
Md. Islamuddin Khan Vs Food Corporation of India and Others

A.P.O. No. 359 of 2001 with W.P. No. 1433 of 2001

Court: Calcutta High Court

Date of Decision: Feb. 22, 2008

Citation: (2008) 2 CALLT 130 : (2008) 3 CHN 186

Hon'ble Judges: Tapan Sen, J; Tapan Kumar Dutt, J

Bench: Division Bench

Advocate: M.M. Das, Mrs. P. Goswami, for the Appellant; Arunava Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

Tapan Kumar Dutt, J.

Heard the learned advocates for the respective parties.

2. The facts of the case, very briefly, are as follows:-

At the time when the writ petitioner/appellant was working as Assistant Grade II (Depot) under the respondents-authorities, a charge-sheet dated

18th April 1999 was issued against the appellant and such charge-sheet contained charges of mis-appropriation of stocks by the appellant in

connivance with other staff for pecuniary gains, failure to discharge duties honestly and faithfully contravening certain regulations of the F.C.I.

(Staff) Regulations 1971 (as amended) on the part of the appellant and the appellant's failure to maintain proper depot records.

For a better appreciation of the said charges, the same are quoted

below: -

Article of Charge Framed Against Md.islamuddin Khan, Ag.II (Depot) ARDC, Khagrabari, Coochbehar Under District Manager, FCL,

Coochbehar. Now Posted Under Dist. Manager (PD), FCI.

Article No. I

Md. Islamuddin Khan, Asstt. Gr.II (Depot), while functioning (as AG.II (Depot), ARDC, Khagrabari, under District Manager, FCI, Coochbehar

from 22.11.97 to 09.10.98, committed gross misconduct and irregularities. During the Annual Physical verification of stocks of Rice, Wheat &

Sugar on 31.3.98 at ARDC, Khagrabari glaring discrepancies and huge shortage of foodgrains and sugar were detected by the Regional P. V.

Team. The discrepancies detected during the Annual Physical verification is detailed below: -

1. Rice 2,929 short (bags)
2. Sugar (Levy) 201 b/s. short stack 1B/13
3. Wheat (Ind) 1391 b/s. found excess

There are reasons to believe that Md. Islamuddin Khan, AG.II(D), had misappropriated the stocks found short in connivance with other staff for

his pecuniary gain while the wheat stock found excess was kept unaccounted with the intention to misappropriate the same at an opportune

moment.

Md. Islamuddin Khan, had thus contravened Regulations, 31(a), (b), 32 of the FCI(Staff) Regulations, 1971 (as amended) and rendered himself

liable for Disciplinary proceedings.

Article No. II

During the 100% physical verification of stocks at ARDC Khagrabari, Coochbehar as on 30.9.98 by a Special PV Team from Regional Office

huge shortage of stocks were detected as detailed below: -

1. Wheat (Ind) 1,863 b/s = Qtl. 1,706,62
2. Sugar (Levy) 216 = Qtl. 246,08.000
3. Rice Common Bld. 469 b/s = Qtl. 485,31,000

The stock is non-existent.

4. Rice Common Bld. (Pkts) 180 b/s. = Qtl. 95,79,590
5. Rice Common Raw- Bags Nil = Qtl. 88,51,000
6. Rice Grade "A" URS 1120 b/s. = Qtl. 1002,70,000

The Stock is non-existent 100% short.

7. Rice Fine Raw -334 b/s. = Qtl. 289,84,000
8. Rice Grade "A" URS -Qtl. 37.48.000

Md. Islamuddin Khan, AG.II(D), had in connivance with the staff posted at ARDC, Khagrabari misappropriated the stocks for his pecuniary gain

at the cost of FCI. Thus Md. Islamuddin Khan, failed to discharge his duties honestly and faithfully contravening Regulations, 31(a), (b), & 32,

32A(4), (5), (3) of the FCI (Staff) Regulations, 1971 (as amended) and rendered himself liable for disciplinary proceedings.

Article No. III

Md. Islamuddin Khan, AG.II(D) did not ensure maintenance of depot records though he was aware that the depot books of account were, not

maintained from 1.4.1997 and the PV was conducted on the basis of the stack registers brought up by the squad deputed from storage Branch of

Regional Office. The depot records were made uptodate during Aug. '98 by a team from Regional Office after 17 months as the depot could not

even make a single entry in the relevant books of account. Md. Khan, AG.II(D), instead of promoting the interest of the Corporation, had acted in

a manner prejudicial to the interest of the Corporation.

