

Bhagwati Prasad Dubey

Vs

Food Corporation of India and Another

Civil Appeal No. 10642 of 1983

(E. S. Venkataramiah, S. Ranganathan JJ)

29.10.1987

JUDGMENT

RANGANATHAN, J. –

1. This is an appeal by special leave from an order dated September 2, 1980 of the Allahabad High Court. By the above order, the High Court had dismissed in limine the writ petition filed by the appellant challenging his removal from the service of the Food Corporation of India (hereinafter referred to as 'the Corporation').
2. The appellant was the District Manager of the Corporation at Allahabad from December 1975 till April 1978. During the period from December 1975 till the middle of May 1976, he also held additional charge as its District Manager at Gorakhpur. The charge against the appellant was that during the period he functioned as District Manager, Allahabad, "he failed to maintain absolute integrity and devotion of duty and committed misconduct inasmuch as he showed undue favour to M/s Iqbal Ahmed Ansari by purchasing pateramats from the said firm at the rate of Rs. 7 per 100 sq. ft. up to May 15, 1976 and after that at Rs. 8.20 per 100 sq. ft. without calling for any questions and by ignoring the rate fixed by the Regional Manager, Lucknow at Rs. 6.74 per 10 square metres and thus caused total loss of Rs. 24,900.35 to the Corporation". An inquiry on the above charge was conducted by an officer of the Central Vigilance Commission. He found that the appellant knew that another firm, M/s D. N. Purwar, had supplied two consignments at the rate of Rs. 6.74 per 100 sq. ft. (slightly above the ceiling prescribed by the Regional Office) and that this firm had also given a letter on July 1, 1976 expressing its willingness to supply more pateramats on the same rates, terms and conditions. But despite this, the appellant had not made any attempts to negotiate and settle and rate with M/s Iqbal Ahmed Ansari but agreed to give the said supplier the rate demanded by him on July 16, 1976 viz. Rs. 7 per 100 sq. ft. till May 11, 1976 and Rs. 8.20 per 100 sq. ft. thereafter. The officer noted that the Gorakhpur office had purchased pateramats at the same rates but he considered that this had been forced on the appellant's successor at Gorakhpur who had no alternative but to have the supplies already taken in by the appellant regularised. He, therefore, held that the charge against the appellant was substantiated by the evidence. The Disciplinary Authority accepted the report of the Enquiry Officer and, by an order dated June 9, 1980, the Board of Directors of the Corporation imposed the major penalty of removal from service on the petitioner.
3. Several contentions had been raised in the petition for special leave to the court. We, however, consider it unnecessary to go into these contentions, as, in our view, the order of removal of the petitioner cannot be sustained. Normally this Court does not interfere with findings of fact arrived at in disciplinary proceedings. But leave to appeal having been granted, we have looked into the matter and find that in the present case the Enquiry Officer has reached his conclusion on no evidence and

without a proper appreciation of the background and circumstances in which the appellant had to function at the relevant time.

4. The Corporation purchased pateramats for the purpose of storing foodgrains in its godowns and preventing the grains from being affected by dampness. Procurement of foodgrains by the Corporation commences from the month of April and is at its peak during the months of May and June. In the year 1976, with which we are concerned, there had been a bumper crop. Special trains loaded with foodgrains had started arriving at the depots of the FCI. The grains had to be unloaded within a few hours failing which huge liability for demurrage would accumulate. The appellant, as the District Manager at Allahabad and Gorakhpur, had to procure a huge quantity of pateramats with maximum expedition during a short period. The evidence shows that the appellant was considered to have discharged this duty so efficiently his work received high appreciation from the Head Office and the appellant was also given two advance increments under an Incentive Award Scheme.

