Before M. M. Kumar & T. P. S. Mann, JJ.

FOOD CORPORATION OF INDIA,—*Appellant*

versus

AJMER SINGH AND OTHERS,—*Respondents*

LPA No. 140 of 2009 in
C.W.P. No. 9358 of 2001

13th January, 2011

Constitution of India, 1950-Art. 226—Food Corporation of India (Staff) Regulations, 1971—Reg. 63(ii)—Charge of misconduct of over staying leave—Removal from service by dispensing with regular departmental inquiry—Reasons recorded by authorities for dispensing with enquiry are wholly irrelevant and insufficient—Order passed by punishing authority liable to be set aside—Appeal dismissed, order of Single Judge substituting punishment of removal from service to that of compulsory retirement upheld.

Held, that the reasons recorded by the authorities in its order dated 25th April, 1995 are wholly irrelevant and insufficient because after recording the factum of absence from duty and the undertaking given by the writ petitioner-respondent at the time of securing No Objection Certificate for the purposes of obtaining passport to the effect that the writ petitioner-respondent would not leave the country without prior permission from the authorities. The disciplinary authority set out the reasons by observing that the writ petitioner—respondent had failed to resume duty inspite of direction given to him and was trying to seek extension of his stay abroad on the fake ground. The order proceeded to hold that it is inescapable conclusion that the writ petitioner-respondent was not interested to serve the Corporation nor it was practicable to hold inquiry into prolonged absence from duty as per provision of the 1971 Regulations. The impugned order further states that the adequate opportunity stood afforded to the writ petitioner-respondent and he was not interested to avail the same. The above stated reasons are not relevant for the purpose of coming to the conclusion that it was not reasonably practicable to hold a departmental inquiry in accordance with the Regulations 58 and 59. A close perusal of Regulation 58(11) of the

1971Regulations would show that in case a delinquent employee fails to appear within the specified time after issuance of charge sheet etc. or refuses or omits to plead then the inquiring authority is well within its right to require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge. The aforesaid Regulation clearly postulates initiation of *ex parte* proceeding against the delinquent employee and therefore, it is no answer to the mandatory requirement of Regulation 58 which provides for holding of a regular departmental inquiry that it is not reasonably practicable to do so. Moreover, the reasons are wholly irrelevant and insufficient and cannot constitute the basis for dispensing with the inquiry. Therefore, order passed by the punishing authority dated 25th April, 1995 is liable to be set aside.

(Para 12)

Further held, that in the absence of any regular departmental inquiry in accordance of Regulation 58 read with Regulation 32(A) (7), the order of removal cannot be sustained and likewise the subsequent order passed in appeal and review can also not be sustained. The order dated 25th April, 1995, the appellate order dated 10th February, 1998 and the order passed in statutory review dated 3rd November, 1998 have been rightly quashed by the learned Single Judge. Accordingly, the conclusion reached by learned Single Judge is affirmed. The petitioner would be deemed to have compulsorily retired from service from date of his removal i.e. 25th April, 1995.

(Para 14)

Hari Pal Verma, Advocate, *for the appellant.*

Rajiv Raina, Advocate, *for respondent No. 1.*

M.M. KUMAR, J.

(1) The Food Corporation of India (for brevity 'the Corporation') is in appeal under Clause X of the Letters Patent against the Judgment dated 10th December, 2008 passed by the learned Single Judge, quashing order dated 25th April, 1995 (P.1) removing the writ petitioner-respondent from service on the allegation of absence from duty. While passing the order dated 25th April, 1995 (P.1), reliance has been placed on Regulation 63(ii) of the Food Corporation of India (Staff) Regulations 1971 (for brevity 'the

1971 Regulations'). The 1971 Regulations provide for holding of a regular departmental inquiry. However, as per Regulation 63(ii) if disciplinary authority is satisfied, for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry then such an inquiry could be dispensed with.

