Company. During course of inspection by the Addl. Divisional Manager of IBP Company Ltd. it was found that the relevant records of the retail outlet showing transactions were not properly maintained during the period between April, 1999 and August, 1999. The Respondent was accordingly cautioned by the letter dated 8th

September, 1999 and directed to maintain records in accordance with the prescribed procedure. An inspecting team, consisting of higher officials, during the course of inspection on November 23rd, 1999, noticed that the Respondent was involved in misappropriation of fund of the said retail outlet during the period between 1.4.99 to 22.11.99 to the tune of Rs. 2,25,717,53, besides committing other gross irregularities in maintaining records as per procedure. The Advisor (H.R.) of the Appellant Company was informed of the illegality and irregularity committed by the Respondent including his admission/confession of guilt made before the Inspecting team. An Information was lodged with Golaghat Police on 23.11.99. On 24.11.99, F.I.R. was registered by the officer-in-Charge of Golaghat Police Station whereupon Golaghat P.S. Case No. 325/99 was registered u/s 408 IPC against the Respondent. By a letter dated 26.11.99 the Respondent was informed that there is a shortage of Rs. 96,955.33 and the matter is subject to further audit. In the event of any further amount found recoverable, the Respondent would be liable to pay the same. In his reply, the Respondent denied the above allegations. Thereafter, the Respondent was placed under suspension and served with chargesheet on six different counts vide letter dated 21.12.99 addressed by the Advisor (HR). It was indicated in the charge memo that the Company could trace out bills amounting to Rs. 1,28,762.20 and, after adjustment, the actual amount misappropriated stood at Rs. 96,955.53. That apart, it was also indicated in the charge memo that the Respondent had confessed his guilt vide deposition recorded on 23.11.99 in presence of the team members of the IBP Co. Ltd.

3. The Respondent submitted his explanation vide letter dated January 22nd, 2000 denying the charges levelled against him. An Enquiry Officer was appointed by the order dated April 20th, 2000.

4. The Appellant Company vide communication dated May 22nd, 2000 amended the figures of unexplained cash by way of adjustment and reduced the amount misappropriated to Rs. 1,68,137.41. The Respondent was directed to pay this amount by demand draft. In his reply, the Respondent refuted the claim of the Appellant Company and asked for furnishing him with copies of all the relevant documents.

5. The enquiry initiated against the Respondent was completed and the Enquiry Officer vide letter dated 25th June, 2001 submitted his report based on the evidence adduced and documents exhibited. The report appended with the writ petition shows that the Enquiry Officer found a net cash shortage of Rs. 60,001.03 which shows that the Respondent had withdrawn the same from R.O. for his personal gain. The Enquiry Officer further held that the Respondent had of his own deposited a sum of Rs. 40,000/- towards cash shortage and this further shows that he was aware of shortage of cash. The Enquiry Officer held that this deposit was nothing but an attempt to square up the discrepancy. The Enquiry Officer recorded a positive finding that charge No. (a) relating to misappropriation of cash is proved beyond reasonable doubt. The Enquiry Officer

opined that charge Nos. (b), (d) and (e) relating to violation of procedures and rules, acting in a manner prejudicial to the interest of the Company etc. stood proved. The Enquiry Officer, however, exonerated the Respondent of the charges Nos. (c), (f) and (g).

6. On the basis of the Enquiry Report, the disciplinary authority imposed the penalty of dismissal of the Respondent in exercise of powers under Rule 6 of Part HI of the CDA Rules, 1995 with effect from July 31, 2001 vide order dated July 31, 2001. The Respondent preferred an appeal challenging the legality and validity of the aforesaid order of dismissal passed by the Adviser (H.R.), the disciplinary authority. The appellate authority by the order dated January 21, 2002 dismissed the appeal for reasons recorded therein.

