V.K. Pathak. Vs. Food Corporation of India and Others

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Court : Allahabad

Decided On : Oct-05-2010

Judge : Ashok Bhushan; Virendra Singh, JJ.

Appeal No. : Civil Misc. Writ Petition No. 25844 of 2001.

Appellant : V.K. Pathak.

Respondent : Food Corporation of India and Others

Judgement :

1. Heard Sri Vikas Budhwar, learned counsel appearing for the petitioner and Sri Satya Prakash appearing for the Food Corporation of India.

2. Counter and rejoinder affidavits have been exchanged between the parties and with the consent of the parties, the writ petition is being finally disposed of.

3. By this writ petition, the petitioner has prayed for quashing the order of punishment dated 22/23rd May, 1995 passed by respondent No.2, the appellate order dated 8th December, 2010 modifying the punishment order and the order dated 26th February, 2001 rejecting the review application.

4. Brief facts necessary for deciding the writ petition are; the petitioner was appointed as Assistant Grade-III (D) on 3rd May, 1969. He was subsequently promoted as Assistant Manager (Depot). A show cause/memorandum dated 30th April, 1992 was received by the petitioner which was replied. The respondents initiated departmental inquiry and charge-sheet dated 5th April, 1994 was issued under Regulation 58 of the Food Corporation of India (Staff) Regulations, 1971 (hereinafter referred to as the Regulation 1971). The Inquiry Officer was appointed to conduct the inquiry. The petitioner submitted his reply denying the charges. The Inquiry Officer after conducting the inquiry submitted the inquiry report dated 22nd February, 1995. The Inquiry Officer opined that none of the charges have been found proved against the petitioner. The disciplinary authority forwarded the copy of the inquiry report to the petitioner asking that if he wishes to make a representation, he may do so within fifteen days. The said letter was issued on 11th March, 1995. The petitioner after receiving the said letter, submitted his representation praying for exoneration relying on the inquiry report. It was stated by the petitioner that Inquiry Officer has discussed the entire evidence on record produced by the learned presenting officer and found the charges not to be proved. The disciplinary authority passed punishment order dated 22/23rd May, 1995 reducing the petitioner in rank from A.M.(D) to AG-I (D) with future ban on promotion. The petitioner filed an appeal against the said order which appeal was decided on 8th December, 1998 modifying the punishment to some extent. The petitioner filed a review application which was rejected.

5. Sri Vikas Budhwar, learned counsel for the petitioner, challenging the orders passed in disciplinary proceedings, has submitted that when the Inquiry Officer exonerated the petitioner from all the charges, the disciplinary authority could not have, without communicating his reasons for disagreeing with the findings,

awarded punishment. He submits that the petitioner at no point of time was given an opportunity by the disciplinary authority to submit his explanation with regard to the reasons of disagreement of the disciplinary authority. Learned counsel for the petitioner further submits that under Regulation 59 of the Regulation 1971 in the event the disciplinary authority disagrees with the finding of the Inquiry Officer, it will be incumbent on him to put the delinquent to notice informing him reasons for disagreement so that the delinquent may be given an opportunity to have his say. He submits that since in the present case no such opportunity was given, the punishment order is liable to be set-aside on this ground alone. In support of his submission, Sri Budhwar has placed reliance on judgments of the Apex Court in the cases of Yoginath D. Bagde vs. State of Maharashtra and another, reported in (1999)7 S.C.C. 739, Punjab National Bank and others vs. Kunj Behari Misra, reported in (1998)7 S.C.C. 84 and State Bank of India and others vs. Arvind K. Shukla, reported in 2001(89) FLR 849.

6. Sri Satya Prakash appearing for the Food Corporation of India, refuting the submission of learned counsel for the petitioner, has contended that even though no notice was given by the disciplinary authority to the petitioner before awarding punishment but the said issue was considered by the appellate authority and the appellate authority has suitably modified the punishment, hence the petitioner's grievance can be said to have been fully satisfied. He submits that only requirement under Regulation 59 is recording of reason by the disciplinary authority which having been recorded, the order is not vitiated. Sri Satya Prakash has placed reliance on the judgment of the Apex Court in the cases of State of Madras vs. A.R. Srinivasan, reported in A.I.R. 1966 S.C. 1827 and in the case of State of Rajasthan vs. M.C. Saxena, reported in A.I.R. 1998 S.C. 1150.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. Copy of the inquiry report has been filed along with Annexure-6 to the writ petition. The inquiry report concludes in following words, "The article of charges does not stand proved against the Charged Officer". After receiving the inquiry report dated 22nd February, 1995 a memo was given to the petitioner on 11th March, 1995. The memo, which was given to the petitioner, was to the following effect:-

> **"Memorandum**
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> **A memorandum number VIG/4(82)/NZ/92/UP dated 5-4-94 under section, 58 of FCI (Staff) Regulations, 1971 was issued to him by the Disciplinary Authority and Shri Chandan Gopal, IAS (Retired) was appointed as Inquiry Officer to enquire into the various articles of charges framed against him, who submitted inquiry report.**
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> **The report of the Inquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If Shri V.K. Pathak, AM(D) wishes to make any representation or submission, he may do so in writing to the Disciplinary Authority within fifteen (15) days on receipt of this letter."**

9. The petitioner after receipt of the memo, submitted his representation dated 15th April, 1994 praying that he be exonerated from the charges. The disciplinary authority passed order dated 22/23rd May, 1995 awarding punishment. The disciplinary authority in the punishment order has observed that the Inquiry Officer has not discussed the main allegations, i.e. the cash memos accompanying the medical claims were of either non-existing medical stores or the shops which were not dealing with retail sale of medicines.

