(1997) 10 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Appeal No. 1656 of 1996

V.K. Ranade APPELLANT

Vs

Food Corporation of India RESPONDENT

Date of Decision : 28-10-1997

Acts Referred:

Citation : (1998) RLR 365

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : V. Shekhar and K.A. Dewan, for the Appellant;

Judgement

Usha Mehra, J.

(1) The petitioner has challenged the order of his dismissal on following counts, namely that order of initiating disciplinary proceedings and of dismissal is bad in law because the same had not been issued by the Disciplinary Authority rather same was ordered by the Appellate Authority. The Appellate Authority assumed the power of Disciplinary Authority and passed the order thereby depriving the petitioner his right of first appeal, secondly, the diplomacy proceedings emanated from common proceedings which is against the circular issued by the respondent and finally the punishment awarded to the petitioner is disproportionate to the offence alleged.

(2) In order to appreciate the points raised let us have quick glance to the facts of the case. The petitioner joined the respondent as Assistant at Patiala. He was subsequently promoted to the post of Assistant Manager. The respondent organisation with a view to keep balance in the distribution of foodgrains across the length and breadth of the country engages transporters to transport the foodgrains from place of surplus to the place of scarcity. The transporters were engaged through the system of tenders. The respondent organisation engaged a transporter who defrauded it by pocketing 1400 Mt of superfine rice. As a result of which the respondent organisation suffered huge losses. The V.K. Ranade Vs.

Food. Corp. of India allegation of the respondent was that the petitioner, who was working as Assistant Manager at the relevant time in the district office, Patiala, had forwarded the documents showing the financial position of the said contractor to the appropriate authority. That while forwarding the same he did not exercise due care. The petitioner was to feed the information of the documents received from the contractor with the comments. The contractor turned out to be a fraud, Therefore, all those persons who were involved were charge-sheeted separately but joint enquiry was held. The enquiry officer (E.O.) exonerated some of the delinquent officer and some were found guilty. So far as the petitioner is concerned, the E.O. found that he was not very careful while forwarding the papers. He should have taken more precaution. Pursuance to the report of the E.O., the petitioner was dismissed from service. He filed revision to the Chairman, who dismissed the same without application of mind. Hence this petition.

(3) Admittedly at the relevant time, the job of the petitioner was to furnish the documents of the contractor to the Regional Officer with comments and thereafter to the Zonal officer with or without noting so that the Zonal office could take independent view as to whether to award the tender to the transporter or not. Under the procedure outlined at Serial No. 22 of the book, the Zonal Manager was to exercise his power on the advise of a committee consisting of zonal Manager and the finance head and staff officer concerned. This was to be done before awarding the contractor. The petitioner in the forwarding note mentioned that the original documents had not been produced by the contractor. That contractor''s financial status was poor. He indicated specifically that the contractor was having only Rs. 200.00 in his bank account. inspire of this intimation, the competent authority awarded the contract to that contractor. Therefore, when the petitioner was charge-sheeted alleging that his integrity and devotion were in doubt, he refuted the same by pointing out these facts.

(4) Counsel for the petitioner contended that the job of the petitioner was to verify tile status and the document''s submitted by the Contractor and then forward the same to the appropriate authority which in this case the petitioner did by specifically pointing out that documents had not been furnished by the contractor and that he had only Rs. 200.00 as his bank balance. Thereafter, there was no question of any dereliction of duty on his part. In fact it was the petitioner alone who in his noting while forwarding the papers indicated the financial status of the contractor with reference to his bank balance. He also indicated that the contractor had not submitted the original documents. Being a Verifying Officer he could not have done more. The respondents have not been able to point out what else the petitioner could have done. The observations of the Chairman Prabhat Kumar in his order dated 4th March, 1996 cannot be sustained that the petitioner merely acted as a Post Officer than as a responsible officer. When the petitioner after verification of bank record of the contractor intimated the financial status of the contractor and also that the contractor had not furnished the original documents, the respondent instead of desisting from

giving contract to such a person went ahead and awarded the contract, Therefore, it would not be appropriate to say that the petitioner merely acted as a Post Office.