(2) In order to appreciate the controversy in its proper perceptive, few facts may first be noticed. The petitioner, after serving the Army for a period of 15 years, was appointed in the appellant-Corporation in 1972. In the year 1994, while he was working as Assistant Grade-III, he applied for 81 days leave to visit Canada. However, he left for Canada without the leave being sanctioned. Despite various reminders, he did not report for duty and *vide* impugned order dated 25th April, 1995 (P-1), he was removed from service. The punishing authority passed the order of removal in purported exercise of power under Regulation 63(ii) by dispensing with regular departmental inquiry, However, he reported for duty on 26th July, 1995, when he returned to India. He was confronted with the order of removal. The departmental remedies in the form of appeal and the statutory review availed by him did not find favour with the authorities. Eventually, he filed the writ petition challenging the order of his removal, which has been quashed by the learned Single Judge holding that the punishment of removal from service is grossly disproportionate to the nature of misconduct of over-staying the leave. The learned Single Judge has quoted the observations made by Hon'ble the Supreme Court in the case of **Union of India** *versus* **S.S. Ahluwalia (1).** Despite the fact that the observation made by Hon'ble the Supreme Court in the aforesaid judgment demarcate the area of interference in the quantum of punishment, the learned Single Judge substituted the punishment of removal from service to that of compulsory retirement with effect from 1st January, 1995. The impugned judgment further clarified that the petitioner would not be entitled to any emoluments for the period he remained absent.

(3) Mr. Hari Pal Verma, learned counsel for the appellant, Corporation has vehemently argued that there were sufficient reasons recorded in the order for dispensing with the inquiry as per the provision of Regulation 63(ii) of the 1971 Regulations. According to the learned counsel, the conclusion that regular departmental inquiry was not reasonably practicable

(1) 2007 (7) S.C.C. 257

to be held stems from the facts that various letters were sent to the writ petitioner-respondent asking him to resume his duty. Those letters were sent on his local as well as his address in Canada. Mr. Verma has maintained that the procedure adopted by the department was just and fair because when he applied for 'No Objection Certificate' in order to obtain passport, he had given an undertaking that he would not leave the country without obtaining sanction of the leave from the competent authority. However, neither he obtained sanction for leave nor any extension of leave was ever granted, although he kept on making applications for extension of leave from Canada. In the facts and circumstances, it was a fit case where it was safe to conclude that no regular departmental inquiry could reasonably be practicable to be held in the case of writ petitioner-respondent. It was a forgone conclusion that the writ petitioner-respondent had abandoned his post in order to stay in Canada.

(4) Mr. Rajiv Raina, learned counsel for the writ petitioner-Respondent has, however, argued that the reasons, which have been recorded for dispensing with the departmental inquiry, do not accord with Regulation 63(ii) of the 1971 Regulations. According to Mr. Raina, the practicability of holding departmental inquiry cannot be ascertained from the facts of issuance of various letters to the writ petitioner-respondent but it must emerge from the facts and circumstances which may show that no inquiry could possibly he held ; for example the witnesses would not come forward or that the Inquiry Officer would not be permitted to hold inquiry or the delinquent official is likely to disrupt the proceedings by resorting to violence etc. The construction of Regulation 63(ii) cannot be that in a case of over-stay of leave it could be concluded that inquiry is not practicable to be held. According to learned counsel, the writ petitioner respondent had factually reported for duty on 26th September, 1995 and there was no question of dispensing with the inquiry. Mr. Raina has supported the view expressed by the learned Single Judge that the punishment of removal in these circumstances was grossly disproportionate even if the mis-conduct of absence from duty or over-stay of leave is accepted.

(5) We have minutely examined the submissions made by the learned counsel for the parties and have perused the paper book as also the impugned judgment delivered by the learned Single Judge. It is patent that absence from duty or overstay of leave after expiry of sanctioned leave

is a serious misconduct. Regulation 32.A(7) of 1971 Regulations has listed various acts of omission and commission, which are to be treated as misconduct. The aforesaid Regulations would clearly spell out that absence without leave or overstaying the sanctioned leave is a misconduct and the same reads as under :

"32.A Misconduct :

Without prejudice to the generality of the term "Misconduct" the following acts of omission and commission shall be treated as misconduct :

xx xx xx xx

(7) Absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation."

