
BEFORE SWATANTER KUMAR & S. S. SARON, JJ

BAL KRISHAN—*Petitioner*

versus

FOOD CORPORATION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 4714 OF 2002

13th September, 2002

Constitution of India, 1950— Art. 226— Food Corporation of India Regulations, 1971— Shortage of foodgrains— Loss to the Corporation— Delay in initiation of disciplinary proceedings— Standard of loss of weight resulting from storage of foodgrains not specified— No ground to vitiate the departmental proceedings— Corporation not taking action against officers holding higher status/ position— Violation of instructions— Departmental proceedings not liable to be quashed even though there might be some administrative lapse on the part of Corporation— Corporation directed to take appropriate disciplinary proceedings against all such erring officials de hors their status.

Held, that the Food Corporation of India could initiate and continue the departmental proceedings without specifying the standard of loss of weight during the storage. This would not per se vitiate the departmental proceedings and in the facts of the circumstances, delay in initiation of the departmental proceedings will also not be fatal to the departmental proceedings. In any case, keeping in view the conduct of the petitioners, as reflected in the charge-sheets, the loss is tremendous and should not be permitted to be over looked as larger public interest demand equity to tilt in favour of the Corporation rather than the petitioners. The delay specially in absence of any specific prejudice pleaded and shown to have been caused to the petitioners cannot be ground for quashing the charge-sheet.

(Para 11)

Further held, that it is always proper for the authorities concerned to deal with all the erring official/officers in accordance with law, irrespective of the status/position held by the person concerned in the Corporation or otherwise. If there are supervisory functions provided and the duties required such officers to supervise in a better manner to issue or not issue such certificate and ensure proper

compliance of the instructions issued by the Food Corporation of India, we expect the department to take appropriate disciplinary proceedings against other such erring official de-hors his status in the Corporation. Obviously, the petitioners are at liberty to take all these pleas in the departmental proceedings or before the appellate authority as the case may be. The Court has declined to quash the charge sheet of departmental proceedings against the petitioners and the Food Corporation of India should also take appropriate steps to conclude the departmental proceedings as expeditiously as possible and in any case not later than one year from today.

(Para 16 & 17)

Baljit Puri, Advocate and

Gulshan Sharma, Advocate for the petitioners.

K.K. Gupta, Advocate for F.C.I. in C.W.P. Nos. 12911 to 12918, 13345 and 13346 of 2002.

G.S. Sandhawalia, Advocate, for F.C.I. In C.W.P. Nos. 525, 1920, 2415, 5000, 5492, 5680, 6853, 9546, 9547 and 9744 of 2002.

Ashwani Prashar, Advocate, for F.C.I. in C.W.P. No. 19756 of 2001.

H.S. Dhandi, Advocate for F.C.I. in C.W.P. Nos. 6865 and 7048 of 2002.

Arun Walia, Advocate for F.C.I. in C.W.P. Nos. 9773 and 9905 of 2002.

V. Ramswaroop, Advocate for F.C.I. in C.W.P. Nos. 4714, 4744, 6363, 6344, 6857 and 6663 of 2002 and C.W.P. No. 19668 of 2001.

Haripal Verma, Advocate for respondents in C.W.P. No. 19950 of 2001.

Parmod Kumar, Advocate for F.C.I. in C.W.P. No. 7767 and 18131, 18924 and 15626 of 2001 and C.W.P. No. 384 of 2002.

Paramjit Singh Thiera, Advocate with Dhanvinder Singh, Advocate for F.C.I. in C.W.P. Nos. 9988, 12196, 12155 and 12156 of 2002.

JUDGMENT

Swatanter Kumar, J. (Oral)

(1) We have heard learned counsel for the parties at some length.

(2) By this common judgment, we will dispose of 48 writ petitions listed today before the court for final hearing.

(3) More or less common question of law arises for consideration of the court based on somewhat similar facts.