(5) Turning to the legal objections raised in order to answer the same, reference can be made to the Fci (Staff) Regulations, 1971 relating to Food Corp. of India and in particular. Regulations 54,56 and 57. The Regulations 56 and 57 appear u/ s 5 which state that the Board of the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix 2) empowered in this behalf by a general or a special order of the Board may impose any of the penalties specified in Regulation 54 on any employee. Similarly, the Board or authority specified above, may institute the disciplinary proceedings against any employee of the Corporation and direct the disciplinary authority to institute disciplinary proceedings and impose penalty as set out in Regulation 54. Under the Discipline and Appeal Regulations for the post and status of the petitioner i.e. Assistant Manager the Discipline and Appeal Regulations, it was the Managing Director who issued the charge-sheet. The proceedings commenced at bids behest and after the E.O. submitted his report, it was the Managing Director who indicated that he was in total agreement with the report of the E.O. He indicated his satisfaction and informed that the charge against the petitioner stood proved, and Therefore, imposed the penalty of dismissal which the Managing Director was not competent to do. He being an Appellate Authority usurped the powers of Disciplinary Authority hence any action taken by him was bad in law, vocative of principle of natural justice and fair play. It deprived and took away the right of the petitioner of the first appeal. Thus one forum of grievance was deprived to the petitioner.

(6) Mr. K. A. Dewan on the other hand appearing for the respondent could not explain as to why the App. Authority usurped the power of the Disciplinary Authority. He in fact could not justify this act of the Managing Director. The Disciplinary Authority of the petitioner was the Zonal Manager. As per the Discipline and Appeal Regulations the Managing Director is the App. Authority. That being so the action of the Managing Director thereby depriving the petitioner his right of appeal cannot be sustained in law. It stands vitiated. In this regard reference can be had to the decision of the Supreme Court in the Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, where it has been held that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality, because when an appeal is provided to the higher authority against the order of the disciplinary authority or of a lower authority and that higher authority instead of remaining App. Authority steps into the shoes of Disciplinary Authority and imposes punishment, then the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the rule/regulations. It has further been observed that when the higher authority exercises the power of Disciplinary Authority it results in discrimination against the employee concerned. This is particularly so when the higher authority

acts as the App. Authority. Therefore, to my mind the initiation of disciplinary proceedings and passing of the impugned order of dismissal by the Managing Director i.e. the App. Authority was in violation of the rules/Regulations and thus deprived the petitioner his right of appeal. It is provided in the Regulations that against the order of Zonal Manager the App. Authority is the Managing Director. Therefore, relying on the decision of Supreme Court in the case of Surjit Ghosh (supra) it can be said that the impugned order passed by the Managing Director Sutler from irregularity which cannot be cured. The regulation which governs the service conditions of the petitioner are mandatory in nature. Hence violation of those regulations rendered the impugned order bad in law. In this backdrop, the order passed by the Managing Director i.e. the App. Authority thereby depriving the right of appeal to the petitioner cannot be sustained and liable to be set-aside.

(7) The second limb of petitioner''s argument was that common proceedings initiated by the respondents are vocative of principle of natural justice beside being against the circular No. 9 dated 13th May 1980 issued by the respondent. This circular says Initiation of common/joint and simultaneous proceedings against Fci employees involved in disciplinary cases is not permissible. This circular was issued alter discussing the problems and carefully examining various instructions issued by the Govt. of India. - - - Mahinder Pal Jain Vs. Jai Bhagwan

(8) Thus the reading of Circular No. 9 clearly indicates that common proceedings should be resorted as a last resort. However, in this case the respondent has not been able to explain why common proceedings were initiated particularly when separate charge-sheets were served and separate show cause notice were issued and separate cause of action had been alleged. In the facts of this case the common proceedings to be against the Circular of the respondent itself. The petitioner has also drawn my attention to the report of the E.O. which except making a statement against the petitioner has not been able to establish as to how the petitioner was found guilty. By indicating the financial status or the bank balance of the contractor the petitioner did not commit any crime nor mentioning by him that the contractor had not submitted the original documents the petitioner committed any offence. The reasons for holding petitioner guilty have neither been discussed nor proved before the E.O. officer. This shows non-application of mind on the part of the E.O. as well as of the Managing Director who stepped into the shoes of the Disciplinary Authority and of the Reviewing Authority i.e. the Chairman. Conducting a common enquiry but imposing different punishments is not in consonance with the circular issued by the respondent Corporation itself. Therefore, neither in law nor on facts the order of dismissal can be sustained. The same is accordingly set aside. The petitioner be reinstated back in service with continuity of service and full back wages.