

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 1070/2001

Judgment delivered on: February 26,2009

Abhey Ram Petitioner

Through: Mr. Gulab Chandra, Advocate for petitioner.

versus

Food Corporation of India & Anr. Respondents

Through: Mr. Jagat Singh, Advocate for respondent.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1 . By way of the present petition filed under Article 226 of the Constitution, the petitioner seeks issuance of appropriate writ to

quash the order passed by the Managing Director on 25.5.2000, under Regulation 56 of the FCI (Staff) Regulation, 1971, whereby the petitioner was held guilty and an order to recover Rs.55,800/- from the petitioner was passed. The petitioner also assails the order of the Chairman, FCI dated 11.10.2000 under Regulation 72 of the FCI (Staff) Regulation, 1971 whereby appeal of the petitioner from order dated 25.5.2000 of the Managing Director was dismissed.

2 . The brief facts of the case relevant for deciding the present petition are as under:

The petitioner Mr. Abhey Ram was working as District Manager, FCI at Kurukshetra between the period 9.9.91 to 19.10.93. A memorandum dated 20.8.99 was received by him whereby he was charged that while he was functioning as a Distt. Manager (Kurukshetra) he did not act in the best interest of the Corporation and resultantly FCI suffered losses to the tune of Rs.1,39,500/- upto 3.11.95. The FCI had entered into a lease agreement for the purpose of setting up a district office at Kurukshetra on 31.10.85 at the rent of Rs.1.25 per sq. feet for 3100 sq. feet area (Rs.3875 p.m.) contrary to the legal opinion. The permission for extension of lease

was sought from District Office, Kurukshetra w.e.f. 4.11.90 to 3.11.95. Due to non-renewal of the lease agreement w.e.f. 3.11.90, the owner demanded a hike in rent from Rs. 1.25 per sq. feet to Rs.2 per sq. feet. The petitioner approached the Regional Manager in this regard who discussed the same with the Zonal Manager (North), who concurred that the Corporation should accede to the request of the owner and therefore, entered into a fresh lease with hiked rate. The petitioner was thus blamed for the said hike in rent and therefore for the loss occasioned to the FCI for paying rent @Rs.2 per sq. feet. In reply to the said memorandum petitioner made a representation to the Executive Director. On 27.3.2000 petitioner received a memorandum whereby respondent no.2 informed about initiation of departmental proceedings against him under Regulation 60 of FCI (Staff) Regulation, 1991. On 25. 5.2000 petitioner was held guilty under the said proceedings and an order was also made for recovery of Rs. 55,800/- from him by respondent no.2. Aggrieved with the same the petitioner preferred an appeal to the respondent no.1, which was dismissed. Challenging the said order the petitioner preferred the present petition.

3 . Counsel for the petitioner submits that the penalty of Rs.55,800/- was wrongly and illegally imposed upon the petitioner as on the relevant date, when the lease with the landlord was to be extended, the petitioner was not posted as District Manager, FCI, Kurukshetra. The contention of the counsel for the petitioner is that the lease with the landlord for premises bearing No. 16, Sector-13, Urban Estate, Kurukshetra which was under lease with FCI was initially valid for a period of five years w.e.f. 04.11.1985 to 3.11.1990. The Regional Office, Haryana vide letter No. B/4/9/79/1808 dated 10.4.1991 granted permission for extension of the lease period w.e.f. 4.11.1990 to 3.11.1995 whereafter the landlord had given a notice for increase in the rent from 1.25 per sq. feet to 2/- per sq. feet. Counsel further submits that the enquiry was also held against Mr. Nityanand, Regional Manager for the same charges but he was burdened to pay only 10% of the total loss i.e. Rs.30,950/- and upon preferring an appeal he was completely exonerated while in the case of the petitioner punishment of 40% of the loss i.e. Rs.55,800/- was imposed and upon preferring an appeal his appeal was dismissed by the Appellate Authority. Counsel thus submits that once the charge

against both the officials were the same the appellate authority committed error in taking two different views holding the appellant liable to pay the said penalty while reducing the penalty amount of the Nityanand, Regional Manager up to 10% of the total loss. Counsel thus submits that the penalty imposed by the respondent is absolutely illegal.