(4) The petitioner(s) are employees of the Food Corporation of India working on different posts and disciplinary actions have been taken against them by serving charge sheet. In some of the cases, orders of punishment have been passed, while in other departmental inquiry is still in progress. Challenges to these actions of the respondents is primarily founded, *inter alia*, on the following contentions :—

1. that the standard of permissible loss resulting from storage of foodgrains has not been specified by the Food Corporation of India, resultantly, no charge can be framed against the petitioner(s) in absence thereof and the charge sheet is liable to be quashed ;
2. the charge sheets in the cases relate to the commission of offence for a period of more than 10 years earlier, whereas in some cases it relates to a period of 4 years and, as such, the disciplinary action is vitiated on the ground of inordinate delay, which has resulted in prejudice to the petitioner(s) ;
3. that to the most of the petitioners, particularly in reference to Civil Writ Petition No. 19950 of 2002, certificate of satisfaction had been issued by the Assistant/District Manager in favour of the petitioner (s) in relation to the same stock for which they have been charged; and
4. the respondents have not taken action in accordance with their instructions and within the time stipulated therein and as such disciplinary action against the

petitioners was not tenable as even no chargesheet has been issued to other defaulting officials/officers, more particularly technical and quality control staff and officers of various cadres, despite the fact that their involvement is apparent from the record of the Food Corporation of India.

(5) On the contrary, it is contended on behalf of the Food Corporation of India that they have acted in accordance with law and the relevant instructions. It is further contended that there is statutory remedy of appeal available to the petitioners (wherever orders of punishments have been passed) under the Food Corporation of India Regulation 1971.

(6) As far as the first two contentions raised on behalf of the petitioners before us, they have no merit. These questions have been dealt with in great length by different Benches of this Court. We have no reason to differ with the view expressed therein and in fact, with respect adopt the reasoning and conclusion arrived at by the concerned Benches.

(7) A Division Bench of this Court in the case of **S.C. Bhateja and others versus The Food Corporation of India** Civil Writ Petition No. 15943 of 1999 decided on 13th March, 2000, while dealing with the matter rejected the contentions that the charge sheets are liable to be quashed on the plea there was inordinate delay in issuing the charge- sheet. Further, the Division Bench while relying upon the judgements of the Hon'ble Supreme Court in the case **Union of India versus N. Saxena (1)**; **State of Punjab and others versus Chaman Lal Goyal (2)** and **State of Madhya Pradesh versus Bani Singh and anr (3)** held as under :—

“In **State of A.P. versus N. Radhakishan**, 1998 (4) S.C.C. 154, the Supreme Court, while dealing with a challenge to the order passed by the Central Administrative Tribunal quashing the proceedings of enquiry on the ground of delay, laid down the following general proposition of law.

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- (1) 1992 (4) S.L.R. 11.
 - (2) 1995 (1) S.L.R. 700
 - (3) 1990 (Supp.) S.C.C. 738

“It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when there are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on that account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.”

In C.W.P. No. 344 of 2000 *O.P. Sachdeva and others versus Food Corporation of India and others* decided on 13th January, 2000, this Court after making in depth examination of the question as to whether the jurisdiction of the High Court should be exercised for quashing the proceedings of enquiry at the threshold held that the mere delay cannot be treated as sufficient for nullifying the proceedings initiated by the public employer.

The law laid down in Dr. Ishar Singh's case (*supra*) is against the petitioners, rather than supporting their case. In that case, a Full Bench of this Court held that delay by itself cannot be a ground for quashing of the proceeding of enquiry."

(8) Now we proceed to deal with the second contention raised by the petitioner that non-prescription of specific guide-lines in relation to loss of weight by the Corporation is essentially not *sine-quo-non* to the initiation or continuation of the disciplinary proceedings against the petitioners.

(9) We are unable to accept this argument. This contention was also raised in Civil Writ Petition No. 10746 of 2000 titled *Sant Singh and other versus The Food Corporation of India* and others decided 29th May, 2002, but the same was not accepted.

(10) The respondents had issued a circular dated 13th May, 2002, Annexure R/2 to the reply filed by the respondents. As per this circular, it was recommended by the Committee that no specification would be provided at All India level and the persons should not be permitted to escape the accountability on this ground. This Circular of the Corporation was subject matter of the controversy in Civil Writ Petition No. 10355 of 2002 titled *Food Corporation of India Employees and another versus Food Corporation of India and another* decided on 10th July, 2002. Their Lordships while declining to interfere held as under :—

"... We have heard counsel for the petitioner and perused the record and are of the opinion that these are matters for the Corporation to decide and in the very nature of things the

court cannot give any direction to fix any particular norms in regard to the storage/transit losses. What is contended by Shri Patwalia is that the Corporation has not considered as to how many grams of weight loss should be allowed against one per cent driage in the food grains contained in a bag of one quintal. We do not propose to issue any direction to the Corporation in this regard. Petitioners may, if so advised, represent to the Corporation in this regard and if any such representation is made, we have no doubt that the same would be considered in accordance with law.

