BALBIR CHAND

v.

THE FOOD CORPORATION OF INDIA LTD. AND ORS.

DECEMBER 16, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Misconduct—Punishment for—Order passed by highest authority—Validity of—Food Corporation of India—Contract for transportation of the foodgrains—A notorious contractor who has earlier committed misappropriation obtained another Benami contract by impersonation—Petitioner's failure in duty to verify the particulars—Charge of misconduct and dereliction of duty against petitioner and other employees—Conduct of joint enquiry—Order removing the petitioner from service—Order not passed by Zonal Manager who was competent to remove petitioner—Instead order of removal passed by higher authority viz. Managing Director—Held order was valid—Such an order is not violative of Article 14.

Surjit Ghosh **v.** *Chairman & Managing Director, United Commercial Bank*, **AIR (1995) SC 1053, held inapplicable.**

Service Law—Number of delinquent employees—Conduct of joint enquiry—Procedure for—Instructions regarding—Need to split up enquiry—Held disciplinary enquiry should not be equated as a prosecution for an offence in a criminal Court where the delinquents are arrayed as co-accused—In disciplinary proceedings, the concept of co-accused does not arise—Therefore, each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the enquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the disciplinary authority—Under these circumstances, the need to split up the cases is obviously redundant, time consuming and dilatory—It should not be encouraged—Therefore, there was no illegality in the action taken after conduct of joint enquiry.

Service Law—Misconduct—Number of delinquent officers—Punishment—parity—Held merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser

punishment lest the same mistaken view would be repeated—Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice—It is open to the appropriate higher authority to take appropriate decision according to law.

Service Law—Public servant—Need for opennes and accountability in conducting the public dealings—Personal recovery of loss from erring officials.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 23981 of 1996.

From the Judgment and Order dated 16.8.96 of the Punjab & Haryana High Court in W.P. No. 12340 of 1996.

V. Shekhar for the Petitioner.

The following Order of the Court was delivered:

This special leave petition arises from the order of the Division Bench of the Punjab & Haryana High Court, made on August 16, 1996 in CWP No. 12340/96, dismissing the petition *in limine*.

While the petitioner was working as Manager in the Food Corporation of India, Chandigarh Office, one Rajinder Singh Rana impersonating himself as Harjit Singh son of Ajit Singh, had succeeded in obtaining a contract with the Corporation for the year 1992-93 for transportation of the foodgrains. The petitioner's duty was to verify the particulars furnished with the tender and to submit the same to the competent authority for taking decision in that behalf. In the verification report submitted by the petitioner, he had stated that Harjit Singh had produced a bank account with balance of Rs. 200 while the certificate obtained by Harjit Singh allegedly from the Bank authorities, dated February 4, 1992 revealed "the balance of Harjit Singh as 56,400. As regards the value of residential House Building, the approved Designer and Architect had evaluated it. It was also stated that "the party holds a good reputation in the city". On that basis, the contract was obtained, but subsequently it was discovered that the said Harjit Singh son of Ajit Singh who obtained the contract was no other than Rajinder Singh Rana who misappropriated 1400 MT of superfine rice delivered to him for transportation ex-Khanna to Assam by road. Based thereon, disciplinary action was initiated against the petitioner and others for their dereliction of duty and misconduct in their failure to submit the

report truthfully. After conduct of joint enquiry against all the officers, authority took decision that the petitioner be removed from service. Accordingly, he was removed. On appeal, it was confirmed by the Board in the proceedings dated April 26, 1996 in an elaborate order running into 19 typed pages. The High Court has dismissed the petition *in limine*. Thus, this special leave petition.

The learned counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a judgment of this Court in *Surjit Ghosh* v. *Chairman & Managing Director, United Commercial Bank*, AIR (1995) SC 1053. It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances where the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now well settled legal position that an authority lower then the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellant authority had passed the order removing the officer from service. Thereby, appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules, In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution.

