Supreme Court of India
Food Corporation Of India & Ors vs Sarat Chandra Goswami on 21 May, 1947
Author: .....J.
Bench: Dipak Misra, N.V. Ramana

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 7201-7202 OF 2008

Food Corporation of India & Ors.	..	Appellant(s)

Versus

Sarat Chandra Goswami	..	Respondent(s)

J U D G M E N T

Dipak Misra, The respondent while holding the post of District Manager in the Food Corporation of India (for short the FCI) was proceeded against in a disciplinary proceedings as contemplated under Regulation 60 of the Food Corporation of India (Staff) Regulations, 1971 (for brevity "the Regulations") on the ground that during the period 15.7.99 to 21.1.02 while the respondent was working at North Lakhimpur Region, FCI in Assam had not faithfully carried out his duties as a consequence of which the Corporation suffered financial loss. After the preliminary inquiry, a show cause notice was issued calling for a representation and eventually the punishment for recovery of a sum of rupees five lakhs and censure was passed against the respondent.

2. The aforesaid order of punishment constrained the respondent to approach the High Court in Writ Petition No.16812(w) of 2006. Before the writ court the singular contention that was highlighted was that the disciplinary authority had not complied with Regulation 60(1)(b) of the Regulations and, therefore, the whole proceeding was vitiated. The learned Single Judge

appreciating the facts and adverting to the submissions raised at the Bar came to hold that the disciplinary authority, the Chairman-cum-Managing Director, had not formed any opinion either to hold a regular inquiry or not as contemplated under Regulation 58 for imposing the major penalty and, accordingly, he quashed the order of punishment as well as the show cause notice.

3. Being dissatisfied, the Corporation preferred F.M.A.No.1187 of 2007 and the Division Bench placing reliance on the decision of this Court in Food Corporation of India, Hyderabad & Ors. v. A. Prahalada Rao & Anr.[1] concurred with the view expressed by the learned Single Judge and consequently dismissed the appeal.

4. We have heard Mr. Dharmedra Kumar Sinha learned counsel for the appellants and Mr. Soumitra G. Chaudhuri learned counsel for the respondent.

5. The controversy, as it seems to us, centres around interpretation of Regulation 60 and hence, we think it appropriate to reproduce the said Regulation. It reads as follows:

> "(60) Procedure for imposing minor penalties: (1) Subject to the provisions of Sub-regulation (3) of Regulation 59, no order imposing on an employee any of the penalties specified in clauses (i) to (iv) of Regulation 54 shall be made except after:
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> (a) informing the employee in writing of the proposal to take action against him and of the imputation of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
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> (b) holding an inquiry in the manner laid down in sub- regulation (3) to (23) of the Regulation 58, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
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> (c) taking the representation, if any, submitted by the employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
>
> (d) recording a finding on each imputation of misconduct or misbehaviour.
>
> (2) Notwithstanding anything contained in clause (b) of Sub- Regulation (1, if in a case it is proposed, after considering the representation, if any, made by the employee under clause
>
> (a) of the Sub-regulation, to withhold increment of pay and such withholding of increments is likely to affect adversely the amount of retirement benefits payable to the employees or to withhold increments of a pay for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period,m an inquiry shall be held in the manner laid down in Sub- regulation (3) to (23) of Regulation 58 before making any order imposing on the employee any such penalty."

6. The interpretation of the said Regulation engaged the attention of this Court in A. Prahalada Rao (supra). A two-Judge Bench, adverting to the anatomy of the Regulation and taking into consideration the submissions advanced with regard to the abuse of the Regulation, came to hold as follows:

> " In our view, on the basis of the allegation that Food Corporation of India is misusing its power of imposing minor penalties, the Regulation cannot be interpreted contrary to its language. Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold inquiry in a particular case or not. But that would not mean that in all cases where an employee disputes his liability, a full-fledged inquiry should be held. Otherwise, the entire purpose of incorporating summary procedure for imposing minor penalties would be frustrated. If the discretion given under Regulation 60(1)(b) is misused or is exercised in an arbitrary manner it is open to the employee to challenge the same before the appropriate forum. It is for the disciplinary authority to decide whether regular departmental enquiry as contemplated under Regulation 58 for imposing major penalty should be followed of not. This discretion cannot be curtailed by interpretation, which is contrary to the language used. Further, Regulation 60(2) itself provides that in a case if it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of retirement benefits payable to an employee and in such other case as mentioned therein, the disciplinary authority shall hold inquiry in the manner laid down in Regulation 58 before making any order imposing any such penalty."

7. It is submitted by Mr, Chatterjee that the High Court has erroneously understood the ratio and ruled that an opinion has to be formed in writing. It is his further submission that when the reasons are manifest from the preliminary inquiry and from the show cause it was erroneous on the part of the High Court to emphasise on the formation of opinion.

8. Per contra, Mr. Chaudhary heavily relied on the authority in A. Prabhakar Rao (supra) and urged that the discretion vested in the disciplinary authority under the Regulations casts an obligation on it to form an opinion and formation of such opinion has to be in writing.

9. On a perusal of the order passed by the learned Single Judge, we find that he has taken note of the fact that there was no expression or formation of opinion. He has further recorded that the learned counsel for the Corporation had conceded that there was nothing to show that the Chairman-cum-Managing Director who had made the final order had recorded any opinion in writing before making the final order to the effect there was no need to hold a regular inquiry. From the principle stated by this Court in A. Prahalada Rao's case it is quite limpid that though in all cases where the employees disputes his liability, a full-fledged enquiry is not expected to be held as that would frustrate the purpose of interpreting the summary procedure for imposing minor penalties, yet the discretion conferred under the Regulation 1960 (1)(b), if exercised in a arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. The Court had further opined that the Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether

it is necessary to hold an inquiry in a particular case or not.

10. Once it is held that there has to be formation of opinion and such an opinion is assailable in a legal forum, we are of the view that the said opinion has to be founded on certain objective criteria. It must reflect some reason. It can neither be capricious or fanciful but demonstrative of application of mind. Therefore, it has to be in writing. It may be on the file and may not be required to be communicated to the employee but when it is subject to assail and, eventually, subject to judicial review, the competent authority of the Corporation is required to satisfy the Court that the opinion was formed on certain parameters indicating that there was no necessity to hold an enquiry. Thus, the High Court has correctly understood the principle stated in A. Prabhakar Rao (supra) and we do not find any fault with the same.

11. In the result, we do not perceive any merit in these appeals and the same stand dismissed with no order as to costs.

.....J.

[DIPAK MISRA] .....J.

[N.V. RAMANA] NEW DELHI, MAY 21, 2014.

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[1] (2001) 1 SCC 165
