R.N.R.

Before K. Kannan, J.

M.S. SAPRA,—Petitioner

versus

THE MANAGING DIRECTOR, FOOD CORPORATION OF INDIA, NEW DELHI AND OTHERS,—*Respondents*

CWP NO. 10966 of 1989 &
CWP NO. 11623 of 1989

27th April, 2011

Constitution of India, 1950—Art. 226—Charges of misappropriation of 200 bags of paddy against an officer—Dismissal from service—Another official found guilty of not properly verifying stock wise and shed wise entries resulting loss of FCI—Disciplinary authority inflicting punishments—Challenge thereto—No evidence to support ultimate finding that there had been a loss of 200 bags of paddy—Report of Enquiry Officer cannot be sustained by mere fact of a discrepancy in entry between two registers—No actual verification done—Findings of fact—Whether High Court has jurisdiction to interfere with in its writ jurisdiction—Held, yes—Where punishment order based on no evidence and passed on violation of natural justice, petition allowed, punishment of removal from

service quashed—Punishment awarded to other official ordered to be re-examined by disciplinary authority in context of finding that there had been no loss and lapse on his part was only of not properly verifying discrepancy in entries between two registers.

Held, that the non-furnishing of copy of the Enquiry Officer's report had surely prejudiced Mr. Behal in his inability to point out as to how the finding had been completely vitiated by the lack of evidence appropriate to an adjudication whether there had been a misappropriation or a fraudulent removal of Mr. Behal to 200 bags of paddy. Evidence without reference to the fact that the Enquiry Officer's report had not been given, I have already pointed out that the report of the Enquiry Officer cannot be sustained by the mere fact of a discrepancy in entry between two registers. The discrepancy was required to be corroborated by actual verification which was not done in this case.

(Paras 12 & 13)

Further held, that the finding entered by the disciplinary authority and the appellate authority that the charges had been established against Mr. Behal was clearly wrong. The punishment of removal from service is liable to be interfered with. The impugned orders are quashed and the petitioner in CWP No. 11623 of 1989 is entitled to be reinstated with continuity of service. He would also be entitled to 50% of back wages and not the full wages, having regard to the fact that he had not worked for the whole period.

(Para 14)

Further held, that the punishment of Mr. Sapra would be required to be re-examined in the context of a finding that there had been no loss but a punishment corresponding to the lapse on his part was only that of not properly verifying the discrepancy in entries between the stock wise and shed wise registers. The impugned order issuing the punishment is set aside and remitted to the disciplinary authority for re-examination on the issue of punishment only in the context of finding rendered above.

(Para 15)

Vivek Sharma, Advocate for the petitioner in CWP No. 10966 of 1989.

G.S. Bawa, Advocate, for the petitioner in CWP No. 11623 of 1989

B.S. Wasu, Advocate, for the respondents.

K. KANNAN, J.

(1) Both the cases are inter-related arising out of a same transaction. The writ petitioners had been named as having been guilty of serious misconduct resulting in the loss of 200 bags of food grains from the Food Corporation of India. The petitioner in CWP No. 10966 of 1989 was an Assistant Grade-I in depot of the Food Corporation of India at the relevant time and the petitioner in CWP No. 11623 was a subordinate under him. In a surprise inspection carried out by Shri S.S. Grewal, Assistant Manager (Vigilance), it was alleged that 200 bags of paddy PR106 variety were found missing and articles of charges had been levelled against both the petitioners.

(2) In the charges issued to Mr. M.S. Sapra, the petitioner in CWP No. 10966 of 1989, the principal allegations were that (i) he had misappropriated 200 bags of paddy, (ii) he had not verified the entries made on 24th January, 1984 in the stock wise and shed wise registers, and (iii) he had deliberately showed himself as absent on that day by making corrections in the official records. The charges against Shri A.K. Behal, who is the petitioner in CWP No. 11623 of 1989, were substantially the same in relation to the loss of grains and it was stated that (i) he had misappropriated 200 bags of paddy and (ii) he had not produced inward and outward gate passes at ARDC Kilaraipur but remained absent on duty from 16th April, 1986.

