

(2012) 01 UK CK 0003
In the Uttarakhand High Court
Case No : Writ Petition No. 41 of 2011 (S/B)

Rajesh Kumar Nigam

APPELLANT

Vs

Uttarakhand Seeds and Tarai Development Corporation Ltd.
and others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Conduct, Disciplinary and Appeal Rules — Rule 33
Seeds Act, 1966 — Section 2

Citation : (2012) 01 UK CK 0003

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—By an order dated 22nd January 2011, the services of the petitioner have been terminated with immediate effect, and a direction has been issued for recovery of a sum of Rs. 51,35,175/- from the petitioner. The said order was passed upon conclusion of a disciplinary proceeding under Rule 33 of the Conduct, Disciplinary and Appeal Rules of the respondent Corporation. In the order, it was also stated that no salary shall be admissible to the petitioner, except subsistence allowance received by him during the suspension period. By filing the present writ petition, validity of the said order has been challenged.

2. Heard learned counsel for the parties, considered the pleadings filed by them and the materials on record.

3. The disciplinary proceeding, which was concluded by the impugned order dated 22nd January, 2011, was initiated by issuing a charge sheet dated 13th July 2010. Prior thereto, petitioner was put under suspension in contemplation of a disciplinary proceeding to be initiated for the purpose of unearthing the truth of certain allegations. Some of those allegations were mentioned in the charge sheet dated 13th July 2010, and the charge sheet also included some more allegations.

4. In the charge sheet dated 13th July 2010, several charges were levelled against the petitioner. The first charge was that the Board of Directors of the respondent employer took a decision in the 196th meeting held on 9th June 2008, that the quantity of one lac quintals of raw seed, which are excess over the target, being mainly of four varieties, be not processed but be kept reserved and processing be done only after receiving clear demand, else efforts be made to sell off the same as foodgrain in such a way that no loss is occurred to the Corporation, and that until sale of excess quantity of one lac quintal is assured, the same be kept unprocessed, and an alternative plan to sell the same in bulk at fair price, be also made ready. Under the first charge, it was alleged that the petitioner, who was then working as Company Secretary and General Manager of the respondent employer, made a note in the file and thereby recommended that in view of the demand of Bihar State Seeds Corporation, there was no relevance of decision of Board taken in its said meeting that, until confirmed demand is received, one lac quintals of seeds should not be processed. It was stated under the said charge that 25000 quintals of additional quantity of raw seeds was recommended by the petitioner to be processed in anticipation of the approval of the Board meeting dated 30th September 2008, and that a recommendation was also made by the petitioner that 15000 quintals of additional quantity of raw seed be processed in anticipation of Board's approval in the meeting to be held on 30th September 2008. It was contended under charge No. 1, that contrary to the decision of the Board of Directors, 25000 plus 10000 quintals, aggregating to 35000 quintals, of seeds was processed / treated, due to which 55000 quintals of processed seeds remain as balance, whereas only 20000 quintals of processed seeds would have remained as unsold. It was alleged that despite the said decision of the Board of Directors, the petitioner got extra 35000 quintals of seeds processed / treated, and accordingly, extra processed seeds remained unsold, resulting in commercial loss of Rs. 166.84 lacs to the respondent Corporation. It was also alleged that for processing additional 35000 quintals, no sanction was obtained from the then Chairman, for which the petitioner was answerable, and accordingly, he was charge sheeted.

5. In reply to the charge sheet dated 11th August 2010, petitioner accepted that he made a noting in the concerned file to the effect that there was no relevance of the decision of the Board taken on 9th June 2008, that until the confirmed demand is received, one lac quintals of seeds should not be processed, but stated that the same was done in view of anticipated demand from Bihar State Seeds Corporation. He stated that he did not make any noting for processing 25000 quintals of additional raw seed. He stated that, whatever was currently within his knowledge, he placed the same, in the form of his noting, before the Managing Director of the respondent Corporation, and while doing so, he requested the Managing Director to consult, if necessary, Agriculture Secretary of the Government as well as the Chairman of the respondent Corporation. He stated that the Managing Director after perusing his note, made certain endorsements on 5th September 2008, on the note, which would show that it

was the Managing Director who permitted processing of 25000 quintals of seeds in anticipation of Board's approval. It was stated that on 20th September 2008, it was the Managing Director who again granted permission to process an additional quantity of 10000 quintals of seeds in anticipation of Board's approval. It was stated by him that at the meeting of the Board held on 30th September 2008, considering the expected confirmed demand, after discussion with the Secretary Agriculture, Patna, sanction for processing of 35000 quintals was given by Secretary Agriculture to the Managing Director, and therefore, its formal approval was sought for and the same was accorded.

