

National Fertilizers Ltd. And Anr. vs P.K. Khanna on 2 September, 2005

Equivalent citations: AIR2005SC3742, 2005(4)AWC3165(SC), [2005(4)JCR233(SC)], (2005)IIILLJ767SC, (2005)7SCC597, AIR 2005 SUPREME COURT 3742, 2005 AIR SCW 4333, 2005 LAB. I. C. 3686, 2005 (7) SCALE 101, (2005) 4 JCR 233 (SC), (2005) 8 JT 125 (SC), 2005 (7) SCC 597, 2005 LAB LR 1151, (2006) 2 KER LT 85, (2006) 38 ALLINDCAS 188 (SC), 2006 (38) ALLINDCAS 188, 2005 (6) SLT 632, 2005 (8) SRJ 436, (2005) ILR(KER) 3 KER 476, 2005 SCC (L&S) 1006, (2005) 107 FACLR 163, (2005) 3 CURLR 405, (2005) 5 SERVLR 735, (2006) 2 KER LT 69, (2005) 3 LABLJ 767, (2005) 4 LAB LN 45, (2005) 4 SCT 295, (2005) 6 SCJ 736, (2005) 6 SUPREME 230, (2005) 4 ESC 529, (2005) 4 ALL WC 3165, (2005) 7 SCALE 10(1)

Author: Ruma Pal

Bench: Ruma Pal, Ar. Lakshmanan

JUDGMENT

Ruma Pal, J.

1. Leave granted.
2. The two issues which arise for determination in this appeal are;
 - 1) Whether it is necessary for the Disciplinary Authority to give reasons for agreeing with the Enquiry Officer's report when the delinquent officer has submitted a representation challenging the report of the Enquiry Officer?.
 - 2) Whether the Disciplinary Authority is bound to issue notice to the delinquent officer before passing the order of punishment?
3. The respondent was employed as an Assistant Materials Manager with the appellant. It is alleged that Lot No. 259 consisting of 36,000 jute bags supplied by M/s. Swastik Laminated Industries to the appellant No. 1 was found to be defective and was rejected. The rejected bags were required to be returned to the supplier after they had been defaced. On the allegation that the respondent did not adhere to the procedure and instructions while despatching the 36,000 jute bags to the supplier and had not defaced them, disciplinary proceedings were commenced against the respondent. The

Enquiry Officer submitted a report in which he held as follows:-

Charge No.1 "There is no laid down procedure in writing for defacement or rejected bags, and proper procedure had not been adopted to deliver the rejected bags to supplier, Shri P.K. Khanna alone is not responsible for this lapse. The Charge No. 1 is therefore proved to the extent that Shri P.K. Khanna had not ensured the defacement of 36,000 bags when gate passes were issued by him.

Charge No. 2:-

Charge No. 2 proved as Shri P.K. Khanna did not get all the rejected bags defaced before issued(sic) of outgoing gate passes thereby showing interest and took hasty actions in despatching, loading of trucks and issue of outgoing gate passes for rejected lot No. 259 of jute bags to M/s. SLI Bahadurgarh."

4. On the basis of the Enquiry Officer's report, on 18th June, 1991 the respondent was removed from service. The respondent filed a Civil Suit challenging the order of removal. The Trial Court set aside the order of the Disciplinary Authority and directed him to furnish a copy of the report. However, liberty was granted to the appellants to proceed with the enquiry by placing the respondent under suspension from the stage of furnishing him with a copy of the Enquiry Officer's report. The respondent's appeal from this order of the Trial Court was dismissed.

5. In compliance with the order of the Civil Court, a copy of the Enquiry Officer's report was made available to the respondent, who was also placed under suspension. The respondent was given an opportunity to represent against the Enquiry Officer's report within 15 days. The respondent submitted his representation to the Disciplinary Authority. The Disciplinary Authority passed the following order:-

" The undersigned has carefully gone through the report of the enquiry officer, statements of witnesses and documents produced as evidence both by the presenting officer as well as the defence assistant of the delinquent employee during the enquiry proceedings. I have also carefully examined the representation of Shri P.K. Khanna dated 9.6.97. After going through the Enquiry Report, documents produced by during the course of the enquiry, evidence recorded, written statement of defence and representation submitted by Shri P.K. Khanna, the undersigned is in agreement with the findings of the Enquiry officer that charges leveled against Sh. R.K. Khanna vide charge sheet dated 19.2.90 stand proved.

Seeing the gravity of the charges and critical nature of job of materials Department where the Company's officers have to handle matters connected with the business and property of the company involving huge financial stake in each and every transaction the charges proved against Sh. Khanna assume utmost gravity. Therefore, the undersigned has come to the conclusion that retention of Sh. P.K. Khanna, Asstt. Materials Officer in the services of the Company is not in the interest of the Company

and imposition of penalty of removal of service in this case is reasonable and will meet the ends of justice. Therefore, the undersigned in exercise of powers conferred by the Rule 30 of NFL Employees (Conduct, Discipline & Appeal) Rules imposes the penalty of removal from the service of the Company on Shri P.K. Khanna, Assistant Materials Officer with immediate effect."

6. The respondent's appeal to the Chairman and Managing Director was rejected. It was held that the respondent had not brought out any new facts in his representation and that the respondent had shown undue favour to the supplier in the dispatch of the rejected bags without ensuring that defacement before issue of the defective bags. The appellate authority held that by doing so, the respondent had acted in a manner prejudicial to the interest of National Fertilizers Limited and had shown willful disobedience of the instructions and had negligently performed his duties. The penalty of removal was accordingly confirmed.