(3) A domestic enquiry was constituted and on the basis of the report which was, however, not communicated to the petitioners, the disciplinary authority passed orders of removal from service and other punishments. There had been an appeal and review against these decisions and on a direction from this Court through a writ petition filed by Mr. M.S. Sapra, the authority was directed to dispose of review application filed by Mr. Sapra. On a review so undertaken by the competent authority from the original order of removal from service, the findings had been modified

exonerating him from the charges of misappropriation and for alleged alteration of official records and found him guilty only for one charge namely that he had not verified the stock wise and shed wise entries that had resulted in the loss to the Food Corporation of India. In so far as the case relating to Mr. Behal was concerned, the charges as found already as proved continued and while Mr. Behal was dismissed from service, Mr. Sapra had been served with three types of punishments : (i) reversion from the post of AG-I(D) to AG-II(D) in the minimum of times scales of 380-640, and (ii) forfeiture of seniority and fixation of the same in the lowest position in the seniority list of AG-II(D). Even apart from the above two punishments, he had also been inflicted with the treatment that from the date of dismissal till the date when he rejoined the duty, it be considered as non duty period. The findings entered by the disciplinary authority and the appellate authority are challenged in both the writ petitioners.

(4) The focal area of concern in whether the management had proved that there had been a loss of 200 bags of paddy as charges against both the employees. If the contention of the petitioners were to be accepted that there had been no theft at all or at any rate the said fact had not been established, then it will have immediately a bearing on the through the gate. In either way, the proof of actual loss would have been possible either by physical verification or by examination of person, who had seen that 800 bags of paddy had passed through the gate. Strangely, in this case, both these aspects had not been established at all. The Enquiry Officer did no more than a finding of discrepancy between the shed wise register and the gate passes to come to the conclusion that there had been a loss of 200 bags.

(5) The learned counsel for the employee pointed out that one Mr. A.S. Dhillon, who was working at FSD, Kilaraipur, had been examined by the management to say that he was present in the depot on 25th January, 1984 and that he had seen the gate passes P12 and P16. Significantly, the person, who wrote the gate passes themselves had not been examined but even his evidence was merely to the following effect :—

> *".....I do not know how much time is consumed in the process of preparation of 200 bags. It is not possible to prepare extra bags by collecting the grains for 200 bags. No AG-I or AG-II in the godown can make up 200 bags. The watchman standing at the gate cannot count the loaded truck."*

His evidence was, therefore, not sufficient to find that 800 bags of paddy had been transported out of the depot. One P.S. Bali, A.M.(D), FSD, Kilaraipur, who was said to have seen the registers had given the following statement :—

> *".....On scrutiny of the break up of paddy issued from FSD and hired godown Kilaraipur, it was observed that in stock wise, shedwise register of FSD 600 bags paddy PR 106 have been issued to party whereas as per gate pas and outward register a totallying 800 bags paddy PR 106 have been issued accordingly. I sent a report dated 14th August, 1984 to the D.M.F.C.I. Ludhiana. I confirm the entry in gatepasses and outward register to be correct. On 24th January, 1984 I was on tour at FSD Gill Road Lushiana being incharge of FSD Gill Road. No short/excess have been pointed out by the P.V. Squad till date in respect of paddy stored in FSD Kilaraipur."*

His evidence cannot be relied for any more than the actual discrepancy found in the two registers. Whether there existed a deficiency of 200 bags of paddy at FSD cannot be seen through this record. Mr. Grewal had also given evidence and he had stated as follows :—

> *".....On scrutiny of the record I noticed that 600 bags of paddy were issued to the party whereas as per gate pass outward register its number was 800. There was overall difference of 200 bags issued from the FSD with that of gate passes and outward register. The entries in the gate passes and gate outward register. The entries in the gate passes and gate outward register differ with the entries of stockwise register. I did not check up empty bags physically but I checked the account thereof. I do not know whether paddy was issued on DFSC pattern on FCI pattern."*

He has also spoken about only the fact that there existed discrepancies in the registers, but he had not himself physically verified whether there had been a loss of 200 bags of paddy or not.

(6) It was on the basis of the above extracted evidence and that the Enquiry Officer found the charge of the actual loss of 200 bags of paddy as having been established to find Mr. Behal as guilty and to justify the disciplinary action to dismiss him from service. It was again this evidence that was found sufficient to hold that Mr. Sapra had failed to properly maintained registers and that he was guilty of dereliction of duty.