A perusal of the aforesaid Regulation makes it evident that absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation is a misconduct.

(6) In order to inflict any major penalty, a detailed procedure for holding inquiry has been provided by Regulations 54 to 62. According to Regulation 54 (v) to (ix), major penalties can be inflicted for good and sufficient reasons on an employee of the Corporation. Regulation 58 provides that no major penalties as provided by Regulation 54 (v) to (ix) could be inflicted on an employee except after holding an inquiry in the manner provided in Regulation 58 and 59. These two Regulations i.e. 58 and 59 contain elaborate procedure for inflicting major penalty including removal from service. A perusal of Regulations 54 to 59 would reveal that the major penalty could be imposed by holding a regular departmental inquiry which includes the procedure of issuance of charge-sheet, supply of list of witnesses/documents by which charges are sought to be proved, supply of inquiry report and the opinion of the punishing authority resulting into issuance of final show cause notice. In the absence of aforesaid procedure provided by Regulations 54 to 59, no major penalty including penalty of reduction in rank could be inflicted on an employee of the Corporation. Admittedly, the aforesaid procedure has not been followed in the present case removing the writ petitioner-respondent from service.

(7) The basic reason for not following the procedure for imposition of major penalty disclosed in these proceeding by the Corporation is that the inquiry was not reasonably practicable to be held in accordance with these Regulations. Accordingly, the disciplinary authority was satisfied and, accordingly, dispensed with holding of inquiry in purported exercise of power derived from Regulation 63(ii), which reads thus :

"63. Special procedure in certain cases :

Notwithstanding anything contained in Regulation 58 to Regulation 62 :

xx xx xx xx xx

(ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these regulations.

xx xx xx xx xx

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

A perusal of the aforesaid Regulation would show that in cases where the disciplinary authority is satisfied for the reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided by Regulations 58 and 59 then disciplinary authority may consider the circumstances of each and every case and make such order as it may consider fit.

(8) It is in pursuance to the aforesaid Regulations that the punishing authority of the appellant-Corporation has passed the following self-speaking order, which reads as under :

"Whereas Shri Ajmer Singh Dhillon, AG-III (Depot) while working at FSD Ahmedgarh had applied for 81 days earned leave w.e.f. 16th May, 1994 to 4th August, 1994 with station leave permission for visiting Canada. The leave applied for was not sanctioned by the competent authority. But without waiting for formal permission of a competent authority he had proceeded

abroad. Shri Ajmer Singh Dhillon, AG-III (D) while submitting his request for grant of No Objection Certificate for applying for passport had given an undertaking that he would not leave the country without sanction of leave by the competent authority. Instead of complying with undertaking Shri Ajmer Singh Dhillon, AG-III (D) *vide* his application sought extension of leave for six months with effect from 4th August, 1994 to 3rd February, 1995. As per instructions contained in no objection certificate issued by Regional Office, FCI, Punjab, Chandigarh before proceeding abroad he should have taken prior permission from competent authority and can proceed to abroad only after getting the leave sanctioned but the said Shri Ajmer Singh Dhillon, AG-III (D) failed to comply with the lawful orders and directions of higher authorities.

Whereas Shri Ajmer Singh Dhillon, AG-III(D) was given an opportunity *vide* this office memorandum No. A/1(13953)/94/ E. II/1026 dated 3rd February, 1995 to resume duty within 10 days of this memorandum. The memorandum was sent at following available addresses through Registered post :

1. Shri Ajmer Singh Dhillon, AG-III(D), s/o Shri Channan Singh, V& PO Ghungrana, Thana Delhon, (Ludhiana).

2. Shri Ajmer Singh Dhillon, c/o Shri Baldev Singh Dhillon, 2097, Rogers Ave, Clearbrook, B.C. Canada.

Wheras the memorandum sent at his available address in India and received back undelivered with the following remarks of postal authority :—

"After repeated enquires addressee not met. Hence registered communication is being returned."

