

FOOD CORPORATION OF INDIA & ORS

v.

SARAT CHANDRA GOSWAMI

(Civil Appeal Nos. 7201-7202 of 2008)

MAY 21, 2014

[DIPAK MISRA AND N.V. RAMANA, JJ.]

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Food Corporation of India (Staff) Regulations, 1971 – Regulation 60(1)(b) – Procedure for imposing minor penalties – Interpretation of – Held: 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 – However, the discretion conferred under the Regulation 60(1)(b) if exercised in a arbitrary manner, the employee can challenge the same before the appropriate forum – 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 – 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 – Thus, it has to be in writing – On facts disciplinary authority not complied with Regulation 60(1)(b), thus proceedings vitiated – High Court rightly quashed the order of punishment and show cause notice – Service Law.

Disciplinary proceedings were initiated against the respondent-District Manager, Food Corporation of India under Regulation 60 of the Food Corporation of India (Staff) Regulations, 1971, for failure in his duties. The Chairman-cum-Managing Director carried the preliminary inquiry, issued show cause notice and imposed fine and censure against the respondent. The respondent filed writ petition alleging that the disciplinary authority had not complied with Regulation 60(1)(b) of the Regulations

A and, thus, the whole proceeding was vitiated. The High Court quashed the order of punishment as well as the show cause notice. The Division Bench upheld the order. Hence, the instant appeal.

B Dismissing the appeals, the Court

C HELD: 1.1. On a perusal of the order passed by the Single Judge of the High Court, the Court took note of the fact that there was no expression or formation of opinion; and that the counsel for the Corporation had
 D 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
 E *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 60(1)(b) of the Food Corporation of India (Staff) Regulations, 1971 if exercised in a arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. The Court opined that the Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is
 F necessary to hold an inquiry in a particular case or not. [Para 9] [97-C-F]

G 1.2. Once it is held that there has to be formation of opinion and such an opinion is assailable in a legal forum, 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

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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 correctly understood
the principle stated in *A. Prabhakar Rao* and there is no
fault with the same. [Para 10] [97-G-H; 98-A-B]

**Food Corporation of India, Hyderabad & Ors. v. A.
Pralhada Rao & Anr (2001) 1 SCC 165:2000 (4) Suppl.
SCR 330-Relied on.*

Case Law Reference :

(2001) 1 SCC 165 Relied on Para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
7201-7202 of 2008.

From the Judgment and Order dated 11.10.2007 in F.M.A
No. 1187 and C.A..N. No. 3130 of 2007 of the High Court of
Calcutta.

Dharmendra Kumar Sinha, Abhijeet Chatterjee for the
appellant.

Soumitra G. Chaudhuri, Abhijit Sengupta for the
respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. 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

A 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.

B 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
C Regulations and, therefore, the whole proceeding was vitiated. The learned Single Judge appreciating the facts and advertent to the submissions raised at the Bar came to hold that the disciplinary authority, the Chairman-cum-Managing Director,
D 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.

E 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.

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

G 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:

H 1. (2001) 1 SCC 165.

(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: A

(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; B

(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; C

(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

(d) recording a finding on each imputation of misconduct or misbehaviour. E

(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, 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." F

6. The interpretation of the said Regulation engaged the H

A attention of this Court in *A. Prahalada Rao* (supra). A two-Judge Bench, advertent 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:

B “ In our view, on the basis of the allegation that Food
C Corporation of India is misusing its power of imposing
D minor penalties, the Regulation cannot be interpreted
E contrary to its language. Regulation 60(1)(b) mandates the
F disciplinary authority to form its opinion whether it is
G 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 or 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.”

H 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.

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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.

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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.

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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

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A 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.

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

Nidhi Jain

Appeals dismissed.