6. It was contended by the petitioner that in such circumstances, he did nothing which can be termed as misconduct, and accordingly, for his conduct highlighted no disciplinary proceeding could be initiated under the Rules. He stated that there was an expected demand from Bihar in view of unprecedented flood in Bihar at the relevant time, and accordingly, in order to enable the respondent Corporation to meet such demand, he prepared a note and placed whatever was within his knowledge truthfully and frankly before the Managing Director. Subsequent thereto, it was the Managing Director and later on the Board, who had taken the decision to process additional quantities. Therefore, the petitioner contended that he cannot be made responsible for the said decision.

7. The charge sheet, and the reply thereto, was considered by the Enquiry Officer in the absence of a Presenting Officer, but in the presence of the petitioner. No oral evidence was adduced but documentary evidence was considered. It is not known who produced those documentary evidence before the Enquiry Officer. Before the Enquiry Officer, the note prepared by the petitioner, was produced. A look at the said note will make it absolutely clear that the petitioner did not make any request / recommendation for processing any specific additional quantity of seeds. He brought to the notice of the Managing Director by the said note that there is a possibility of receiving a large order from Bihar, inasmuch as an enquiry through Fax has been received from Bihar on 1st September 2008, expressing requirement of 3.30 lac quintals of wheat seeds in addition to crop seeds. In the note, the petitioner made a request to the Managing Director to consider the note, and to grant permission for processing of seed withheld from processing, in the light of the decision of the Board of Directors taken on 9th June 2008, and for that purpose, if it is felt necessary to apprise the Chairman of the respondent employer and Agriculture Secretary of the State to obtain their concurrence. It was also stated in his note that, in the next Board meeting ex post facto approval for processing of withheld seeds may be obtained in view of the clear demand. On the said note, which was prepared on 1st September 2008, the Managing Director made two endorsements on 5th September 2008. In one endorsement, it was recorded that "in reference to the demand of Bihar Rajya Beej Nigam, discussion with Secretary Agriculture, over telephone, was made today on 05.09.2008 in the afternoon at 14.40 and to him a mention was made of the telephonic discussion held with Managing Director, Bihar Rajya Beej Nigam, and Managing Director, Bihar Rajya Beej Nigam stated that after

ratification from Bihar Government within 2-3 days he would convey confirmation. It was appended by the Managing Director to the said endorsement that Secretary Agriculture's information is that for the time being out of the withheld quantity of unprocessed seed, processing of 25000 quintals seed be made. The Managing Director then noted that "since the processing is to be made within stipulated time limit, therefore, the sanction for processing of 25000 quintals seeds in anticipation of Board's approval is given. Proportionate (Plant and Variety) be done according to the quantity fixed." The other endorsement, also made on the 5th September 2008, by the Managing Director, was to the effect "the demand received from Bihar Rajya Beej Nigam and the confirmation of the G.M. be preserved in file". A further noting was appended "the seeds whose matter is pending in enquiry should not be processed and reply be awaited of that", which endorsement learned counsel appearing for the respondent employer submitted was not in connection with charge in question.