Whereas the said Shri Ajmer Singh Dhillon failed to resume his duty inspite of directions given to him and instead on fake ground trying to extend his leave. The sequence of the events as narrated above leads to inescapable conclusion that the said Shri Ajmer Singh Dhillon is not interested to serve the Corporation nor it is

practicable to hold enquiry into prolonged absence from duty as per provision of FCI (Staff) Regulations, 1971. Since adequate opportunity to him has already been afforded and the said official did not seem to be interested to avail the same, there obviously is no other alternative except to invoke the provisions of Regulation 63(ii) of FCI (Staff) Regulation, 1971 in his case.

Now, therefore, the undersigned in exercise of powers conferred under Regulation 56 of FCI (Staff) Regulations, 1971 (read with Regulations 63(ii) removes the said Shri Ajmer Singh Dhillon AG-III(D) from the service of the FCI from the date of his last attendance."

(9) It is well settled and judicially recognised principle of law that absence from duty is a misconduct. If a Regulation provides for automatic termination of service of a Government employee on the ground of absence from duty then would be hit by Article 14 and 16(1) of the Constitution as has been held by a Constitution Bench of Hon'ble the Supreme Court in the case of **Jai Shanker** *versus* **State of Rajasthan (2).** In that case, the delinquent employee was a Head Warder and he proceeded on leave for a period of two months. Thereafter he applied for extension of leave on medical ground for 20 days and again for a period of 10 days. Still further, he asked for extension for another month and continued to apply for leave. Eventually, the Deputy Inspector General of Prison passed an order discharging him from service. The delinquent employee exhausted all the statutory departmental remedies of appeal and review etc. and also lost before the courts below. Eventually, his appeal before Hon'ble the Supreme Court was considered by a Constitution Bench where the authority raised an argument that in accordance with Regulation 13, which was applicable in that case, an individual who absents himself without permission after the end of his leave must be regarded to have sacrificed his appointment. The Constitution Bench of Hon'ble the Supreme Court repelled the contention that the Regulation in that case operated automatically and there was no

(2) AIR 1966 S.C. 492

question of removal from service because as per Regulation 13, the delinquent employee must be regarded to have sacrificed his appointment. The aforesaid argument was rejected by observing as under :—

> ".....The Regulation, no doubt speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from services on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art. 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Art. 311 and this is what has happened here." (emphasis added).

(10) On the basis of Regulations 58 and 59 as well as on principles and precdents, it becomes evident that removal from service without holding a regular departmental inquiry would be impermissible and therefore, the order of removal dated 25th April, 1995 (P-1) is liable to be set aside.

(11) The question then is whether dispensing with inquiry as contemplated by Regulations 58 and 59 in pursuance to the power conferred on respondent No. 4 by Regulation 63(ii) is sustainable in law. The provisions of Regulation 63(ii) are akin to Article 311(2) (b) of the Constitution. Therefore, the interpretation given to provisions of Article 311 (2) (b) would *ipso facto* govern the parameters for dispensing with inquiry under Regulation 63(ii) of the 1971 Regulations. The aforesaid provision came up for consideration of Hon'ble the Supreme Court in the case of **Chief Security Officer** *versus* **Singasan Rabi Das (3)** where the reasons for dispensing with inquiry given by the disciplinary authority that if an inquiry is held then it would not be feasible or desirable to procure witnesses because that would expose them and make them ineffective in future. Another reason given was ; that if witnesses were asked to appear at a confronted inquiry they were likely to suffer personal humiliation and insults and that their family members might become targets of acts of violence. Hon'ble the Supreme Court rejected the aforesaid reason as insufficient and irrelevant. The view of Hon'ble the Supreme Court is that it is not understood "how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry." Likewise, the reasons were found insufficient in the cases of **Sudesh Kumar** *versus* **State of Haryana (4) Tarsem Singh** *versus* **State of Punjab (5).**