It is next contended that a circular was issued by the Department on May 13, 1980 regarding splitting up of an enquiry and while para 2 indicates the procedure to be followed, para 3 (ii) indicates as to when the split of the case would be ordered and sub-para (iii) envisages that it would be advisable to issue one common charge-sheet against all the charged officials. It is further envisaged in the Department's Circular thus :

> "Whenever common proceedings are initiated against two or more than two FCI employees, such common proceedings have to be ordered by the Disciplinary Authority competent to impose the major penalty of dismissal upon the senior most FCI employee involved in that case. This naturally means that the inquiring authority would submit his report of inquiry in such common proceedings to that particular disciplinary authority, for final orders in the case thereby depriving the junior officials involved of one or more avenues of appeals as also petition for review.
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> In case of such common proceedings, if the inquiry report or a copy thereof is forwarded to the lower Disciplinary Authorities, competent to impose penalties upon such junior officials, it has in several instances resulted in imposition of varying punishments by different authorities to different individuals on the same charges.
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> This position has been carefully examined with reference to the various instructions issued by the Government of India in this regard and it has been decided to follow the guidelines mentioned hereunder :
>
> (i) There has been a apprehension as to the actual meaning of common proceedings and joint proceedings. It is hereby clarified that the terms 'common proceedings' and 'joint proceedings' are synonymous and in fact there is no difference between the two.
>
> (ii) Whenever two or more employees are involved in a particular disciplinary proceedings and when one charged official cites the other as a witness in his case, the proceedings cannot be conducted as common/joint proceedings. In such contingencies, the general principles laid down by the courts is that the charged official in

cross cases should be tried separately and that both the inquires should he held simultaneously, so as to avoid conflicting findings and different appraisal of the same evidence, by different inquiring authorities.

(iii) While initiating common proceedings it would be remembered that such proceedings should be ordered only as a last resort and in case such proceedings are ordered, the charge should be also common against all the charged officials involved. In other words, it would be advisable to issue one common charge-sheet against all the charged officials. The concerned Disciplinary Authority should examine the desirability of conducting a common inquiry before taking a decision in this regard so that the issue of separate charge-sheets could be avoided. After the enquiry is over in common proceedings, the concerned disciplinary authority should take a decision against the charged employees of considering the gravity of the misconduct by such of the concerned officials. However, cases of all the officials should be disposed off by the authority ordering the common proceedings to ensure that same standards are applied in case of all the officials concerned."

It is contended that when one delinquent officer seeking to summon other delinquent who is charged on the common cause of action or for the misconduct committed during the course of the same transaction or to summon more than one officer jointly, the petitioner should be given an opportunity of splitting up the matter and to contend that common enquiry has thereby caused grave prejudice to the petitioner denying him the opportunity to summon the officer to substantiate his defence. We find no force in the contention. It is seen that these are only instruction in conducting the proceedings as guidelines. When more than one delinquent officer are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping adducting of evidence or omission thereof and conflict of decision in that behalf, it it always necessary and salutary that common enquiry should be conducted against all the delinquent officers. The competent authority would objectively consider their cases according to Rules decide the matter expeditiously after considering the evidence to record findings on proof of

misconduct and proper penalty on proved charge and impose appropriate punishment on the delinquents. If one charged officer cites another charged officer as a witness, in proof of his defence, the enquiry need not *per se* be split up even when the charged officers would like to claim an independent enquiry in that behalf. If that procedure is adopted, normally all the delinquents would be prone to seek split up of proceedings in their/his bid to delay the proceedings, and to see that there is conflict of decisions taken at different levels. Obviously, disciplinary enquiry should not be equated as a prosecution for an offence in a Criminal Court where the delinquents are arrayed as co-accused. In disciplinary proceedings, the concept of co-accused does not arise. Therefore, each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the enquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the Disciplinary Authority. Under these circumstances, the need to split up the cases is obviously redundant, time consuming and dilatory. It should not be encouraged. Accordingly, we do not find any illegality in the action taken.

It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question. Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the mater and take appropriate decision according to law.

Present one is a case of a notorious contractor known to have committed on earlier occasions misappropriation in relation to the Corporation property; he sought and obtained another benami contract in the name of other persons by impersonation. Obviously all those who had prior knowledge of the contractor and had earlier dealt with him should have taken proper care to point out to the higher authorities the true facts so as to enable the concerned authorities take necessary decision. Account-

ability and openness is an imperative in conducting public dealings, lest they/he become/s abettor to perpetrate offences. This case is apart from pending suit to recover about Rs. 16 lacs from the erring officials. They would became privy to the abetment of impersonation by the contractor and appropriate action is required to be taken against him according to law.

The Special Leave Petition is accordingly dismissed.

T.N.A. Petition dismissed.