

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1052 of 2015

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Sri Shubhranshu S/o Sri Ram Bali Prasad Chaurasia Flat No. - 401 Klayani
Complex Near Lavkush Tower Exhibition Road, P.S. - Ghandhi Maidan, District -
Patna.

.... Petitioner/s

Versus

1. The Food Corporation of India through the Chairman, 16-20 Barakhamba Lane, New Delhi.
2. The Chairman, Food Corporation of India 16-20 Barakhamba Lane, New Delhi.
3. The Managing Director Food Corporation of India 16-20 Barakhamba Lane New Delhi.
4. The Executive Director (East Zone) Food Corporation of India 10-A, Middleton Row Kolkata-71.
5. The General Manager (Region) Food Corporation of India Regional Office Arunanchal Building Exhibition Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur

For the Respondent/s : Mr. Prabhakar Tekriwal

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 20-04-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:-

- "1(I) *Order dated 26.08.2014 passed by the Board of Directors under the power conferred under clause 74 of the Service regulation of the Food corporation of India whereby review petition dated 5.7.2013 is hereby dismissed and affirmed the order of punishment passed by the appellate as well as disciplinary authority vide order dated*
- (II) *Order dated passed by appellate authority whereby the order of punishment dated passed by the*

Disciplinary authority has been affirmed and appeal has been dismissed.

- (III) *Order dated 10/13.February 2012 passed by the Disciplinary authority whereby penalty for "Reduction of Three stages in the present scale of pay for a period of Three Years. During the said period of Three Years, the officer will not earn increments of pay. On the expiry of the said period of Three years, the reduction will not have the effect of postponing the future increments of pay. The said penalty will take effect after the period of operation of the penalty awarded to the C.O. by order No. Vig.4(12)/05-PB-vol.II dated 09.03.2007 has come to an end."*

3. Mr. Ajay Kumar Thakur, learned counsel for the petitioner, in support of the aforementioned prayer, has raised a simple but far reaching question namely as to whether the disciplinary authority, having already passed an order of punishment, can review such order of punishment even in absence of power of review vested in him under the relevant statutes/disciplinary control appeal rules and secondly as to whether such review could have been made even without affording an opportunity of hearing to the petitioner.

4. As a matter of fact, when this case was heard earlier on 16.2.2015, learned counsel for the Food Corporation of India (hereinafter to be referred to as 'the FCI') was specifically asked to file his counter affidavit confining to the aforesaid issue.

5. Today, Mr. Tekriwal, learned counsel for the FCI has firstly produced the circular no. 59/1986 laying down that the FCI has



adopted the Rules, Regulations, Instructions, Orders issued by the Central Government from time to time. Mr. Tekriwal on the basis of this notification of the FCI dated 22.9.1986 has proceeded that the power of revision and review having been provided in part (VIII) of the Central Civil Services Classification, Control and Appeal Rules could be well exercised by the authorities of the FCI in view of the adoption made by the aforesaid circular dated 22.9.1986. In this regard, he has also placed reliance on Government of India instruction which has been made Annexure-C to the counter affidavit.

6. In the considered opinion of this Court, the power of revision and review has never been vested in the disciplinary authority. That would become very clear from reading of the Rule-29 of the CCS CCA Rules. The same in fact has also been incorporated in the Food Corporation of India (Staff) Regulations, 1971 wherein under Regulation 74, the power of review has been laid down as follows:-

"74. Review:

(1) (Notwithstanding anything contained in these regulations, the Board may, at any time either on its own motion or otherwise, call for the records of any inquiry and review any order made under these regulations), and

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty

where no penalty has been imposed; or

- (c) *Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*

- (d) *pass such other orders as it may deem fit;*

Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Regulation 54 or to enhance the penalty imposed by the order sought to be viewed to any of the penalties specified in those clauses; no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation 58.

- (2) *No proceeding for review shall be commenced until after:*

- i) *the expiry of the period of limitation for an appeal, or*
- ii) *the disposal of the appeal, where any such appeal has been preferred.*

- (3) *An application for review shall be dealt with in the same manner as if it were an appeal under these regulations*

- (4) *Powers similar to those specified in clause(1) above may be exercised by the (Chairman), Managing Director, Zonal Manager and Regional Manager(Additional/Joint Manager) in respect of orders passed by authorities subordinate to them."*



7. As would be evident, the power of review does not lie with the disciplinary authority and in fact whatever has been mentioned in the Government of India instruction quoted below Rule-29 in Swamy's Publication whose photocopy has been produced by way of Annexure-C to the counter affidavit will also clearly go to show that in Rule 130 of the Post and Telegraph Manual, it was clearly mentioned that the disciplinary authority cannot itself set aside its own orders even if it discovers any procedural irregularity and it has to in fact report the matter to the appellate authority or the competent reviewing authority. Once, therefore, this becomes clear that the circular of the Director General of Post and Telegraph dated 22.7.1953 was issued at a point of time wherein certain decision of Ministry of Law were taken into consideration. Those decisions of Post and Telegraph Department may have been applicable to the employees of the Post and Telegraph authorities but what would really govern the services of the petitioner would be either the CCA Rules or any specific authorization as required under the rules or the authorization is under Rule 74 of the FCI Staff Regulation. It does not in any way empower the disciplinary authority to review/revise his own order.

8. Judged in this background, when this Court finds that there was already an order dated 9.8.2011, that could not have been



either reviewed by way of cancelling the order dated 9.8.2011 and substituting it with the fresh order of punishment. Therefore, this Court would find that the orders dated 13.2.2012 passed by the disciplinary authority reviewing his own order of punishment dated 9.8.2011 is not permissible in law. This Court, therefore, will have no difficulty in quashing the order dated 13.2.2012. Consequently, the order dated 5.7.2013, the appellate order and the revisional order dated 26.8.2014 affirming the order of the disciplinary authority are also quashed.

9. Having done so, this Court must clarify that quashing of the order dated 13.2.2012 will not mean that the order of punishment dated 9.8.2011 shall also come to an end, inasmuch as, if the disciplinary authority had no power to pass order dated 13.2.2012 by imposing a fresh punishment, he would also have no power to recall the earlier order of punishment dated 9.8.2011. The order of punishment dated 9.8.2011, however, shall remain intact till its varied by the competent authority of the FCI in exercise of his power of review/revision.

10. It however goes without saying that if any review or revision of the order of punishment dated 9.8.2011 is required, the competent authority under regulation 74 shall firstly issue a show-cause notice to the petitioner and, thereafter, shall pass an appropriate

order as may be permissible in law.

11. Notwithstanding such exercise of power of review or revision by the competent authority of FCI, it will be also open for the petitioner to file an appeal against the order of punishment dated 9.8.2011, inasmuch as, he had earlier been given some sort of reprieve in the punishment while considering his grievance against the impugned order revising/reviewing the order of punishment and, therefore, the petitioner may again approach the competent authority.

12. Nothing said in this order shall come in the way of the petitioner in filing an appeal and getting appropriate relief as may be permissible in law.

13. With the aforementioned observation, this application is allowed to the extent indicated above.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 20th April 2015
A.F.R./Rishi/-

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