4 . Mr. Jagat Singh, counsel for the respondent, on the other hand, submits that the petitioner was the concerned officer posted at Kurukshetra being in charge of that area in his capacity as a District Manager and he had recommended the enhancement of the rent from Rs.1.25 per sq. feet to Rs.2/- per sq. feet ignoring the terms of the lease deed. Mr. Jagat Singh further submits that it was for the petitioner to have persuaded the landlord to the terms of the lease deed instead of recommending the enhancement in the rate of rent which led to the loss of Rs.1,39,500/- to FCI. Counsel thus submits that the order passed against the petitioner is legal and justified.

5 . I have heard counsel for the parties and perused the record.

6 . Indisputably, the initial five years of lease came to an end on 3.11.1990 and on the expiry of the said period the petitioner was not holding the charge of District Office as he was posted there only from 9.9.1991 till 19.10.1993. Primarily, it was the duty of the District Manager who was posted on the relevant date when the lease period came to an end as it is then only the steps were required to be taken by the lessee to seek renewal of the lease period. The petitioner entered the scene much later, after the expiry of the lease period and taking advantage of the situation, the lessor demanded enhancement in the rent since the lease was not renewed. The petitioner accordingly recommended the enhancement of the rent from Rs.1.25 per sq. feet to Rs.2/- per sq. feet in conformity with the demand raised by the landlord. Disciplinary proceedings on account of the loss sustained by the FCI due to enhancement in the rent were initiated against the petitioner as well as Mr. Nityanand, Regional Manager, FCI. The main allegation against the petitioner is that he ignored the legal opinion of the empanelled advocate despite the same being brought to his notice by the District Office. The Disciplinary Authority thus felt that the loss of Rs.1,39,500/- was due

to the lapse of the petitioner. It was also observed by the Disciplinary Authority that the payment towards the increased rent was agreed to the detriment of the interest of the Corporation and there was no compulsion for the petitioner to have agreed for the increase in the rate of rent when the legal opinion was to the contrary.

7 . It is not in controversy that the disciplinary proceedings were also initiated against Shri Nityanand, the then Regional Officer, Haryana, and as against him penalty of 10% of the total loss was imposed although the charges against him were also identical. It is also not in dispute that the appellate authority vide orders dated 17.10.2000 had completely exonerated the said Nityanand while the appeal filed by the petitioner was dismissed by the Appellate Authority. Once charges against the petitioner as well as the said Nityanand were almost identical therefore no separate penalties could have been awarded by the Disciplinary Authority and no different decision could have been taken by the Appellate Authority in the order passed by the Appellate Authority. In this regard, the Division Bench of this court dealing with a similar issue, in **Union of India Vs. Tejvir Singh -2006 (132) DLT 104** observed as under:-

4. We have heard learned Counsel for the parties who have taken us through the inquiry proceedings and the evidence recorded. We are, prima facie, of the view that evidence as recorded is indicative of these two having taken an active role in the misconduct, and therefore, it cannot be said that they should not have been awarded punishment different from others who have been given reduction in rank/pay.

Be that as it may, the petitioner was not Incharge of the District on the relevant date when the decision was required to be taken by the lessee for the extension of the lease period. The petitioner was posted at the place later i.e. on 9.1.1991 and therefore, I do not find that the blame for the loss as occasioned to the respondent FCI could have been fastened upon the petitioner. No doubt the petitioner should have taken care to respect the legal opinion given by the counsel representing the FCI and should have also taken a prior permission before taking a decision to enhance the rent but in any event of the matter the petitioner cannot be held responsible for the loss caused to the respondent.

8 . In the light of the above, the petition is allowed. The order dated 25.5.2000 of the Disciplinary Authority and order dated 11.10.2000 of the Appellate Authority are set aside. The respondent is directed to pay back the amount recovered from the petitioner within a period of one month.

With these directions, the petition is disposed of.

February 26, 2009
pkv

KAILASH GAMBHIR, J.