10. The submission, which has been pressed, is that disciplinary authority could not have passed order of punishment without giving any opportunity to the petitioner to explain in the event the disciplinary authority was disagreeing with the findings of the Inquiry Officer.

11. Regulation 59 of the Regulation 1971 deals with action on the inquiry report. Regulation 59 is quoted below:-

> **"59. Action on the inquiry report:**

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 58 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such dis-agreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clause (i) to (iv) of Regulation 54 should be imposed on the employee, it shall, notwithstanding anything contained in Regulation 58, make an order imposing such penalty.

"(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clause (v) to (ix) of Regulation 54 should be imposed on the Corporation employee, it shall make an order imposing such penalty and it shall not be necessary to give the Corporation employee any opportunity of making representation on the penalty proposed to be imposed.

"(5) The disciplinary proceedings shall come to an end immediately on the death of the charged employee. No disciplinary proceeding under the FCI (Staff) Regulations can, therefore, be continued after the death of the concerned charged employee."

12. Regulation 59 sub clause (2) provides that disciplinary authority shall, if it disagrees with the findings of the inquiring authority on the article of charges, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. The issue, which has been raised, is that in the event the disciplinary authority intends to proceed under Regulation 59(2) of the Regulation 1971 disagreeing with the findings of the Inquiry Officer whether opportunity is to be given to the delinquent or not. The judgment of the Apex Court in Yoginath D. Bagde's case (supra), relied by the counsel for the petitioner, is a complete answer to the aforesaid issue. Paragraph 28 of the said judgment is quoted below:-

"28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of

hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be `not guilty' by the Inquiring Authority, is found `guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."

13. The Apex Court in the aforesaid judgment has categorically laid down that when the rules are in this regard silent "opportunity of hearing" have to be read into the rule and it is incumbent upon the disciplinary authority to give opportunity if it intents to disagree with the findings of the Inquiry Officer. The judgment in the case of Punjab National Bank and others vs. Kunj Behari Misra (supra) also lays down that principles of natural justice has to be read in Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal)Regulations, 1977, which regulations were pari materia to the Regulations 1971. Following was laid down by the Apex Court in paragraphs 18 and 19 of the said judgment:-

"18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer"

14. The judgment in State Bank of India's case (supra) also lays down the same proposition following three Judges Bench judgment in the case of Punjab National Bank and others vs. Kunj Behari Misra (supra).

15. In view of the proposition as laid down in the aforesaid cases, it is clear that the disciplinary authority was required to give opportunity to the delinquent when he intended to disagree with the finding so as to give opportunity to the delinquent to have his say to dispel the doubts entertained by the disciplinary authority, if any. The memo, which was issued to the petitioner on 11th March, 1995 after receipt of the enquiry report, has been extracted above which indicates that the petitioner was not given any opportunity by the disciplinary authority since it was not even disclosed that disciplinary authority is disagreeing with the inquiry

report and thus the petitioner was taken with surprise when the punishment order was passed by the disciplinary authority overruling the findings of the Inquiry Officer. The present is a case in which principles of natural justice has been violated since the disciplinary authority overruled the findings of the Inquiry Officer without giving any opportunity to the petitioner.

16. Learned counsel for the respondents has placed reliance on the judgment in State of Madras vs. A.R. Srinivasan case (supra). In the aforesaid case the Apex Court has laid down that the State Government when does not accept the finding of the Tribunal, which may be in favour of delinquent, it should record reasons as to why it defers from the conclusion of the Tribunal. The issue which has been raised in the present case was not under consideration in the aforesaid case. The said judgment is an authority for the proposition that reason should be recorded while disagreeing with the finding but where after receipt of the inquiry report exonerating the delinquent from the charges the disciplinary authority intended to disagree with the enquiry report, it was necessary for the disciplinary authority to inform the delinquent that it intended to disagree with the report of the Inquiry Officer was not gone into. The said judgment does not help the respondents in the present case.

18. Another judgment relied by the learned counsel for the respondents is in the case of State of Rajasthan vs. M.C. Saxena (supra). The said judgment was a two Judge judgment and in view of the three Judge judgment in Punjab National Bank and others vs. Kunj Behari Misra (supra), we are of the view that we feel ourselves bound by the subsequent three Judge judgment in Punjab National Bank and others vs. Kunj Behari Misra (supra).

19. The submission of Sri Satya Prakash that appellate authority has modified the punishment which has substantially met the grievance of the petitioner cannot be accepted. The appellate authority has modified the punishment after considering the merits of the case and not after consideration of the aforesaid grievance of the petitioner.

20. The question may arise as to whether non information to the petitioner that disciplinary authority intended to disagree with the findings of the Inquiry Officer shall cause serious prejudice. We have no doubt that in a case where the Inquiry Officer completely exonerates an employee, non information shall cause serious prejudice and thus non giving of opportunity has seriously prejudiced the petitioner and the order of punishment and subsequent orders of the appellate authority and reviewing authority cannot be sustained.

21. In view of foregoing discussions, we set-aside the order of punishment dated 22/23rd May, 1995, order of the appellate authority dated 8th December, 1998 and the order of the reviewing authority dated 26th February, 2001. We have been informed that petitioner has already attained the age of superannuation. The petitioner having already attained the age of superannuation, he shall be entitled for consequential benefits.

22. The writ petition is allowed.