8. Although in the charge sheet, under charge No. 1, it was alleged that at page No. 71, of the note, recommendation was made by the petitioner that 15000 quintals of additional quantity of raw seed be processed in anticipation of Board's resolution, but the said page was not produced before the Enquiry Officer. However, in his reply, the petitioner had accepted having given a proposal for sanction to process additional 15000 quintals of wheat seeds to the Managing Director. On 20th September 2008, the Managing Director approved processing of only 10000 quintals in anticipation of approval of the Board. This aspect of the matter has been dealt with in the enquiry report, where it has been stated, amongst others, that the proposal given by the petitioner in his notings for processing of additional quantity of raw seeds was improper and unjust. At the same time, however, it was not stated in the enquiry report that there was no Fax dated 1st September 2008, from Bihar Rajya Beej Nigam, or that there was no discussion by the Managing Director of the respondent employer with Managing Director, Bihar Rajya Beej Nigam, or with the Secretary Agriculture. In the enquiry report, the Enquiry Officer reported that sanction for processing of 25000 quintals of seeds was given by the Managing Director with the condition that the letter of demand received from Bihar Rajya Beej Nigam be enclosed alongwith the confirmation made by G.M. (Operation). In other words, Enquiry Officer tried to insinuate that the permission to process additional quantity of 25000 quintals of seeds, as was accorded by the Managing Director, was attached with a condition that the same can be processed only when a confirmed order is received. This is contry to record. In the enquiry report, the Enquiry Officer referred to a letter dated 8th of December 2010, of the Joint Chief Financial Controller of the respondent employer, where allegedly it was certified that the respondent employer has suffered a loss of Rs. 79,88,500/-. The said letter was not disclosed as a piece of evidence to be relied. How the Enquiry Officer came to be in possession of the said letter, has not been indicated in the body of the report. Be that as it may, it was not mentioned in the enquiry report that the alleged loss of Rs. 79,88,500/- was suffered by the respondent employer

by reason of 35000 quintals of processed / treated seeds remaining unsold. In any event, on the basis of a certificate, even if issued by any person, having whatever stature as he may have, the quantum of alleged loss alleged to have been suffered cannot be established. The same is required to be established by facts and figures, supported by vouchers and other materials, including books of accounts. No such attempt was made in the instant case.

9. Having regard to what has been stated above, it is, therefore, crystal clear that the purported charge that 35000 quintals of additional quantity of raw seed was processed at the instance of the petitioner is factually incorrect as established on record and making of a recommendation to that effect is no charge of misconduct, inasmuch as, as a responsible employee of the respondent employer, the petitioner was entitled to make appropriate recommendations / requests to his higher authorities, and for making such request / recommendation, no one can be charged of misconduct. In the charge, there was an insinuation that the petitioner got 35000 quintals of raw seed processed / treated of his own accord. The said insinuation has been proved unsustainable at the enquiry. The Enquiry Officer has accepted, that the request or recommendation was accepted not only by the Managing Director of the respondent employer but also by the Board of Directors of the respondent employer. In the circumstances, though the loss allegedly suffered for the extra processed seeds remained unsold was not proved, but the petitioner under no circumstances in law can be held to be liable for such loss. As the charge No. 1 contained in the charge sheet do not suggest, for the reasons indicated above, any misconduct on the part of the petitioner, insinuations contained therein have been proved wrong on the basis of evidence on record, and the finding recorded by the Enquiry Officer to the effect that the permission to process was with a condition of having confirmed demand is a finding contrary to the records. No prudent person, based on the materials before him, could come to the conclusion as was concluded by the disciplinary authority while framing the charge No. 1, and at the same time, no prudent person, including the Enquiry Officer as well as the disciplinary authority informed with the informations as were available to them and as were on record, could come to the conclusion as they had arrived in relation to charge No. 1 in the enquiry report as well as in the order impugned in the writ petition.

10. The charge No. 2 was that the quantity of one lac quintals as mentioned in the Board meeting of the respondent employer dated 9th June 2008, should have been 64254 quintals only. It was alleged that the same was a deliberate action on the part of the petitioner. It was not contended that by doing so, what gain the petitioner made. The said allegation, therefore, spoke about only a mistake on the part of the petitioner. It is significant to note that in the enquiry report, the Enquiry Officer did not even bother to deal with the charge. Without dealing the charge and understanding the purport thereof, he for no just reason held that the said charge stands proved. Even assuming charge No. 2 stands proved, the same would establish mistake on the part of the petitioner in recording one lac

quintals, instead of 64254 quintals in the minutes of the Board meeting held on 9th June, 2008.

11. The third charge was that, the petitioner did not take effective steps to stop intake of seeds in the month of June 2008, and as a result the intake for the month of June 2008, stood at 8314 quintals. The charge did not indicate that the petitioner was ever asked not to take intake of seeds for the said month. The fact remains, that only on 9th June 2008, it was decided not to process one lac quintals of raw seeds, which were excess over the target. Although, as per the enquiry report, the said charge stands proved, but surprisingly the enquiry report nowhere says when the procurement orders in respect of the said 8314 quintals were placed i.e. whether before or after 9th June 2008. The conclusion, therefore, would be that while the said charge do not disclose misconduct, the employer utterly failed to bring on record any material to support even the allegation contained therein.