(7) The extent of judicial review of decisions in departmental proceedings are reasonably well known. A Court does not sit as a Court of appeal and it has to only ensure that the procedure as established by law has been duly followed and the decision follows an obvious inference of the evidence adduced before the fact finding authority. It may not at all times be the sufficiency of evidence that will be called in question but the ultimate decision will be considered in the light of whether there existed any evidence at all to support the findings. Keeping the above well laid out precepts in background. I find that in this case there is absolutely no evidence at all to support the ultimate finding that there had been a loss of 200 bags of paddy. If the whole case was to be decided only on what was contained in the registers without any cross verification of what was contained in the registers by physical appraisals of the stocks, then the charge ought to have been different that the entries were not properly made in the respective registers. If the charge, however, is that there arose a loss of 200 bags of paddy by one or the other officer being guilty of fraudulent removal for personal aggrandizement, then there ought to be proof that what was reflected in the registers was verified and found to be wrong. If 200 bags of paddy had gone missing and any officer was found to be responsible, such a finding cannot be rendered without actually making a physical verification for 200 bags of paddy were missing or by examining the person at the gate, who had issued the pass that he had verified that 800 bags of paddy had been transported through 5 vehicles that went past the gate. In this case, at the pre-enquiry stage, a statement was said to have been recorded from the watchman Harbans Lal that 800 bags were discharged through 5 trucks but he was not himself examined and the statement itself was taken as affording proof that 800 bags had gone from the gate. This assumes significance because Mr. A.S. Dhillon admitted in the cross-examination before the Enquiry Officer that a watchman standing on the gate cannot count the loaded truck and, therefore, it was required to be explained how the watchman had given the statement.

(8) If there had been no evidence at all with reference to the loss of 200 bags either through the actual physical verification or through the evidence of the witnesses, the findings that came to be passed that Mr. Behal was responsible was not justified. It was sought to be buttressed by the fact that he was questioned whether he had anything to say and Mr. Behal is reported to have had that he had issued 5 gate passes containing 160 bags each and the watchman's entry was only on the basis of such passes. He had also explained that after the issue of the gate passes, the party had requested to issue bags from the same godown from where some other bags had been issued and so as per the request, he had issued 600 bags from the godown which was under his charge and 200 bags from the other godown. This was a manner of explanation as to how all the 800 bags of paddy did not go from the godown under his supervision. The Enquiry Officer also held that since Shri S.S. Grewal and Mr. A.S. Dhillon had both stated that they had found a discrepancy in the entries between the two registers, the burden of proof was on the two charged officers to say that they had not been responsible for the loss of the stock. This observation also is a wrong statement of law for the burden of proof never shifts. If the officer was explaining that 600 bags of paddy alone had been seen from the godown under his control and another 200 bags of paddy had gone from yet another godown, it was absolutely essential to find whether such a statement was correct or not and that 800 bags of paddy had not left from the godown under the control of Mr. Behal and Mr. Sapra.

(9) On a point of law, the contention on behalf of the petitioners was that they had not been given the copy of the Enquiry Officer's report and, therefore, the ultimate order finding them guilty was vitiated. It must be noticed that in the case of Mr. Sapra after a direction from this Court for examination of his case for review, the disciplinary authority dealt with the case on the basis of objection given by the charged officer to the Enquiry Officer's report. Consequently, at the relevant time before a decision was taken by the disciplinary authority, the charged officer had the benefit of meeting the findings of the Enquiry Officer and, therefore, he could not have been prejudiced in any way. As regards the charges against Mr. Behal, the Enquiry Officer had given a report on 16th July, 1987 and the order of the disciplinary authority was passed on 13/27th August, 1987. The disciplinary authority proceeded to dismiss him from service by the impugned order and it was only after pronouncement of this order at the time of preferring the appeal, Mr. Behal had obtained a copy of the Enquiry Officer's report to assail the finding. The

disciplinary authority had definitely denied to Mr. Behal a sufficient opportunity to point out as to how the Enquiry Officer's report was faulted. As far as Mr. Behal was concerned, he was clearly prejudiced by not being supplied the copy of the Enquiry Officer's report.

(10) The fact of non-supply of the Enquiry Officer's report and the issue whether such a lapse would constitute a violation of natural justice was dealt with by the Hon'ble Supreme Court in a Constitution Bench in **Managing Director, ECIL, Hyderabad** *versus* **B. Karunakar (1).** The decision was in the context of the 42nd Amendment of the Constitution that allowed to the government servant a right to receive the report of the Enquiry Officer and represent against the findings recorded. The Constitution Bench was examining the right to be served with report at the second stage of the disciplinary enquiry when a government servant shall serve with a notice to show cause against a proposed penalty. While holding that a delinquent was entitled to a copy of the report, even when the statutory rules did not permit, the Court explained that the law laid down in **Union of India** *versus* **Mohd. Ramzan Khan (2)** must be understood in such a way of whether it was specifically provided under rules or not, a copy of the report must always be furnished even if he does not ask for it. The Hon'ble Supreme Court, however, laid down one more qualification for this principle to apply viz. of a person who complained of violation of natural justice for non-furnishing of report must prove prejudice and the issue of whether a prejudice has been caused or not has to be examined in the facts and circumstances of each case. The Hon'ble Supreme Court held that the question as to whether the employee was entitled to back wages and other benefits from the date of dismissal to the date of reinstatement should invariably be left to be decided by the authority according to law. In this case, the non-furnishing of copy of the Enquiry Officer's report had surely prejudiced Mr. Behal in his inability to point out as to how the finding had been completely vitiated by the lack of evidence appropriate to an adjudication whether there had been a misappropriation or a fraudulent removal of Mr. Behal to 200 bags of paddy. I am not examining certain other decisions which had been cited by the learned counsel to show as to how the non-furnishing of the Enquiry Officer's report would amount to violation of natural justice.

