

NAHAR SINGH

v.

FOOD CORPORATION OF INDIA & ORS.

(Review Petition (C) No. 285 of 2007

IN

Civil Appeal No. 2273 of 2008)

MARCH 31, 2008

(S.B. SINHA AND MARKANDEY KATJU, JJ.)

Service Law:

Disciplinary proceedings – Misconduct – Penalty of compulsory retirement – Delinquent being an Assistant Grades Clerk in a wheat godown of FCI – Shortage of stock detected – HELD: Report of Inquiry Officer that delinquent was responsible for shortage, cannot be said to be perverse or unreasonable – All the authorities having affirmed the finding, High Court rightly refused to interfere with the same – No case made out to take a different view – Constitution of India, 1950 – Articles 136 and 226.

The appellant was an Assistant Grades Clerk in one of the godowns of the respondent-Food Corporation of India. On a checking of the said godown, *inter alia*, 295 bags of wheat were found short. Disciplinary proceedings were initiated, besides the In-charge of the godown, against the appellant and two others. The inquiry officer found the appellant guilty of the charges. The disciplinary authority imposed upon him the penalty of compulsory retirement. The departmental appeal, the review application and the writ petition of the appellant having been dismissed, he filed an appeal by special leave, which was dismissed for non-prosecution. However, the review petition filed by the appellant was entertained and the appeal was heard on merits.

It was contended for the appellant that in the

A departmental proceedings only the In-charge of the godown was found responsible for the shortage; and the appellant was proceeded against only on surmises and conjectures and, therefore, the order passed by the disciplinary authority without application of mind was liable to be set aside.

Dismissing the appeal, the Court

HELD: It is not correct to say that the appellant had nothing to do with the shortages of wheat. It was concluded by the inquiry officer that the appellant was also responsible for shortages of 295 bags of wheat. His conduct during the raid, as also the manner in which the shortages had occurred, clearly go to show that without his active support, the In-charge alone could not have caused the said misconduct. The report of the enquiry officer cannot be said to be perverse or unreasonable. Furthermore, the order of the disciplinary authority has been affirmed by the appellate authority. A review petition filed by the appellant has also been dismissed by the appropriate authority. The High Court also has rightly refused to interfere in the matter. Keeping in view the materials on record, no case has been made out to differ with the said findings. [para 13-15] [732-G-H; 733-A-C]

CIVIL APPELLATE JURISDICTION : Review Petition No. 285 of 2007

IN

Civil Appeal No. 2273 of 2008.

P.N. Mishra, S.P. Sharma for the Appellant.

Ajit Pudussery for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Order dated 12.2.2007 is recalled.

2. Leave granted.

3. Appellant was an Assistant Grade-III (AG-III) in one of the Food Storage Depots of Food Corporation of India. 295 bags of wheat and 195 bags BTB Class gunny bags were found missing when special physical verification was conducted by the physical verification squad during the period 7.1.1980 and 22.1.1980. A B

4. One Bhoop Singh was the unit in-charge of the godown. Appellant, Rattan Singh and one Kunwar Singh were working thereat as the Assistant Grades Clerk. Shortages in the said depots were suspected. The godowns were sealed. Physical verifications were made by Physical Verification Squad (PVS). C Stock checking exercises were carried out in the said godown during the period 7.1.1980 to 22.1.1980. 295 bags of wheat and 195 bags of gunnies in Unit No.1 of which Bhoop Singh was the in-charge, were found short. D

The contents of the vigilance report were verified by one Shri Panchhi. Apart from Bhoop Singh, Nahar Singh and Kunwar Singh were posted there. Shortages and excesses were found in 12 stacks of wheat. The total shortages were found to be 295 bags of wheat and the excess amounted to 11 bags only. Whereas shortages were found on the top layers of the stacks which were not visible from the ground, except Stack No.4/16 and 1/11, which were from partly used stacks. E

5. Disciplinary proceedings were initiated against the aforementioned Bhoop Singh and others. F

The imputation of charges drawn against the appellant were on the basis of the report of the said inspection carried out by the vigilance department as also the one submitted by Shri I.d. Nautial, Assistant Manager (Vigilance) containing compilation of the statements made by the entire staff of the Food Storage Depot, Sahibabad. Appellant was found guilty of the charges on the basis of the report of the enquiry officer which was submitted before the disciplinary authority. The disciplinary authority, by an order dated 18.4.1986 imposed the penalty of compulsory retirement from services of the Corporation. A H

A departmental appeal preferred thereagainst was dismissed by the Appellate Authority in September 1986. A review application filed thereagainst was also dismissed on 22.11.1987.

6. Appellant thereafter filed a writ petition before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which by reason of the impugned judgment dated 17.5.2005 has been dismissed.