By the acts as aforesaid Md. Khan, AG.II(D), had failed to maintain absolute integrity and devotion to duty in contravention of Regulations 31(a),

(b), (c), 32, 32A(4), (5), (30) and thus rendered himself liable for disciplinary proceedings.

5. It was alleged by the respondent authorities that the appellant was responsible for huge shortage of stocks and the appellant failed to maintain

absolute integrity and devotion to duty and had rendered himself liable for disciplinary proceedings. Thus the disciplinary proceeding was brought

against the appellant and it further appears that the allegation made by the respondents against the appellant in the charge-sheet was in respect of

the period of the appellant's posting at Khagrabari, Coochbehar under the District Manager, FCI, Coochbehar, from 22.11.1997 to 09.10.1998.

The Enquiry Officer, who was appointed to hold an enquiry, submitted his report. The Enquiry Officer took into consideration the evidences on

record and came to the finding that it has been established that the appellant was guilty of utter negligence to his duty and indifferent attitude while

performing at the depot concerned and that the huge shortages detected in the depot were result of misdeeds which were carried on for years even

prior to the period when the appellant was posted at the said depot. The Enquiry Officer came to the finding that the wrongful activities in the

depot concerned continued during the period when the appellant was posted at the said depot. The Enquiry Officer, however, held that he cannot

hold the appellant fully responsible for both charges of misappropriation of stocks to the tune of more than Rs. 38,00,000/- as the appellant had

joined in the depot when some losses were already existing but the appellant's involvement in the misappropriation, which took place when he was

posted in the depot, cannot be ruled out but the extent of involvement in terms of money value in the overall estimated loss is indeterminable and

therefore the appellant was partially guilty of the charge Nos. 1 and 2. With regard to charge No. 3 the Enquiry Officer came to the following

finding :-

Article of Charge No. III

The instances of flagrant violation of system and procedures with regard to maintenance of records, allowing books of accounts remaining un-

written and in arrears for months after months was a lapse and dereliction of duties individually and collectively as far as the CO is concerned for

the period he was posted in the depot. I, therefore, hold him responsible for pendency of accounts relating to the period he was posted at ARDC,

Khagrabari.

6. The disciplinary authority served a copy of the enquiry report upon the appellant giving the appellant an opportunity to make a representation

and/or submissions in respect of the findings of the Enquiry Officer. The appellant submitted his representation, and the disciplinary authority, after

taking into consideration the materials on record, agreed with the findings of the Enquiry Officer and passed an order that a penalty of reduction of

pay to the minimum of the time scale should be imposed on the appellant for a period of five years with a further direction that he will not be

entitled to earn any increment during the period the reduction shall be in force and on expiry of such period the reduction will have the effect of

postponing the future increment of pay. (Page-19 of the Paper Book). It appears that an appeal was filed by the appellant against the final order of

the disciplinary authority but the said appeal was dismissed. Challenging such order of dismissal passed by the appellate authority the writ petition

was filed being W.P. No.1433 of 2001 by the appellant.

7. The writ petition came up for hearing and an Hon"ble single Judge of this Court by order dated 18th October, 2001 was pleased to allow the

said writ petition to the extent indicated therein. In this regard the following relevant part of the order under challenge in this appeal is quoted

below:-

With regard to quantum of penalty as imposed is reduction of pay to the minimum of the time scale for a period of five years. The order was

passed on November 30, 2001. Therefore, it appears that the disciplinary authority overlooked the aforesaid date of superannuation of the

Petitioner while imposing the said penalty spreading over a period of five years with a further direction stopping increment during the said period of

five years when admittedly the Petitioner was not having a service period of five years left in his credit. Therefore, the impugned order of

disciplinary authority only to the extent of quantum of punishment appears to be on non-application of mind. The penalty imposed by the impugned

order is therefore set aside and the respondents may pass final order reducing the period, as observed hereinabove within a period of three weeks

from today. The writ petition is allowed to the aforesaid extent.

8. It appears from a reading of the order challenged in this appeal that the Learned counsel for the appellant/writ petitioner contended before the

Hon"ble single Judge that the charge-sheet is bad as it depicted a closed and prejudged mind and the findings of the Enquiry Officer are perverse.

Further, it was the case of the writ petitioner that the final order of penalty passed by the disciplinary authority was on the basis of a conclusion

which was different from that of the Enquiry Officer and yet the disciplinary authority neither indicated the reasons for such difference nor granted

an opportunity to the writ petitioner to make a representation with regard to such reasons and the appellate order was also challenged on the

ground of insufficient findings.

