(2006) 02 MAD CK 0181

In the Madras High Court

Case No : Writ Petition No. 705 of 1999

T. Iyyamperumal APPELLANT

Vs

The Managing Director, T.N.C.S.C. Limited, The General Manager, (Administration) T.N.C.S.C. Limited and The Regional Manager, T.N.C.S.C. Limited RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Citation : (2006) 02 MAD CK 0181

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : C. Rajesh, for the Appellant; V. Perumal, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—The above writ petition has been filed for the issuance of writ of certiorari to call for the records of the first respondent in his order dated 09.03.1998 passed in R.C. No. G1/101778-97 and to quash the same.

2. The petitioner was working as a Godown Supervisor in the TNCSC Limited, Tuticorin, Division. It is the responsibility of the petitioner to distribute all the food commodities to various Co-operative societies, Noon meal centres and other authorised centres. Before distribution, food commodities will be properly weighed by means of "Avery Scales", inside the godown. A proper register is also maintained and every day the accurate measurements of the food commodities are entered.

3. While so, the Vigilence Cell of the Corporation inspected the Town godown, Tuticorin on 08.03.1995 and 09.03.1995, and detected certain irregularities. The pre-standardised bags of wheat and rice kept ready for issuance to the Public Distribution System were re-weighed by the Vigilence Cell in the presence of the petitioner and on such re-weighment the excesses and shortages were found.

4. For the above said shortage the petitioner herein was held responsible for his

supervisory lapses in allowing such huge shortage in standardised bags. Accordingly, disciplinary action was initiated against him under Regaulation 4 (a), Chapter V of TNCSC Employees'' Rules.

5. A charge memo was served on the petitioner and the charge memo contained the following three charges:-

Charge No. I:-

Re-weighment of pre-standardised bags of wheat and rice noticed excess and shortage of 45 bags in boiled rice super fine (G1/323/94) one bag was found with correct weight, shortages were ranging from 200 grams to 400 grams in 3 bags, 600 grams in one bag, 1 kg to 2 kg in 23 bags, 2 kgs to 3 kgs in 15 bags and 3.5 to 3.8 kgs in 2 bags. In J2/287/94 boiled rice common one bag was correct weight and one bag 100 grams shortage, one bag with 300 grams shortage, one bag with 200 grams excess and 2 bags with 300 grams excess. In GII/J1/321 wheat stock 2 bags with 100 grams excess. That he failed to supervise the pre standardised bags of rice resulting heavy shortage were noticed.

Charge No. II:-

That he has not done the supervisory work properly.

Charge No. III:-

That he had violated the corporation rules. Therefore, Thiru.T.Iyyamperumal, Superintendent Town Godown, Tuticorin is drawn to the Corporation Service Regulation 1989 Chapter V, Regulation 4(a) and he is directed to submit his written explanation to this office within 15 days from the date of receipt of this charge memo. If the explanation not received within the time stipulated, it will be construed that he has no explanation to offer and further action will be proceeded without any further notice or intimation.

6. The petitioner submitted his explanation dated 01.07.1995. In that, he stated that during the past two years he had been discharging his duties without any complaint. On 08.03.1995 the weighing machines in the godown were kept at different points and different commodities were weighed and issued. When he was signing the issue memos, the persons who were in charge of N.S.R Scale M.C.995 Type 7102 came before him and informed him that the weighing machine got struck and weighment could not be made and the petitioner has to see the weighing machines. The petitioner rushed to see the weighing scale and at that time the Vigilence Squard entered the godown and they wanted the petitioner to stop issuance of the commodities and assist them in checking the godown. He has further stated that in the bags which were weighed in the weighing scale N.S.R Scale M.C.995 Type 7102, which was under repair, there was shortage and that may not be considered as a mistake on his part. The petitioner has further stated in his explanation that the weighing machine used for weighing the wheat namely J2/287/94 B.R.C.G II J1/321 was old and when

the machine is kept on an uneven scale, there is a possibility of difference in weighments. Regarding charge No. 2 the petitioner submitted that in respect of discharge of his duties during the past two years, no mistake was pointed out. The capacity of the godown is 5000 tons and commodities are being issued to 316 noon meals centres, 76 Co-operative stores, 24 shops etc. Regarding Charge No. 3, the petitioner submitted that he has fully complied with the rules and regulations of the Corporation and prayed that his explanation may be accepted and charges may be dropped.

7. The explanation of the petitioner was not accepted and domestic enquiry was ordered and an Enquiry Officer was appointed. During the enquiry no witnesses seem to have been examined. The Enquiry Officer submitted his report simply based on the explanation of the petitioner. In respect of charge No. 1 the Enquiry Officer has stated as follows.

The petitioner had admitted the charge and he had stated that there was shortage in the bags which were weighed in M.C.995. Hence, the charge No. 1 is proved. The enquiry officer has proceeded on the basis that the delinquent employee has admitted charge No. 1. Regarding charge Nos. 2 and 3 the enquiry officer has simply stated that the charges are proved.