7. Mr. Mishra, learned senior counsel appearing on behalf of the appellant, would contend that from a perusal of the enquiry report, it would be evident that the appellant had been held responsible for the shortages only on the ground that he had not informed thereabout to the appropriate authority and in that view of the matter the impugned judgment is wholly unsustainable. The learned counsel would urge that all the officers concerned have found only Bhoop Singh responsible for the shortages and the appellant had been proceeded against in only on surmises and conjunctures. It was urged that the disciplinary authority had passed the impugned order without any application of mind and, thus, the same is liable to be set aside.

8. We may notice that the special leave petition filed by Bhoop Singh has been dismissed summarily by an order dated 12.2.2007.

9. The SLP preferred by the appellant was also listed on the same day but as nobody had appeared, the said special SLP was dismissed for default. Appellant filed an application for review alleging that he, as also his lawyer, was misled in view of the fact that the matter was shown to be listed on 19.2.2007 as per COURTNIC enquiry. We had called for a report from the Registry of the Supreme Court and it appears that the contention of the appellant was not correct. It furthermore appears that the parties had been given notice with regard to the date of listing of the matter.

10. We have, however, entertained the review application and heard the appellant on merits.

11. It may be true that Bhoop Singh was in-charge of the godown but the manner in which the shortages have occurred categorically goes to show that it could not have been possible without the active support and/or connivance of the appelland and other staff. Whereas in the report of Shri I.D. Nautial, full responsibility for shortage of 195 gunnies was placed on Bhoop Singh, as regards shortages of 295 bags of wheat, it was stated :

"Keeping in view the general observation and various statements, the involvement of Unit In charge, AM (Depot) besides some Unit No.1 Staff and watchman may not be ruled out."

12. Before the enquiry officer, the report of Shri Panchhi was proved. He was examined as a witness on behalf of the department.

In his report, inter alia, it was held by the enquiry officer :

(C) Shri Nahar Singh is also one of the officials who did not want the P.V. to be done by 'breaking of stacks' and had objected to it. This is the statement of Shri H.S. Panchhi during cross examination by Shri Suraj Bhan, AM(D) and Shri Bhoop Singh Unit In-charge.

(D) The way shortage have been noticed ruled out theft because shortages/excess were detected by the P.V. team in 12 different stacks in 4 different Chambers (and top layers were so rearranged that on periphery no shortages were visible until some one went to the top of the stack). The thieves would not operate in such a way nor it is possible for Unit In-charge alone to create shortgages in 12 different stacks in 4 different chambers all alone without the knowledge and active involvement of his unit staff.

(E) The Joint representation by the Unit In-charge and his staff including the C.O. that keys of the godown was kept in the table drawers of the AM(D) is another

A proof of their connivance. This plea is not convincing
and has been apparently made to absolve
themselves from the status of custodian and the
responsibility for the shortages in stacks. The joint
representation dated 22.1.1980 is one of the
Annexure of Exb.P-3 and P.W. has been cross
examined in the last para of the proceedings at page
4. The reasons why the 'key-theory' does not hold
ground are as under :

(1) to (3)

C (4) Also, it is interesting that such a letter should have
been drafted on 22.1.1980, that is, the day when the
PV was concluded. This statement by Shri Bhoop
Singh, AG-I (D) is nothing but an after thought in
connivance with his staff to involve Shri Suraj Bhan,
AM(D). To my mind after Shri Bhoop Singh and
company had come to realize that being the
custodian as well as operating staff they will be held
responsible for such huge losses to the Corporation,
they thought that the responsibility may be shifted on
AM (D) if they could jointly allege that all keys of
FSD, Sahibabad used to be kept in the custody of
the AM(D). But as already stated above, they have
failed to influence Shri Panchhi because Shri Panchhi
has not only denied receipt of this photocopy letter
dated 22.1.1980 but he has categorically stated that
"the keys of the godowns are kept in the custody of
godown In-charge himself."

13. It was concluded that the appellant was also responsible
for shortages of 295 bags of wheat. It is, therefore, not correct
to contend that the appellant had nothing to do with the shortages
of wheat. His conduct during the raid, as also the manner in
which the shortages have occurred, clearly go to show that
without his active support, Bhoop singh alone could not have
caused the said misconduct.

H

14. We, therefore, are of the opinion that the report of the enquiry officer cannot be said to be perverse or unreasonable. Furthermore, the order of the disciplinary authority has been affirmed by the appellate authority. A review petition filed by the appellant has also been dismissed by the appropriate authority.. The High Court also, by reason of the impugned judgment, has also rightly refused to interfere in the matter.

15. We, keeping in view the materials placed before us, are of the opinion that no cause has been made out to differ with the said findings.

16. The appeal, therefore, is dismissed but with no order as to costs.

R.P.

Appeal dismissed.