9. The Hon"ble single Judge found that on reading the entire charge-sheet it appeared that the substance of imputation of misconduct was set out in

the articles of charge and that the authority concerned proposed to hold an enquiry and the writ petitioner was granted opportunity to make

representation and also hearing in person. The Hon"ble Judge found that an enquiry was held and the matter was considered on the materials found

during hearing and there was no reason to hold that the charge-sheet depicted a closed mind of the authority concerned. The Hon"ble Judge found

that the Enquiry Officer considered the evidence and came to a finding on that basis that the charges against the writ petitioner have been partially

proved though extent of involvement of the writ petitioner in terms of money value in the overall estimated loss was found to be indeterminable but

the involvement of the writ petitioner in the misappropriation has been found. The Hon"ble single Judge found that this is not a case where it can be

said that the findings were arrived at by the Enquiry Officer without any evidence on record. The Hon"ble single Judge was of the opinion, quite

rightly, that the Enquiry Officer came to his findings on assessment of evidence and such evidence cannot be re-assessed by the writ Court for the

purpose of reaching an independent conclusion. The Hon"ble single Judge also, quite rightly, found that the disciplinary authority agreed with the

findings of the Enquiry Officer and thereafter passed the order of punishment. The Hon"ble single Judge further found, quite rightly, that in such

case of agreement by the disciplinary authority with the findings of the Enquiry Officer, when the writ petitioner was granted opportunity to make a

representation on the findings of the Enquiry Officer there was compliance of the requirement of the law as it stands.

10. It further appears on perusal of the order challenged in the instant appeal that the Hon"ble single Judge took into consideration the fact that the

writ petitioner was due to retire on 30.11.2001 and thus came to the conclusion that the disciplinary authority overlooked such date of

superannuation of the writ petitioner while imposing the penalty spreading over a period of five years with the further direction for stopping

increment during the said period of five years when admittedly the writ petitioner was not having a service period of five years left to his credit and,

therefore, the final order of the disciplinary authority only to the extent of quantum of punishment appears to be a result of non-application of mind.

The Hon"ble single Judge was pleased to set aside the penalty imposed by the disciplinary authority and give liberty to the respondents-authorities

to pass a final order reducing the period as observed by His Lordship in His Lordship"s said order within a stipulated period of time.

11. Comparing the submissions made by the learned counsel for the appellant before this Court and those made before the Hon"ble single Judge,

as is reflected in the order under challenge in this appeal, it appears to us that the submissions were more or less similar. Before us, also, the

Learned counsel for the appellant, by way of referring to certain copies of documents on record, tried to argue that the charge-sheet was a product

of closed mind and the findings of the Enquiry Officer were perverse. In agreement with the Hon^{ble} single Judge, we are also of the view that it

will not be proper for us to re-assess the evidences on record. We are convinced that the present case is not a case where it can be said that the

findings were arrived at by the Enquiry Officer without any evidence on record. Even if, on appraisal of the evidence on record, we feel inclined to

come to a different view from that of the Enquiry Officer and/or the disciplinary authority, we cannot possibly do so. The proceedings before the

disciplinary authority and the manner in which such proceedings took place the conclusion arrived at by the disciplinary authority cannot be said

to be one which can possibly shock the judicial conscience of the Court. The Learned counsel for the appellant laid emphasis on the finding of the

Enquiry Officer where he held that the huge shortages detected in the depot are the culmination of misdeeds and rampant activities which were

going on in the depot for years even prior to the period when the charged officer was posted in the depot i.e. ARDC, Khagrabari. The other

finding on which emphasis was given by the said learned counsel was the finding where the Enquiry Officer held that the appellant cannot be held to

be fully responsible for both the charges of misappropriation of stocks to the tune of more than Rs.38,00,000/- as he joined the depot when some

losses were already existing. The said Learned counsel submitted that the said findings would show that there were misdeeds or misappropriations

even before the appellant had joined the said depot, that is, ARDC, Khagrabari and thus the appellant cannot be held to be responsible for such

misappropriation. The said learned counsel submitted that the aforesaid finding of the Enquiry Officer will indicate that the Enquiry Officer did not

find the appellant guilty of Charges I and II. In our view, such submission of the said Learned counsel for the appellants is without any force and

such submission is not acceptable to this Court. By making the above finding the Enquiry Officer had clearly meant that the appellant may not be

fully responsible for the entire misappropriation of stocks to the tune of Rs.38,00,000 and odd but the appellant had a role to play in some part of

the entire misappropriation. The aforesaid findings of the Enquiry Officer clearly indicate that even during the tenure of the appellant

misappropriations were there and also even before the tenure of the appellant misappropriation had been there.