5. At the commencement of the season on April 7, 1976, the Regional Office of the Corporation at Lucknow had directed the district offices to purchase pateramats at the rate of Rs. 6.74 per 10 sq. metres. This was on the basis of tenders that had been invited in February 1976. The appellant sent from Gorakhpur a telegram on April 26, 1976 to the Regional Office stating that no pateramats were available at the prescribed rates and requesting that the Regional Office should either immediately supply the necessary pateramats by road or grant permission to purchase them at market rates. There was no reply to this telegram till May 26, 1976. The Enquiry Officer makes a point that the appellant had not placed any evidence before him showing that he had informed the Regional Office in his capacity as District Manager, Allahabad that he was not in a position to get supplies at the ceiling rates. This is totally meaningless as it is common ground that, at the relevant time, the petitioner was in charge of both Allahabad and Gorakhpur districts and, further, that the rates of supply in both these districts were the same. In the absence of any instructions from the Regional Office, the appellant proceeded to acquire the mats from M/s Iqbal Ahmed Ansari who was able to supply the mats in the quantities required by the appellant. It is on record that this firm's supply was to the tune of 11,90,570 sq. ft. between April 28, 1976 and June 11, 1976. He got this done on the understanding that the firm would be paid at the rates at which the State Warehousing Corporation (SWC) purchased the pateramats required by it and this is what has ultimately been done.

6. The main criticism against the appellant was that he paid higher rates to M/s. Iqbal Ahmed Ansari although M/s. D. N. Purwar were prepared to supply the same commodity at slightly above the ceiling rates prescribed by the Regional Office. That firm had supplied pateramats during the month of May 1976 to the Naini and Pratapgarh depots of the Corporation at the above rates. It is also pointed out that M/s. D. N. Purwar had written a letter on July 1, 1976 stating that it was prepared to make further supplies at the same rates. This criticism, we find, is completely without force. In the first place, M/s. Purwar was obviously a small scale supplier who had supplied only 55,530 sq. ft. of mats. Secondly, while it is true that it wrote a letter on July 1, 1976 promising further supplies at the same rates, it is also an admitted fact that within five days thereafter, namely, on July 5, 1976, it had withdrawn the offer. The Enquiry Officer comments that the appellant had not examined any representative of M/s. D. N. Purwar. On the other hand, as pointed out by the learned counsel of the appellant, M/s. D. N. Purwar had been cited as a witness on behalf of the department but the department took no steps to produce any witness from that firm either to explain the circumstances in which it had made the offer on July 1, 1976 or the reasons why it chose to withdraw the offer within three or four days of making the same. There is, thus, nothing to show that supplies to the extent needed could have been obtained at the rates prescribed or even from M/s. D. N. Purwar. In fact, the District Manager at Lucknow, who was one of the witnesses examined by the department

deposes that, "to the best of his recollection, none of the districts in U.P. purchased pateramats at the original ceiling price advised in the letter of April 1976 for their full and continuous requirements". We are, therefore, of the opinion that the petitioner cannot be punished for misconduct solely on the basis of the supplies made and offer allegedly made by M/s. D. N. Purwar.

7. We have already pointed out the circumstances in which the appellant was constrained to purchase a huge quantity of mats. Under the pressure of necessity, he acted to the best of his judgment. He ultimately sanctioned payment only at the rates at which another public undertaking, namely, the SWC, had acquired the same goods. There is nothing whatever on record to show that the appellant had any special reasons for favouring M/s. Iqbal Ahmed Ansari. It is clear that, at worst, the appellant can only be accused of an error of judgment.

8. For the above reasons, we are of the opinion that the conclusion of the Enquiry Officer as well as the order of removal of the appellant dated June 9, 1980 have to be quashed. It consequently follows that the order of the High Court dated September 2, 1980 should also be and is set aside. Counsel for the appellant submitted that the appellant is on the verge of retirement and that he would therefore not insist on being reinstated in service. We therefore direct that the petitioner will not be entitled to reinstatement but that he should be paid the salary due to him for the period June 9, 1980 till date.

9. The appeal is allowed. In the circumstances, however, we make no order regarding costs.

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