
(1995) 12 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.P. No. 1653 of 1994

Shriniwas M. Katti

APPELLANT

Vs

Rashtriya Chemicals and Fertilizers Limited

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Food Corporation of India Employees (Conduct, Discipline and Appeal) Rules, 1972 —
Rule 23, 25, 5A(1) , 5A(2), 5A(21)

Citation : (1997) 3 LLJ 259 : (1997) 1 MPJR 869 : (1996) 41 MPLJ 869 : (1996) MPLJ 869

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : R.S. Jha, for the Appellant; V.K. Tankha and S. Nagu, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

The two petitions are disposed of by this common order.

The petitioner in M.P. No. 1653 of 1994 has prayed for quashment of the order dated January 10, 1994 of penalty (Annexure P-15) passed by the Acting Chairman and Managing Director, whereby the petitioner who was working as Deputy Marketing Manager, was reduced from his substantive grade of Rs. 3700-5900 to Rs. 3100- 5100 with effect from January 10, 1994, as a consequence of that an order dated February 3, 1994 (Annexure P-16) was passed not only reducing the petitioner's grade, but the petitioner was redesignated as Senior Marketing Officer with effect from January 10, 1994. Against the order of punishment the petitioner's appeal was also dismissed by the appellant authority, the Board of Directors, vide order dated April 19, 1994.

In M.P. No. 1652 of 1994, the petitioner A.H. Shedge who was working as Senior

Marketing Officer, has challenged the order of penalty dated January 10, 1994 (Annexure P-12) passed by the Acting Chairman and Managing Director who in exercise of power conferred by Rule 25 of the F.C.I. Employees' (Conduct, Discipline & Appeal) Rules, 1972 (for short Rules) as adopted by the Rashtriya Chemicals & Fertilizers Ltd. imposed the penalty of reduction in grade from his substantive grade of Rs. 3100-5100 to Rs. 2400-4300 with effect from January 10, 1994, whereby the petitioner was redesignated as Marketing Officer vide memorandum dated February 3, 1994 (Annexure P-13). The petitioner also challenges the appeal filed under Rule 30 (1) which was dismissed by order dated April 19, 1994 by the Board of Directors.

Facts giving rise to the petitions are these. Respondent M/s. Rashtriya Chemicals & Fertilizers Ltd. (a Government of India Undertaking) (for short "the company") is an incorporated company under the Companies Act, 1956, which deals in manufacturing and sale of fertilizers. To promote sales and to flood the market with urea of the respondent, the company framed a policy that the manufactured urea be supplied to the dealers on invisible facility so that the dealers may only deal in the fertilizers manufactured by the Company. To achieve the object it was decided to open warehouses in the interior areas connected with the main dealer. According to the petitioner, it was a policy of high risk factor. The petitioners in terms of the said policy to promote sales supplied the stock of ujjwala urea worth Rs. 27,05,000.00 to one dealer S.M. Lodha who issued post dated cheques towards payment. The cheques were presented from time to time for encashment but were bounced. On approach, the said dealer issued fresh cheques worth Rs. 7.5 Lacs which were encashed, for the balance amount of Rs. 19.05 lacs the company instituted the suit. In the suit, the dealer accepted the liability and issuance of post dated cheques and prayed for payment by instalments. The suit was decreed. The decree was put to execution which is pending for its satisfaction. The company ordered a CBI enquiry against the petitioners, which ultimately was dropped as there was no collusion, fraud or dishonesty on the part of the petitioners; even the supply was not found for extraneous considerations. However, the CBI advised the company to proceed departmentally. Thereafter the petitioners were served with a charge sheet under Rule 23 dated July 4, 1991, wherein the common charges of misconduct were levelled against the petitioner on the ground that the petitioners have failed to maintain absolute integrity and devotion to duty and acted in the manner unbecoming of an employee in violation of Rule 5. In charge-sheet issued against petitioner A.H. Shedge two additional charges were also levelled. As the charges were common, a common departmental enquiry was held by one Mr. K.P. Rao, Dy. CM. (IPD) who was appointed as Enquiry Officer. After appreciation of evidence adduced during the domestic enquiry, the Enquiry Officer gave a detailed report running into 45 pages wherein the Enquiry Officer recorded a finding that the two delinquents have not committed any misconduct, hence exonerated them, vide report of the enquiry, dated March 1, 1993. The Chairman and Managing Director who was delegated with the powers of the appellate

authority passed the order of punishment holding the petitioner guilty of misconduct as enumerated in Sub-rule (1) to (5), (6) and (21) of Rule 5-A of the Rules. Aggrieved of the said order of penalty the petitioner preferred appeals to the Chairman and Managing Director which after consideration were dismissed by the Board of Directors, communication of which was sent by the memorandum issued by the Executive Director (Vigilance), dated April 19, 1994. Aggrieved of the penalty and of order of rejection of appeals the petitioners have filed these petitions under Articles 226 and 227 of the Constitution of India.