(1) AIR 1993 (5) S.C. 533
(2) 1991 (1) S.L.R. 159 (S.C.)

(11) Even without reference to the fact that the Enquiry Officer's report had not been given, I have already pointed out that the report of the Enquiry Officer cannot be sustained by the mere fact of a discrepancy in entry between two registers. The discrepancy was required to be corroborated by actual verification which was not done in this case. The learned counsel for the petitioners referred to the decision in **Natinder Mohan Arya** *versus* **United India Insurance Company Limited and others (3)** that held that even in domestic enquiry suspicion or presumption cannot take the place of proof and this Court is entitled to interfere with the findings of fact of any Tribunal or authority in certain circumstances. Detailing the circumstances in para 26, the Hon'ble Supreme Court has held :—

"In our opinion the learned single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the follow :

(1) the Enquiry Officer is not permitted to collect any materia from outside sources during the conduct of the enquiry. [See **State of Assam and another versus Mahandra Kumar Das and others (1970) 1 SCC 709 : AIR 1970 SC 1255.**

(2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice (See **Khem Chand versus Union of India and others AIR 1958 SC 300** and **State of Uttar Pradesh versus Om Parkash Gupta (1969) 3 SCC 775.**

(3) Exercise of discretionary power involve two elements : (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See **K.L. Tripathi versus State Bank of India and others : (1984) 1 SCC 43 : AIR 1984 SC 273.**

(3) AIR 2006 S.C. 1748 (1)

(4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis . [See **Sawai Singh versus State of Rajasthan AIR 1986 SC 995.**

(5) The Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal, [See **Director (Inspection and Quality Control) Export Inspect Council of India and others versus Kalyan Kumar Mitra and others 1987 (2) CLJ 3441.**

(6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See ***Central Bank of India Limited versus Prakash Chand Jain AIR 1969 SC 983, Kuldeep Singh versus Commissioner of Police and others (1999) 2 SCC 10.***

A Division Bench of the Court has also held in **P.R.T.C.** *versus* **Dhani Ram (4)** that a punishment order based on no evidence and passed on violation of principles of natural jusitce is liable to be interfered with by the High Court in its writ jurisdiction. This principle finds affirmation by a decision of the Hon'ble Supreme Court in **Yoginath D. Bagde** *versus* **State of Maharashtra (5)** that held in paragraph 51 as follows :

> *".....The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter..... It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions*

(4) 2001 (1) P.L.R. 585
(5) 1999 (7) S.C.C. 739

reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

(12) In the above circumstances, I have no doubt in my mind that the finding entered by the disciplinary authority and the appellate authority that the charges had been established against Mr. Behal was clearly wrong. The punishment of removal from service is liable to be interfered with. The impugned orders are quashed and the petitioner in CWP No. 11623 of 1989 is entitled to be reinstated with continuity of service. He would also be entitled to 50% of back wages and not the full wages, having regard to the fact that he had not worked for the whole period. If he has already reached the age of superannuation, he shall be entitled to 50% back wages, as well as the terminal benefits and they shall be calculated and the amount released to him within 12 weeks from the date of the order.

(13) As regards the findings recorded against Mr. Sapra, it was held that he was guilty only to the charge laid in article 2, namely, that he had not verified the entries on 24th January, 1984 in stock wise and shed wise registers. There had been a discrepancy in registers, but this finding will have to be re-examined in the context of a changed decision that has come through in this writ petition that there was no proof that there was loss of 200 bags of paddy. However, he could not have been visited with punishment which was rendered in the context of a finding recorded in the case against Mr. Behal that there had been a loss/misappropriation. The punishment of Mr. Sapra would be required to be re-examined in the context of a finding that there had been no loss but a punishment corresponding to the lapse on his part was only that of not properly verifying the discrepancy in entries between the stock wise and shed wise registers. The impugned order issuing the punishment is set aside and remitted to the disciplinary authority for re-examination on the issue of punishment only in the context of finding rendered above.

(14) CWP No. 11623 of 1989 filed by Mr. Behal is allowed and in CWP No. 10966 of 1989, the punishment meted out to Mr. Sapra under the order are set aside and remitted to the disciplinary authority for consideration regarding punishment in accordance with law. CWP No. 10966 of 1989 is disposed of.

R.N.R.