12. The Learned counsel for the appellant submitted that the Hon^{ble} single Judge was not correct in holding that the writ Court should not

reassess the evidence and the power of judicial review by the Court is wide enough to include such reassessment of evidence, if necessary, and to

find out if the finding of the Enquiry Officer can at all be substantiated. The said Learned counsel submitted that the instant case is one where this

Court should make a re-appraisal of the evidence on record and come to its own finding with regard to the alleged guilt of the appellant.

13. The said Learned counsel cited a decision reported at 2001(3) E.S.C. (All.) 1325 (Brijesh Kumar v. Collector /District Magistrate, Mainpuri

and others). It cannot be appreciated as to how the said reported case can be of any assistance to the appellant since the facts and circumstances

of the said reported case were quite different. In the said reported case the petitioner was aggrieved against an order whereby his services were

terminated. It appears from reading paragraph 3 of the said reports that in the said reported case the subject matter for consideration was the

order of termination of services of the petitioner on the ground of not achieving the target for collection. The Hon"ble Court held in the said reports

that mere non-achieving of target for collection bereft of other relevant facts, cannot be the criterion for achieving efficiency.

14. The said learned counsel referred to another decision reported at Yoginath D. Bagde Vs. State of Maharashtra and Another, and drew the

attention of this Court to paragraphs 15, 22, 28 and 29 of the said reports. Paragraph, 15 of the said report deals with the High Court's power of

control over the subordinate Courts. In paragraph 22 of the said reports the discussion is with regard to the concept of ""wider consultation"" as

contained in the said paragraph. It appears that the observations and/or discussions made in paragraphs 15 and 22 of the said reports are not

relevant for the present purpose. In paragraphs 28 and 29 of the said reports the Hon"ble Supreme Court was pleased to observe that"" Where the

enquiring 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 enquiring 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 these cases in which the enquiring-

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. The

Hon"ble Supreme Court was pleased to further observe ""that before the disciplinary authority finally disagrees with the findings of the enquiring

authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded

by the enquiring authority do not suffer from any error and that there was no occasion to take a different view."" In the present case the disciplinary

authority did not disagree with the Enquiring Officer and as such the facts of the present case are quite different from the facts of the said reported

case. In any event, proper opportunities of hearing were given to the appellant at all material times. Thus, the said reported case cannot be of any

assistance to the appellant.

15. The Learned counsel for the appellant relied upon a decision reported at 2000(8) S.L.R. 769 (Kumaon Mandal Vikas Nigam Ltd. v. Girija

Shankar Pant) and referred to paragraph 17 of the said reports. In paragraph 17 of the said reports the Hon"ble Supreme Court was pleased to

observe that the availability of judicial review even in the case of departmental proceeding cannot be doubted and that judicial review of

administrative action is feasible and has its application to its fullest extent in the departmental proceeding where it is found that the recorded findings

are based on no evidence or the findings are totally perverse or legally untenable. The Hon"ble Supreme Court was further pleased to observe that

the ""adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of

the Court, it is a wellneigh impossibility to decry availability of judicial review at the instance of an affected person"".

16. There cannot be any dispute with regard to the aforesaid observations of the Hon"ble Supreme Court as contained in the said reports but the

point is that in the facts and circumstances of the instant case it cannot be said that findings of the enquiring officer are based on no evidence or that

such findings are in any way perverse or legally untenable. This being the factual position in the present case, this Court is of the view that judicial

review should not be exercised in the present case by way of reassessing the evidence on record. There cannot be any dispute that judicial review

even in case of departmental proceeding is available but what is required to be done in a given case will depend on the facts and circumstances of

such case. It further appears that pursuant to the order under challenge in this appeal, the respondent-authorities have passed an appropriate order

dated 30.10.2001 taking into consideration the date of superannuation of the appellant and its effect on the order of punishment.

In view of the discussions made above we do not find any merit in the instant appeal which is accordingly dismissed. There shall, however, be no

order as to costs.

Urgent Xerox certified copy of this order, if applied for, shall be given to the learned Advocates for the respective parties, on compliance of usual

formalities.