Shri R.S. Jha, learned counsel for the petitioners, contended that the charge-sheet is vague; it does not specify the clauses of the misconduct committed by the petitioners. It is submitted that when the Enquiry Officer exonerated the petitioners from all the charges levelled against the petitioners the Disciplinary Authority ought to have recorded its reasons for taking a different view holding the petitioners guilty of the charges; but no such finding was recorded. With the show cause notice enquiry report was supplied to the petitioners but as the petitioners in the enquiry report were exonerated, submitted a short reply. The petitioners never knew that the Disciplinary Authority has taken a different view that from the report of the Enquiry Officer. Non-communication of the reasons for punishing the petitioners by not accepting the report of the enquiry violates not only the principles of natural justice but violates the mandatory Rule 25 which lays down that the Disciplinary Authority shall consider the charge and record reasons and pass appropriate orders. It was submitted that even prima facie the charges are not proved as all the witnesses examined by the company during the departmental enquiry, admitted that nowhere the instructions were being followed to obtain permission in writing for supply of material after obtaining insurance and bank guarantee from the dealer. The Enquiry Officer in his report critically appreciated the evidence in 45 pages and found that all the charges levelled against the petitioners are not proved. The Disciplinary Authority while disagreeing with the report of the Enquiry Officer asked for the report of the Vigilance Officer. The Vigilance Officer gave the report that during the enquiry charges Nos. 1, 2, 3 were dropped, in relation to charge No. 6 the matter was subjudice, therefore, it was advised to drop the charge. However, the Vigilance Officer summarising the charges gave a report that charge Nos. 4,5, and 6 are proved while charge No. 7 was considered as not proved. Additional charge No. 8 against Shedge was also found proved since the stock statement tallied with the same. In relation to charge No. 9 against the petitioner Shedge, the Vigilance Officer gave a report that it is part of charge No. 5. therefore, does not require any elaboration. However, the Chief Vigilance Officer after considering the vital need of supply on 30 days credit on receipt of post dated cheques without prior permission of the authority, reported that the Chairman and Managing Director may consider imposing of major penalty against the Officers. This report of the Vigilance Officer was not made the part of the order of penalty nor was supplied to the petitioners. The report was also not made a part of the return which was produced only during the course of hearing. The Disciplinary Authority acting on

cryptic report of the Vigilance Officer directed the Vigilance Officer to draft the order of penalty. From the above it is apparent that the Disciplinary Authority without application of independent mind and without recording any reasons for taking a different view than taken by the Enquiry Officer acting on the advice of the Vigilance Officer, and the draft order, passed the order of penalty holding the delinquents guilty of misconduct under Rule 5-A. By the order of punishment the petitioners have not been reduced in their substantive grade, but, by redesignation the petitioners have been reduced in their rank. Besides, the petitioners have been discriminated as no action was taken against other Officers who acted in the same manner and it is only the two Officers who have been meted out with the punishment, which is evident from report of the Enquiry Officer, that all the Officers were supplying the material on taking of post dated cheques. In any case, the petitioners were not found guilty of any fraud or dishonesty; on the other hand the petitioners by their efforts increased the sales which were highest in the State of Madhya Pradesh. In the circumstances, the order of punishment is illegal and is liable to be quashed. Counsel placed reliance on the decisions reported in *Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others*, *State Bank of India and others Vs. D.C. Aggarwal and another*, *Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another*, *New Bank of India Vs. N.P. Sehgal and Another*, *H.C. Tehren v. Union of India (1994 III LLJ 1113) (SC)*, *Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh and Others*, *Sengara Singh and Others Vs. State of Punjab and Others*, *Moolchand Agrawal v. Jiwaji University Gwalior 1993 MPLJ 744*.

Shri V.K. Tenkha and Shri S. Nagu, learned counsel for the respondents submitted that it is wrong to say that the petitioners have been awarded double punishments. If order of reduction in rank is passed from a higher rank to lower and or post, it does not merely lose place in rank or order, it also affects the pay scale. Therefore, where an order of reduction in pay scale is passed, the post of a delinquent is to be redesignated accordingly, reliance was placed on a decision of the Supreme Court in case of *State of Punjab Vs. Shri Kishan Das*. On the contention of discrimination it was submitted that M.T. Rajput was prosecuted by the C.B.I. by filing a charge sheet, therefore, he could not be dealt with departmentally while in the case of the petitioners, the C.B.I. gave a report that petitioners may be proceeded departmentally instead of prosecuting them. Besides, if others in different areas have violated the instructions, therefore, against them also, departmental action ought to have been taken, has also no relevance as except M.T.R. Rajput against whom the C.B.I. has launched the prosecution no case of "pick and choose" has been demonstrated by the petitioners. Therefore, it cannot be said that the petitioners have been made the victims of hostile discrimination. On the enquiry report and the order of punishment it was submitted that this Court would not examine the report of the enquiry or the findings and conclusion arrived at by the Disciplinary Authority as an appellate Court. The contention that the findings and conclusions recorded by

