

CASE NO.:
Review Petition (civil) 285 of 2007

PETITIONER:
Nahar Singh

RESPONDENT:
Food Corporation of India & Ors

DATE OF JUDGMENT: 31/03/2008

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
REPORTABLE

REVIEW PETITION (C) NO.285 OF 2007
IN
CIVIL APPEAL NO 2273 OF 2008
(Arising out of SLP (C) No.20341 OF 2005)

S.B. Sinha, J.

1. Order dated 12.2.2007 is recalled.
2. Leave granted.
3. Appellant was an Assistant Grade-III (AG-III) in one of the Food Storage Depots of Food Corporation of India. 295 bags of wheat and 195 bags BTB Class gunny bags were found missing when special physical verification was conducted by the physical verification squad during the period 7.1.1980 and 22.1.1980.
4. One Bhoop Singh was the unit in-charge of the godown. Appellant, Rattan Singh and one Kunwar Singh were working thereat as the Assistant Grades Clerk. Shortages in the said depots were suspected. The godowns were sealed. Physical verifications were made by Physical Verification Squad (PVS). Stock checking exercises were carried out in the said godown during the period 7.1.1980 to 22.1.1980. 295 bags of wheat and 195 bags of gunnies in Unit No.1 of which Bhoop Singh was the in-charge, were found short.

The contents of the vigilance report were verified by one Shri Panchhi. Apart from Bhoop Singh, Nahar Singh and Kunwar Singh were posted there. Shortages and excesses were found in 12 stacks of wheat. The total shortages were found to be 295 bags of wheat and the excess amounted to 11 bags only. Whereas shortages were found on the top layers of the stacks which were not visible from the ground, except Stack No.4/16 and 1/11, which were from partly used stacks.

5. Disciplinary proceedings were initiated against the aforementioned Bhoop Singh and others.

The imputation of charges drawn against the appellant were on the basis of the report of the said inspection carried out by the vigilance department as also the one submitted by Shri I.d. Nautial, Assistant Manager (Vigilance) containing compilation of the statements made by the entire staff of the Food Storage Depot, Sahibabad. Appellant was found guilty of the charges on the basis of the report of the enquiry officer which was submitted before the disciplinary authority. The disciplinary authority, by an order dated 18.4.1986 imposed the penalty of compulsory retirement from services of the Corporation. A departmental appeal preferred thereagainst was dismissed by the Appellate Authority in September 1986. A review application filed thereagaist was also dismissed on 22.11.1987.

6. Appellant thereafter filed a writ petition before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which by reason of the impugned judgment dated 17.5.2005 has been dismissed.

7. Mr. Mishra, learned senior counsel appearing on behalf of the appellant, would contend that from a perusal of the enquiry report, it would be evident that the appellant had been held responsible for the shortages only on the ground that he had not informed thereabout to the appropriate authority and in that view of the matter the impugned judgment is wholly unsustainable. The learned counsel would urge that all the officers concerned have found only Bhoop Singh responsible for the shortages and the appellant had been proceeded against in only on surmises and conjunctures. It was urged that the disciplinary authority had passed the impugned order without any application of mind and, thus, the same is liable to be set aside.

8. We may notice that the special leave petition filed by Bhoop Singh has been dismissed summarily by an order dated 12.2.2007.

9. The SLP preferred by the appellant was also listed on the same day but as nobody had appeared, the said special SLP was dismissed for default. Appellant filed an application for review alleging that he, as also his lawyer, was misled in view of the fact that the matter was shown to be listed on 19.2.2007 as per COURTNIC enquiry. We had called for a report from the Registry of the Supreme Court and it appears that the contention of the appellant was not correct. It furthermore appears that the parties had been given notice with regard to the date of listing of the matter.

10. We have, however, entertained the review application and heard the appellant on merits.

11. It may be true that Bhoop Singh was in-charge of the godown but the manner in which the shortages have occurred categorically goes to show that it could not have been possible without the active support and/or connivance of the appellant and other staff. Whereas in the report of Shri I.D. Nautial, full responsibility for shortage of 195 gunnies was placed on Bhoop Singh, as regards shortages of 295 bags of wheat, it was stated :

"Keeping in view the general observation and various statements, the involvement of Unit In charge, AM (Depot) besides some Unit No.1 Staff and watchman may not be ruled out."

12. Before the enquiry officer, the report of Shri Panchhi was proved. He was examined as a witness on behalf of the department.

In his report, inter alia, it was held by the enquiry officer :

"(C) Shri Nahar Singh is also one of the officials who did not want the P.V. to be done by 'breaking of stacks' and had objected to it.

This is the statement of Shri H.S. Panchhi during cross examination by Shri Suraj Bhan, AM(D) and Shri Bhoop Singh Unit In-charge.

(D) The way shortage have been noticed ruled out theft because shortages/excess were detected by the P.V. team in 12 different stacks in 4 different Chambers (and top layers were so rearranged that on periphery no shortages were visible until some one went to the top of the stack). The thieves would not operate in such a way nor it is possible for Unit In-charge alone to create shortages in 12 different stacks in 4 different chambers all alone without the knowledge and active involvement of his unit staff.

(E) The Joint representation by the Unit In-charge and his staff including the C.O. that keys of the godown was kept in the table drawers of the AM(D) is another proof of their connivance. This plea is not convincing and has been apparently made to absolve themselves from the status of

custodian and the responsibility for the shortages in stacks. The joint representation dated 22.1.1980 is one of the Annexure of Exb.P-3 and P.W. has been cross examined in the last para of the proceedings at page 4. The reasons why the 'key-theory' does not hold ground are as under :

(1) to (3) \005\005.

(4). Also, it is interesting that such a letter should have been drafted on 22.1.1980, that is, the day when the PV was concluded. This statement by Shri Bhoop Singh, AG-I (D) is nothing but an after thought in connivance with his staff to involve Shri Suraj Bhan, AM(D). To my mind after Shri Bhoop Singh and company had come to realize that being the custodian as well as operating staff they will be held responsible for such huge losses to the Corporation, they thought that the responsibility may be shifted on AM (D) if they could jointly allege that all keys of FSD, Sahibabad used to be kept in the custody of the AM(D). But as already stated above, they have failed to influence Shri Panchhi because Shri Panchhi has not only denied receipt of this photocopy letter dated 22.1.1980 but he has categorically stated that "the keys of the godowns are kept in the custody of godown In-charge himself."

13. It was concluded that the appellant was also responsible for shortages of 295 bags of wheat. It is, therefore, not correct to contend that the appellant had nothing to do with the shortages of wheat. His conduct during the raid, as also the manner in which the shortages have occurred, clearly go to show that without his active support, Bhoop Singh alone could not have caused the said misconduct.

14. We, therefore, are of the opinion that the report of the enquiry officer cannot be said to be perverse or unreasonable. Furthermore, the order of the disciplinary authority has been affirmed by the appellate authority. A review petition filed by the appellant has also been dismissed by the appropriate authority.. The High Court also, by reason of the impugned judgment, has also rightly refused to interfere in the matter.

15. We, keeping in view the materials placed before us, are of the opinion that no cause has been made out to differ with the said findings.

16. The appeal, therefore, is dismissed but with no order as to costs.