7. Mr. Goswami, learned senior counsel for the Appellant submitted as follows:

There is no scope for an in-depth scrutiny of the evidence of a disciplinary proceeding by the learned Single Judge in exercise of powers of judicial review. The jurisdiction of the Court is limited to the examination of the decision making process. The materials on record would show that the Respondent was guilty of violating the Marketing Rules and Regulations of the Company and in the process indulged in misappropriation resulting in shortfall in cash which could not be properly explained by him despite reasonable opportunity. On the admission relating to breach of procedure/rules/regulation made by the Respondent in his letter/deposition dated 23.11.99, the quantum of money misappropriated or defalcated was not the sine qua non of purity of a disciplinary proceeding. The Enquiry report and even the judgment rendered by the learned Single Judge would also reveal that the Respondent could not account for a sum of Rs. 31,927.43. It is not a case where penalty of dismissal has been imposed based on no evidence warranting judicial review of the decision of the Company. Hence the Writ Petition should have been dismissed.

8. Mr. Choudhury, learned senior counsel for the Respondent, on the other hand argued as follows:

The charges levelled against the Respondent were vague. The amount alleged to have been misappropriated has been altered from time to time and no reasonable opportunity was given to the Respondent for reconciliation of the accounts. The Respondent was not served with copies of the relevant documents/depositions in breach of the principles of natural justice.

Supporting the judgment under appeal, Mr. Choudhury highlighted that the unexplained cash of Rs. 31,927.43 was due to differences over settlement of accounts between the employer and the employee and as provided in the Service Rules, the employee was entitled to further reconciliation. Hence this Appeal is liable to be dismissed.

9. The memorandum of charges drawn on December 21, 1999 clearly spells out the nature of delinquency indulged in by the employee. It indicates that the

Respondent defaulted in depositing a sum of Rs. 1,43,485.22 being the sale proceeds in the bank account. That apart, there was a loss in stock in Lubes and in M.S. to the tune of Rs. 25,711.01 and Rs. 56,521.30. After adjustment of the amount that could be computed from the available bills, a sum of Rs. 96,955.53 was found to be short. On this allegation the chargesheet has been drawn on six different counts in clear and categorical terms. The Respondent in his reply while denying the charges also requested for reconciliation of accounts a fresh. During the course of enquiry, apart from the evidence adduced by the authority, the Respondent was also examined and his statement was recorded in question and answer form. A copy of the statement, as submitted by Mr. Choudhury, was also furnished to the Respondent. In the memorandum of appeal the Respondent admitted that the enquiry was started on 10.5.2000 and concluded on 14.7.2000 in which his statement was recorded by the Enquiry Officer. The Respondent had admitted that he had deposited Rs. 40,000/- to make up the shortage. From the enquiry report as well as the statements made in the memo of appeal it cannot be said that the enquiry was conducted in violation of the prescribed procedure and/or principles of natural justice. There is nothing on record to show that at any point of time after initiation of the departmental proceedings or before its completion the Respondent had ever asked for any document from the authority. The Enquiry Officer considering the evidence of three witnesses examined by the management and the documents available found a net cash shortage of Rs. 60,001.03 against which the Respondent suo moto deposited Rs. 40,000/-. Obviously, this shortfall is relatable to shortage in cash of the retail outlet. This decision of the Enquiry Officer has been founded on the evidence on record independent of the deposition/confession made by the Respondent on 23.11.99 in the form of a letter addressed to the Appellant authority. The contents of the aforesaid document, appended as Annexure-B to the memo of appeal, clearly show that the Respondent had during the course of inspection admitted of violation of the procedure in incurring the expenditure without any authority. That apart, he had also admitted that on various occasions the amount deposited in the bank was lesser than the sale proceeds due to withdrawal for his personal use and that sometimes the bank remittance were more than the sale proceeds that he had borrowed from his own sources. Admitting that he was in default in respect of a sum of Rs. 40,000/- he had promised to pay this amount along with other additional amounts as may be found due from him. In un-categorical terms the Respondent prayed for exoneration with assurance that such mistakes will never happen in future. The learned Judge had noticed that the Enquiry Officer after adjustment of all the expenditures incurred, though unauthorisedly, found a sum of Rs. 60,001.03 who on recalculation concluded that the amount due to the Appellant authority is Rs. 31,927.43 opining that the adjustment of different bill amounts at different point of time reducing the amount to Rs. 60,001.03 by the Enquiry Officer displays a patent lack of application of mind by the Enquiry Officer.