the Disciplinary Authority were not supplied to the petitioners will not amount to violation of the principles of natural justice. The Disciplinary Authority after considering the report of the enquiry and the report of the Vigilance Officer, disagreed with the findings of the Enquiry Officer, as it is always open to the Disciplinary Authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the Disciplinary Authority. It is one and the same proceeding. Even the Disciplinary Authority is empowered to hold the enquiry for itself. It is equally open to him to appoint an Enquiry Officer to conduct the enquiry and place the entire record before him with or without his findings. But, in either case, the final decision is to be taken by the Disciplinary Authority on the material adduced. Therefore, on disagreement no fresh opportunity was needed, reliance was placed on the decision of the Supreme Court in case of *State Bank of India v. S.S. Koshal* 1994 AIR SCW 2901. In the alternative it was submitted that if this Court is of the opinion that the enquiry violates the principles of natural justice, there is procedural defect in the enquiry, the Court would direct the enquiry to be started afresh from the stage it stands vitiated. Counsel cited the decision in case of *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, .

After hearing counsel and giving my due consideration to the case it is, not necessary for this Court to deal with the various contentions raised in the petition, as I am of the opinion that the order of punishment of the two petitioners is liable to be quashed only on the ground that the Disciplinary Authority while disagreeing with the findings recorded by the Enquiry Officer in the enquiry report asked for the report of the Vigilance Officer. On that the Disciplinary Authority agreed and directed the Vigilance Officer to draft out the order of punishment, which clearly shows that the Disciplinary Authority did not fairly act by applying its mind independently. Not only this, the copy of the report of the Vigilance Officer was not supplied to the petitioners. Further the order of Disciplinary Authority on the report of the Vigilance Officer and the draft prepared by the Vigilance Officer is not a speaking order and is a mechanical one. It does not contain any findings or reasons for disagreeing with the report of the Enquiry Officer except giving an observation that the Enquiry Officer made an attempt to dilute the gravity of the charges against the delinquent officers, even this order was not supplied to the petitioners of which merely a communication was made. Therefore, the petitioners could challenge the same in reply to show cause, nor could challenge the same appeal, therefore, the petitioners were denied the opportunity of being heard at the stage of show cause. See the decision of the Supreme Court in case of *Brij Nandan Kansal Vs. State of U.P. and Another*, .

Ever assuming that it was not necessary to communicate the reasons and to demonstrate that the reasons were recorded, as the record has been produced during the course of hearing and for argument's sake the principles of natural justice are not violated, in that case too the order of punishment cannot be sustained, as ruled by the Supreme Court in case of *State Bank of India v. D.C.*

Agrawal (supra) wherein the Enquiry Officer's report exonerated the delinquent, the Bank directed the Central Vigilance Commission; which disagreed with the report of the Enquiry Officer, recorded its finding of guilt and recommended the imposition of major penalty copy of which was not supplied, it was contended therein that the report was confidential, the Supreme Court held that the order of punishment passed by the Disciplinary Authority is vitiated in denying copy of the recommendation of the Central Vigilance Commission which was preferred behind the back without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied on was certainly violative of procedural safeguards and contrary to the just enquiry. The submission that the recommendations are confidential copies which could not be supplied cannot be accepted. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. Besides, in the case of the petitioners, for disagreement with the report of the enquiry and for taking a view to punish the petitioners, the report of Vigilance Officer is cryptic, without any discussion on the material adduced in the enquiry and the order of punishment drafted by the Vigilance Officer clearly demonstrates that the Disciplinary Authority as well as the Appellate Authority without applying their mind to the charges levelled and the material adduced in the enquiry acted on the report of the Vigilance Officer which was not binding. Therefore, the order of punishment of the two petitioners passed by the Disciplinary Authority cannot sustain and has to be quashed, and is hereby quashed, being arbitrary without application of mind and against the principles of natural justice. See the decision of Supreme Court in case of Nagraj Shivraj Karjagi (supra)

The submission of the learned counsel for the respondents that liberty be granted to hold an enquiry from the stated (sic. stage) it has been declared illegal. In that learned counsel for the petitioners submitted that post decision at hearing will not subserve the rules of natural justice as the Disciplinary Authority has already taken decision to punish the petitioners no fruitful purpose would be served if the respondents are granted liberty and same result would follow. If liberty is granted that would not be in compliance with the rules of natural justice or avoid the mischief or arbitrariness as contemplated by Article 14 of the Constitution. Therefore, as the order of punishment has been quashed the liberty be not granted. After hearing counsel, it is not for this Court to issue any direction, it is for the respondents to act in accordance with law.

In the result, the petitions are allowed, the order of punishments of the two petitioners are quashed, as a result of which the orders passed in appeals are also quashed. As a consequence of quashment of the orders the petitioners shall be restored to their status prior to passing of the order of punishment with consequential benefits. Respondents to pay the costs to the petitioners. Counsel's fee Rs. 500/- in each case, if pre-certified.