(12) When we examine the facts of the present case in the light of the principles laid down in the aforesaid judgments for dispensing with inquiry, it becomes evident that the reasons recorded by the authorities in its order dated 25th April, 1995 (P- 1) are wholly irrelevant and insufficient because after recording the factum of absence from duty and the undertaking given by the writ petitioner-respondent at the time of securing No Objection

(3) (1991) 1 S.C.C. 729
(4) (2005) 11 S.C.C. 525
(5) (2006) 13 S.C.C. 581

Certificate for the purposes of obtaining passport to the effect that the writ petitioner-respondent would not leave the country without prior permission from the authorities. The disciplinary authority set out the reasons by observing that the writ petitioner-respondent had failed to resume duty inspite of direction given to him and was trying to seek extension of his stay abroad on the fake ground. The order proceeded to hold that it is inescapable conclusion that the writ petitioner-respondent was not interested to serve the Corporation nor it was practicable to hold inquiry into prolonged absence from duty as per provision of the 1971 Regulation. The impugned order further states that the adequate opportunity stood afforded to the writ petitioner-respondent and he was not interested to avail the same. The above stated reasons are not relevant for the purpose of coming to the conclusion that it was not reasonably practicable to hold a departmental inquiry in accordance with the Regulations 58 and 59. A close perusal of Regulation 58 (11) of the 1971 Regulations would show that in case, a delinquent employee fails to appear within the specified time after issuance of charge-sheet etc. or refuses or omits to plead then the inquiring authority is well within its right to require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge. The aforesaid Regulation clearly postulates initation of *exparte* proceeding against the delinquent employee and therefore, it is no answer to the mandatory requirement of Regulation 58 which provides for holding of a regular departmental inquiry that it is not reasonably practicable to do so. Moreover, the reasons are wholly irrelevant and insufficient and cannot constitute the basis for dispensing with the inquiry. Therefore, order passed by the punishing authority dated 25th April, 1995 (P-1) is liable to be set aside.

(13) The approach adopted by the learned Single Judge does not commend itself to us because the quantum of punishment cannot be interfered by the Court as is well settled by Hon'ble the Supreme Court in **Union of India** *versus* **Parma Nanda (6) and State of Karnataka** *versus* **H. Nagaraj (7).** However, such an interference would be within the parameters of law if the procedure for inflicting the punishment of removal has not been followed and the principles of natural justice have been violated. The Courts

(6) (1989) 2 S.C.C. 177
(7) (1998) 9 S.C.C. 671

are fully competent to interfere with the order of punishment in such like circumstances. In a seven Judge Bench judgment of Hon'ble the Supreme Court in the case of **Remeshwar Prasad (VI)** *versus* **Union of India (8)** a statement of Wednesbury principle has been made in para 242, which reads as under :—

> "242. The Wednesbury **(Associated Provincial Picture Houses Ltd.,** *versus* **Wednesbury Corpn., (1948) 1KB 223)** principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it."

(14) When we apply the aforesaid principle to the facts of the present case, it is spelt out that in the absence of any regular departmental inquiry in accordance of Regulation 58 read with Regulation 32(A)(7), the order of removal cannot be sustained and likewise the subsequent order passed in appeal and review can also not be sustained. The order dated 25th April, 1995 (P. 1), the appellate order dated 10th February, 1998 (P.4) and the order passed in statutory review dated 3rd November, 1998 (P.6) have been rightly quashed by the learned Single Judge. Accordingly, the conclusion reached by learned Single Judge is affirmed. The petitioner would be deemed to have compulsory retired from service from the date of his removal i.e. 25th April, 1995. Accordingly, the appeal fails and is dismissed.

(15) The appellant shall disburse the pension and other retiral benefits of the writ petitioner-respondent expeditiously, preferably within a period of three months from the date of receipt of a copy of this order.

R.N.R.

(8) (2006) 2 S.C.C. 1