12. The fourth charge was giving of false information (misleading) on the agenda of the Board meeting held on 30th September 2008, in the sense that an information was given in respect of the confirmed demand, and by giving such false information, Board's sanction for processing 35000 quintals of seeds was obtained. The principal insinuation in the charge sheet, which can be claimed to be misconduct, was an information given by the petitioner to the effect that there is a confirmed demand and on the basis of such information, sanction for processing 35000 quintals of seeds was obtained by the petitioner from the Board on 30th September, 2008. The Enquiry Officer, though was very much instrumental in framing the charge sheet, totally failed to ascertain the scope of the charge. He, accordingly, did not make any effort to ascertain, whether the petitioner at any point of time by any means held out to the Board of Directors of the respondent employer that there is a confirmed demand, and accordingly, sanction to process 35000 quintals of seeds should be granted. Accordingly, in the enquiry report, there is not even a single whisper in relation thereto. There is no evidence of any such representation in the records. The fact remains that the Enquiry Officer resorted to subterfuge, in as much as he knew from the day one and until the date he submitted his report, that there was never any representation by the petitioner to the respondent employer at any point of time, and in any form whatsoever, that there is a confirmed demand, and accordingly, the petitioner did not make any such representation either before the Managing Director or before the Board of Directors or before the respondent employer at any point of time. For the reasons as above, no prudent person informed with the informations, as were available to the Enquiry Officer and the disciplinary authority, could conclude in the manner as was concluded in the enquiry report or the impugned order under challenge.

13. The fifth charge was that the petitioner allegedly sold poisonous seeds which were neither fit for eating by men or animals. In this connection, the Enquiry Officer has reported "thus possibility of selling the treated wheat seeds to flour

mills cannot be denied." On the basis thereof, he opined that the charge stands proved. The disciplinary authority failed to bring on record one single piece of evidence, in any form whatsoever, to support that poisonous wheat seed was sold either to achieve the motive of self gain or to cause loss of any money to the respondent employer. No prudent person on the basis of the records available in the present case, therefore, could hold that the said charge stands proved.

14. In order to prepare seeds, the respondent employer purchases grain from the market, and then processes the same. It has adopted two processes of processing grain into seeds. One of them is to process by industrial activity, and the other is to put fungicide inside the bags of the grains in order to enable the farmers to process such grains for the purpose of converting the same into seed. The sixth charge was that, the petitioner processed 35000 quintals of grain through industrial process, instead of processing the same by putting packets of fungicide inside the bags containing grains. The charge did not say that the petitioner did so in violation of any order passed by any of his superior authority. In the charge it was not said that the said quantity of grains could not be processed in the manner the same was processed, and could only be processed in the manner the same was not processed. Therefore, charge No. 6 was no charge of misconduct at all. The said charge has been reported to have been proved, but as aforesaid, the consequence thereof has no effect at all, as the charge does not disclose an allegation of misconduct, and at the same time the fact remains, 35000 quintals of raw seeds were processed in the manner the same was to be processed, and for which an industrial unit has been set up by the respondent employer.

15. The seventh charge was that, because of delay in holding Annual General Meeting of the respondent employer, the respondent employer suffered loss by way of penalty, and in the balance sheet for the year 2007-08, at page No. 19, an audit para was also incorporated by the CAG. The Enquiry Officer has reported that there is no evidence that the respondent employer has suffered any loss by way of penalty. In the reply to the charge sheet, it was indicated by the petitioner the reasons for delay in holding the subject AGMs. In the enquiry report those reasons have not at all been dealt with. The reason furnished was that on the audit report, a CAGs report was required, and the said report by the GAG was delayed. It was contended that without audit report one of the said meetings could not be held. The Enquiry Officer surprisingly did not go into those aspects of the matter at all in his enquiry report. The said action on the part of the enquiry officer suggests partisan behaviour on his part, as if he was appointed only to uphold that the charges are proved, and the petitioner is guilty of those charges. The other reason was bifurcation of the respondent employer in view of bifurcation of the State of Uttar Pradesh. It was stated that by reason thereof what difficulties the respondent employer faced for election of Farmer Directors. The Enquiry Officer by not considering those aspects, but at the same time holding that the petitioner is guilty of the said charge, acted in a most unjust, irrational and un-judicious manner. No person far or less a disciplinary

authority, informed with the informations, as were available to him, could accept under any circumstances the said finding of the Enquiry Officer.