10. The fact that emerges from the above discussion clearly indicates that the Respondent had been discharging his function in a reckless manner in violation of

the marketing rules and procedure prescribed by the authority and that he was in the habit of incurring expenditure from the sale proceeds without any authority of law and, in the process defaulted in depositing the entire sale proceeds in the bank account of the employer as is required under the Rules. A short fall in the cash amounting to Rs. 31,927.43 was detected. This amount forms part of the net cash balance of the employer and cannot be retained by the Respondent employee. This being a part of the amount alleged to have been misappropriated, no lenient view can be taken in the instant case warranting judicial interference with the decision taken. The gamut of the entire situation discernible from the records leads to the irresistible conclusion that the Respondent was guilty of the charges levelled against him. The factual matrix as narrated above does not show that for any reason whatsoever the defence of the Respondent employee was prejudiced in any manner.

11. The argument advanced by Mr. Choudhury that the Respondent was not given reasonable opportunity for reconciliation of accounts is of no force. He was asked to show the relevant Rules providing for such reconciliation. The Service Rules shown to us do not have any such provision. He then showed certain guidelines which, in our opinion, cannot be relied upon contrary to the provisions in the Service Rules. That apart, the provision for reconciliation in the guidelines, is for the purpose of inspection undertaken from time to time to regulate the affairs of business of the Company. Such provision cannot vest upon an employee any right to reconcile the accounts after having mismanaged the same in total violation of the rules and regulations.

12. Mr. Choudhury placed reliance on the decision in *Sawai Singh Vs. State of Rajasthan*, in support of his submission that the charges framed were vague and, therefore, it was unjust on the part of the authority to call upon the Respondent to defend him. There cannot be any dispute with regard to the proposition of law available in this judgment that in a case where charges are vague, it would be unjust to call upon an employee to meet the charges, but here there is absolutely no vagueness in the charges. Charge No. (a) shows that the delinquent was charged for misappropriation of cash amount of the Company. There may be variation in the amount which eventually came down to 31,927.43. This variation does not altogether obliterate the basic foundation of the charge of misappropriation. The authority in all fairness came up with all possible informations to reduce the burden on the delinquent employee. The other charges were concomitant with the above charge of misappropriation and the decision thereon is based on the findings in charge No. (a). Therefore, judicial interference on the ground of vagueness of the charges is not permissible in the given factual background of this case.

13. Mr. Choudhury had also tried to make out a case of disproportionate punishment. Relying upon a decision of a Division Bench of this Court in *Trilok Singh Rawat v. Union of India* and Ors. 2001 (1) GLJ 106, he submitted that the Court had rightly interfered with the extreme penalty of dismissal as the

punishment imposed was found to be shocking to the conscience. We, however, find that the case at hand is completely on the opposite pole. The delinquent has been found guilty of misappropriation of money in breach of trust reposed on him by the employer. The decision in *B.C. Chaturvedi Vs. Union of India and others*, stands on a similar footing. For the reasons stated above, we are not inclined to interfere with the punishment.

14. In fairness to Mr. Goswami, we note that he had relied upon the decisions of the Hon'ble Supreme Court in (i) *Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen*, ; (ii) *Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another*, and (iii) *State of U.P. and Another Vs. Johri Mal*, . We are not inclined to unnecessarily burden this judgment with the above decisions in details. Precisely, we are of the opinion that no case was made out by the Respondent for judicial review of the administrative action taken by the Appellant dismissing him from service for misappropriation, while holding a position of trust. Question of taking any lenient view in a case where charge of misappropriation is proved does not arise. We are of the considered view that the penalty of dismissal of the Respondent has to be maintained in reversal of the judgment under appeal.

15. In the result, we allow this appeal and set aside the judgment and order dated 11.2.2005 passed by the learned Single Judge.

16. Considering the fact situation, we direct the parties to bear their own costs.