7. The respondent challenged the order of removal under Article 226 before the High Court of Punjab and Haryana. The Division Bench was of the view that after supply of the Enquiry Officer's report a delinquent employee, if he opts to submit his reply/objections against the finding of the Enquiry Officer, it is imperative for the Disciplinary Authority to deal with the objections giving his own reasons in support of his conclusion. It was also noted that the Enquiry Officer had not given a firm finding and in relation to charge No. 1, concluded that the respondent alone was not responsible for the lapse. According to the High Court, failure to give reasons dealing with the respondent's objections to the Enquiry Officer's report amounted to violation of principles of natural justice. This defect in the Disciplinary Authority's order was also true of the Appellate Authority's order. The orders of the Disciplinary Authority and the Appellate Authority were accordingly set aside with liberty granted to the Disciplinary Authority to pass fresh orders keeping in view the observations made by the High Court.

8. We are unable to agree with the reasoning or with the conclusion reached by the High Court. We have quoted the conclusions of the Enquiry Officer. It could not be said that the Enquiry Officer had not reached a firm conclusion with regard to both the charges as far as the respondent was concerned. It is true that the Enquiry Officer said that there was no procedure laid down in writing relating to the defacement of rejected bags. But he did not say that there were no instructions given to the respondent to ensure the defacement of rejected bags. In fact the Enquiry Officer had listed his conclusions and findings at the end of his report from which it is abundantly clear that he was convinced that instructions had been issued to the respondent to deface the bags before despatching them to the supplier. The Enquiry Officer held that the respondent alone was not responsible for the lapse. This did not mean that he had not come to a firm conclusion that the respondent was responsible. As far as charge No. 2 is concerned the conclusion was categorical that it had been proved against the respondent.

9. Apart from misreading the Enquiry Officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the Disciplinary Authority is required to give reasons only when Disciplinary Authority does not agree with finding of the Enquiry Officer. In this case the Disciplinary Authority had concurred with the findings of the

Enquiry Officer wholly, in *Ram Kumar v. State of Haryana* 1997 (Suppl.) SC 582, the Disciplinary Authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the Enquiry Officer, the finding of the Enquiry Officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the Disciplinary Authority in this case. Learned Counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the Disciplinary Authority had, in *Ram Kumar's* case itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words:-

"In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order".

(Emphasis supplied)

10. We respectfully adopt the view. The position is further clarified by Rule 33 of the Employees (Conduct Discipline & Appeal) Rules. It reads as follows:-

1. The Disciplinary Authority, if it is not itself the Enquiring Authority may, for reasons to be recorded by it in writing remit the case to the Enquiry Authority for fresh or further Enquiry and report and the Enquiring Authority shall there upon proceed to hold the further Enquiry according to the provisions of Rule 32 as far as may be.
2. The Disciplinary Authority shall, if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

3. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule-29 should be imposed on the employee shall, notwithstanding any thing contained in Rule 31, make an order imposing such penalty.

4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned."

11. It is apparent from Sub-rule (2) that the Disciplinary Authority is not required to record its reasons if it concurs with the Enquiry Officer's findings in contradiction with the situation in which the Disciplinary Authority disagrees with the findings of the Disciplinary Authority. Only in the latter case does Sub-rule (2) expressly mandate that the Disciplinary Authority shall, if it disagrees with the findings of the Enquiry Officer record its reasons for such disagreement as well as its own findings on such charges.

12. The respondent's reliance on the decision in Managing Director v. V. Karunakaran, is misplaced. That decision relates to the right of a delinquent officer to a copy of the Enquiry Officer's report. In the course of the judgment the Court had no doubt said that the report of the Enquiry Officer is required to be furnished to the employee to make proper representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment if any to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the Disciplinary Authority. It does not require the Disciplinary Authority to record separate reasons from those given by the Enquiry Officer. The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Enquiry Officer means that the Disciplinary Authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the Disciplinary Authority to restate the reasoning.

13. As far as the second question is concerned, neither the decision in Karunakaran nor Rule 33 quoted earlier postulate that the delinquent employee should be given an opportunity to show cause after the finding of guilt as to the quantum of the punishment. The rules envisage the passing of an order by the Disciplinary Authority not only finding the delinquent guilty, but also imposing punishment after the delinquent has been given a copy of the Enquiry report and had an opportunity of challenging the same.

14. Learned counsel appearing on behalf of the respondents sought to take us through the Enquiry Officer's report to contend that the Disciplinary Authority had not correctly appreciated the objections taken by the respondents to the report. That is normally not a plea which is available as a ground for judicial review. (See Indian Oil Corporation Ltd. v. Ashok Kumar Arora Nevertheless, it would be open to the respondent to raise all such grounds before the Appellate Authority, who should deal with the same.

15. This Court had issued limited notice as to whether the matter should be remanded back to the Appellate Authority rather than the Disciplinary Authority as directed by the High Court. For the

reasons stated we are of the view that the appropriate order in the circumstances of this case will be to remand the matter back to the Appellate Authority to reconsider the respondent's plea that the Disciplinary Authority had not appreciated the respondent's objection correctly.

16. Accordingly we dispose of the appeal by modifying the order of the High Court setting aside the decision of the appellate authority so that the matter may be remanded back to the Appellate Authority for reconsideration of the objections raised by the respondent to the Enquiry Report. No costs.