16. The eighth and the last charge was that, a clear instruction was given by the Secretary, Uttarakhand Government, Agriculture and Agriculture Marketing Section-2, to register a case under the Seeds Act against those farmers, who got themselves registered on the basis of forged documents, but the petitioner in collusion with concerned farmers did not file a case against them, and those farmers filed cases against the respondent employer. With that, a serious allegation was made that the petitioner, in his capacity as the Head of Department of Law Section, obtained the original file of source verification from the Personnel Department and then with collusion with the farmers, got the original file misplaced. In relation to the said charge, the petitioner contended in his reply to the charge sheet, that the letter of the Secretary concerned was addressed to the respondent employer and also to Director, Seed Certification Agency. It was stated that under the Seeds Act, suits could be filed against the concerned farmers by the Seeds Certification Agency, as the forged documents were supposed to be lying with them. It was contended that on and from 6th February 2009, the petitioner was only the Secretary to the respondent employer and ceased to be General Manager of the respondent employer. It was stated that the subject file was dispatched from the Company Affairs Department of the respondent employer headed by the petitioner to the General Manager on 27th October 2009, and the particulars thereof are duly entered in the dispatch register, and accordingly, the allegation made that the petitioner got the original file misplaced, is blatant lie. In the report, the Enquiry Officer contended that the reply / clarifications given by the petitioner are not supported by any documentary evidence, and accordingly, the said charge stands proved. The Enquiry Officer failed to take note of the fact that, it is the person who alleges is required to prove the allegations made by him, and accordingly, the disciplinary authority was required to prove that it was the petitioner who got the file in question, misplaced. The Enquiry Officer even refused to call for and look at the dispatch register of the Company Affairs Department of the respondent employer. He did not think that in respect of such a serious charge either the disciplinary authority or the Enquiry Officer could act in such a slip shot manner. The conclusion would be that, there is nothing on record on the basis whereof, one could come to the conclusion that the said charge stands proved.

17. In the circumstances, the conclusion would be that the order impugned in the writ petition being a product based on an enquiry report, which no person could report being informed of the matters brought on record, is not sustainable in law, and accordingly, the same is and should be liable to be quashed.

18. We, accordingly, allow the writ petition and quash the order of the disciplinary authority impugned in the writ petition, being the disciplinary order dated 22nd January, 2011, as well as the enquiry report and the charge sheet. It shall be open for the respondent employer to frame appropriate charge sheet, if

necessary, against the petitioner and against any other person, as the respondent employer may deem fit and proper, and to conclude the same in accordance with law. We make it further clear that it shall be open to the respondent employer as well as to the State Government, which has a substantial stake in the respondent employer, to make such enquiry / investigation as regards the affairs of the respondent employer, and in particular in relation to the loss alleged to have been suffered by it for processing 35000 quintals of extra seed, either through the Vigilance Department of the State or through the Central Bureau of Investigation, as it may deem fit and proper.

19. Having had concluded the matter, in the manner as above, and taking note of the fact that some of the insinuations contained in the charge sheet were also the reasons for suspending the petitioner, and those having been established to be unsustainable in view of what has been stated and discussed above, the conclusion would be that there was no just reason to suspend the petitioner. We accordingly, quash the suspension order also. We make it clear that because of the suspension order and the termination order impugned in the writ petition, the petitioner was prevented from discharging his duties attached to the post to which he is appointed, and accordingly, the petitioner should be deemed to be on service from the date he was suspended, and should be deemed to be entitled to all salaries not paid to him, less the amount of money paid to him by way of subsistence allowance. Let such dues and claims of the petitioner be paid as quickly as possible but not later than one month from the date of service of a copy of this order upon the respondent employer. The writ petition is allowed to the extent as above.