8. Though the petitioner submitted his explanation, the Enquiry Officer has not considered the same and he simply stated that charge No. 1 is proved hence, charge No. 2 is also proved. Regarding charge No. 3, the enquiry officer has held that since charge Nos. 1 and 2 have been proved charge No. 3 is also proved.

9. The first respondent/ the General Manager (Administration) of T.N.C.S.C. Ltd., after considering the charge memo, explanation of the delinquent employee and the report of the Enquiry Officer, has arrived at the conclusion as follows:-

"For Charge No. 1:-

The delinquent has admitted the shortages noticed at the time of reweighment made by the Vigilence Cell. So, the explanation offered by him is only an after thought. Hence, the charge is held proved.

For Charge No. 2:-

The reason for the shortages in the pre-standardised bags is only due to lack of supervision. The explanation of the delinquent is not at all acceptable. So, this charge is held proved.

For Charge No. 3:-

Though there were clear instruction that the standardised bags should have correct weighment, there were abnormal shortages at the time of inspection and this is an act of violation of Corporation Rules. Therefore, this charge is also held proved.

10. On the above said conclusions arrived at by the second respondent he

awarded the punishment of stoppage of increment for three years with cumulative effect. Aggrieved by the order passed by the second respondent the petitioner preferred an appeal to the Managing Director, T.N.C.S.C Ltd.

11. In the appeal petition the petitioner stated that on each and every day at the begining of the working hours he would check-up the day''s allotments and correlate it with the monthly indent, which were received from the T.N.C.S.C CRS indent and also from other indents. Then he has to issue the indent memo for the movement of allotted food commodities and the checking up procedures must be done with regard to the indents and the balance needs and he has to play the role of a cashier, Accountant and also to do an overall supervisory work and a lot of paper work is involved before the commodities were being moved out of the godown premises.

12. Further he has stated that in the godown the ground level is not even and the Avery Scale is located in an uneven surface and that therefore, there may be an error in weighment and the point clerk has to supervise the standardising work in the points then and there. There should not be delay in the clearance of the goods to reach the destinations of ration shops and other distribution places. There was excess in few bags and shortage in some other bags. The petitioner in his appeal petition prayed that considering the volume of work and the minor error in weighment and the fact that there is no large scale shortage, the charges may be dropped.

13. After considering the submissions contained in the appeal filed by the petitioner, and the findings of the second respondent, the first respondent has stated as follows:-

he has also admitted the shortages. As a godown incharge, the appellant has to supervise all the transactions in the godown without any deviation and to make sure that the rice bags supplied under various Government welfare schemes are with correct weight. He has failed to ensure correct weight in the standardised bags. Further, he has not taken action against the persons, who have standardised the bags. The appeal petition has no merits and hence it is rejected and orders of the General Manager (Admin.,)/Head Office, in the reference 1st read above are upheld.

14. Heard Mr.C.Rajesh, learned counsel for the petitioner as well as Mr.V.Perumal, learned counsel for the respondents 1 and 2.

15. Without considering the explanation submitted by the petitioner in its proper perspective, the respondents have proceeded with the enquiry on the assumption that the petitioner had admitted the charges. In fact the petitioner has not admitted the charges but on the other hand, has only stated the reasons for the shortages which has been wrongly taken as admission by the respondents.

16. The learned counsel for the respondents submits that the petitioner in his statement has clearly admitted the shortage and there is no error in the order

passed by the respondents 1 and 2.

17. A reading of the order makes it clear that they have taken the statement given by the petitioner as an admission on his part. Before an admission is relied upon it should have been made clearly and unequivocally without any qualifying words.

18. The first important rule, with regard to admission is, that the whole statement containing the admission must be taken together: for, though some part of it may be favourable to the party, and the object is only to ascertain what he had conceded against himself, and what may therefore, be presumed to be true, yet, unless the whole is received, the true meaning of the part which is against him, cannot be ascertained.

19. In the light of the above said principle, if the statement of the petitioner is considered it can not be said that the petitioner has made admission clearly and unequivocally without any qualifying words. The petitioner''s statement is to the effect that the shortage has been caused because the weighing machines were not in order and further the statement states that the weighing machines were being moved from point to point and the ground level is not even and hence, there is possibility for shortage in rice and wheat. This aspect has been totally overlooked by the respondents. The second respondent simply brushed aside the explanation by stating that it is an after thought. It is not stated either in the enquiry report or in the order of the respondents 1 and 2 that the weighing machine was working properly and there is no defect in it and the ground level in the godown was even and it was not uneven as claimed by the petitioner.

20. The first respondent has not at all considered the explanation of the petitioner. He simply stated that the petitioner has admitted charge No. 1 without considering the facts of the case. The first respondent has failed to see that he is dealing with the right of an employee of the Corporation and also failed to see that any finding against the employee will affect his civil rights.

21. The respondents 1 and 2 have simply held that since, charge No. 1 has been proved, charge Nos. 2 and 3 were automatically proved without any discussion. Therefore, the orders of the respondents 1 and 2 are not sustainable. Hence the order of the first respondent confirming the order of the second respondent is set aside. This writ petition is allowed. No order as to costs.