The writ petition stands disposed of as above.”

(11) With respect, we follow the reasoning given by the above three Division Benches of this Court in the afore-noticed cases and while concurring with view expressed we reject both the contentions raised on behalf of the petitioners. In order to avoid any ambiguity we specify that the Food Corporation of India could initiate and continue the departmental proceedings without specifying the standard of loss of weight during the storage. This would not per se vitiate the departmental proceedings and in the facts of the circumstances, delay in initiation of the departmental proceedings. In any case, keeping in view the conduct of the petitioners, as reflected in the chargesheets, the loss is tremendous and should not be permitted to be over looked as larger public interest demand equity to tilt in favour of the Corporation rather than the petitioners. The delay specially in absence of any specific prejudice pleaded and shown to have been caused to the petitioners cannot be ground for quashing the chargesheet.

(12) We may notice here that on account of the commission and omission on the part of the petitioners in the writ petitions before us, the Corporation is alleged to have suffered loss of more than 20 crore. For such large public loss equity would not demand quashing of departmental proceedings at the initial stage though there might be some administrative lapse on the part of the Corporation as well.

(13) Having rejected the first two contentions raised on behalf of the petitioners, now we proceed to discuss the third and the fourth contentions together as they have common thread of submission in them.

(14) While we are of the considered view that the departmental proceedings against the petitioners must proceed in accordance with law and wherever order of punishment have been passed, the petitioners should be relegated to take to the remedy of statutory appeal before the appellate authority, we also constrain to observe that there is some substance in the submission of the petitioners that Food Corporation of India is not acting in consonance with its instructions and the persons who are really guilty of alleged pilferage are not being subjected to departmental proceedings because they are holding higher status/position in the Corporation.

(15) As we have already indicated that loss to the Corporation is tremendous and the certificate issued by the higher authority in favour of petitioners (in Civil Writ Petition No. 19950 of 2002) in no way is prudent exercise of its powers. Certificate issued by the Assistant Manager and duly certified by the District Manager (in Civil Writ Petition No. 19950 of 2002), reads as under :—

“... (b) I have by accord the sanction for the write of losses which are within my powers. The losses are not due to theft, pilferages, negligence etc. and do not reveal any defect in procedure ...”

(16) What will be the effect of issuance of such certificate is for the disciplinary/competent authority to consider. The Court will not travel at this stage of the proceedings into the merit or demerit of the authority or contents thereof. In any case, it is always proper for the authorities concerned to deal with all the erring official/officers in accordance with law, irrespective of the status/position held by the person concerned in the Corporation or otherwise. If there are supervisory functions provided and the duties required such officers to supervise in a better manner to issue or not issue such certificate and ensure proper compliance of the instructions issued by the Food Corporation of India, we expect the department to take appropriate disciplinary proceedings against other such erring official de-hors his status in the Corporation.

(17) Obviously the petitioners are at liberty to take all these pleas in the departmental proceedings or before the appellate authority

as the case may be. The Court has declined to quash the chargesheet or departmental proceedings against the petitioners and the Food Corporation of India should also take appropriate steps to conclude the departmental proceedings as expeditiously as possible and in any case not later than one year from today. In the event of default, all the petitioners in these petitions would be entitled to invoke the jurisdiction of this Court for grant of appropriate relief.

(18) At this stage, on the basis of some of the documents placed on record, it is contended that the District Manager/Assistant Manager and even higher officers are responsible and are directly involved in the huge loss of more than Rs. 20 crore of the Corporation.

(19) Under the circumstances, we direct the respondent-Corporation to look into the matter in a greater depth and take appropriate action against and the erring officials/officers irrespective of their status. If they are found guilty directly or indirectly responsible for causing such huge loss to the Corporation in this regard instructions of the Corporation, itself would be the best guidelines for the authorities concerned. Such action would be taken within three months from today.

(20) While disposing of these petitions in the above terms and conditions, we direct the respondents-authorities to duly consider and pass appropriate orders on the pleas taken by the petitioners, aforesaid. The writ petitions are disposed of in the above terms without any order as to costs.

(21) All the orders will be passed within the stipulated period as-aforesaid. Wherever, the petitioners are required to file an appeal or remedy of review is available, they would be entitled to seek the same. Such remedy would not be declined on the ground of limitation alone, as they were pursuing *bona fide* these petitions.