

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11058 of 1997

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Yogindra Narain Mishra, son of late Satya Narain Mishra, resident of Village – Sonbarsha, Police Station Charpokhari, District-Bhojpur

.... Petitioner/s

Versus

1. The Hindustan Fertilizer Corporation Limited, Madhuban 55, Nehru Place New Delh-110019, through its Chairman-cum Managing Director
2. The Chairman-cum-Managing Director, Hindustan Fertilizer Corporation Limited, 'Madhuban' 55 Nehru Place, New Delhi-110019
3. The Executive Director (Marketing), Hindustan Fertilizer Corporation Ltd., 'Madhuban' 55, Nehru Place, New Delhi-110019

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Suresh Roy, Sr. Advocate
 Mr. Ramesh Jha &
 Mr. Abhay Kr.Roy

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 04-02-2015

1. This is an application seeking quashing of the order dated 25.05.1995 passed by the Executive Director (Marketing), Hindustan Fertilizer Corporation Limited (hereinafter referred to as the Corporation) whereby, on the charge of misconduct the petitioner has been removed from service. The order passed by the Chairman - Cum- Managing Director, of the Corporation dated 15.5.1996 as an Appellate Authority, rejecting the petitioner's appeal against the order of punishment is also under challenge. The petitioner had filed a revision/review application against the orders of the Disciplinary Authority and the Appellate Authority, which also came to be

dismissed by an order dated 29.10.1997, passed by the Board of Directors of the Corporation, which is also impugned in the present case.

2. I have heard Mr. Ram Suresh Roy, learned senior counsel appearing on behalf of the petitioner. However, there is no representation on behalf of the respondent-Corporation, though counter affidavit sworn by Mr. Baleshwar Prasad Verma, Deputy Marketing Manager of the Corporation, on 4.5.1999 is there on record, filed through learned counsel.

3. As pleaded in the writ application, the petitioner was appointed as Field Demonstrator in the Corporation and was promoted as Senior Field Demonstrator. He was subsequently promoted and posted as Assistant Agronomist, Fertilizer Promotion & Agriculture Research Development (FP & ARD) at Sasaram. His assignment was to promote the sales of Fertilizers by publicity and demonstration.

4. On 30.4.1992 the petitioner was transferred to Sasaram under one K.K.P. Sinha, Incharge, Area Office, Arrah where he joined on 28.5.1992. While posted at Sasaram, the petitioner was assigned duties in marketing Division, for promotion of sales. It is the petitioner's case that he did not have sufficient knowledge and experience in the field of marketing where he was required to promote sales of Fertilizer, through marketing. According to him, he was

under obligation to act according to and abide by instruction issued by his superior from time to time for the purpose of promotion of sales of fertilizers.

5. With the issuance of charge-sheet, a departmental proceeding was initiated against the petitioner on 14.7.1993, containing various charges. The statement of article of charges framed against the petitioner has been brought on record by way of Annexure-1 to the writ application. From perusal of the articles of charges, it would appear that charges related to various act of the petitioner in issuing delivery orders for supply of fertilizer to the dealers against cheques issued by such dealers. He is also said to have entertained out station cheques from one of the dealers which was contrary to the instructions issued by the Head Office of the Corporation from time to time. It was also alleged that he withheld some of the cheques with himself for considerable period of time in order to give undue advantage to the dealers, so that they might utilize higher credit facility, in the meanwhile. There is one more allegation that he undertook that he would realize the outstanding amounts from the dealers "anyhow" by 31.1.1993, but he failed to do so. Such conduct of the petitioner, according to the Corporation constituted misconduct within the meaning of Hindustan Fertilizer Corporation Limited Employees (C.D. & A) Rules, 1981, the conduct being



violative of Rules 6(5),6(6) & 6(1) of the Rules. The petitioner is said to have filed his written statement of defence denying the allegation of misconduct against him. It appears that he took the plea before the Disciplinary authority in course of the departmental enquiry that he acted under the instructions of his superior Sri K.K.P. Sinha, Area Manager, Ara of the Corporation. He also took a plea that he acted bonafide to promote sales of fertilizer in the area and in order to achieve the marketing goals, he issued delivery orders on the basis of cheques issued by the dealers. The Inquiry Officer, it appears, submitted his report holding the petitioner guilty of the charges levelled against him. The Disciplinary Authority, by the impugned order dated 25.5.1995, imposed upon the petitioner penalty of “removal from the service of the Corporation with immediate effect”. The Disciplinary Authority while passing the impugned order dated 25.5.1995 recorded in paragraph 3 that following articles of charges were framed against the petitioner:-

- “i) Theft, fraud or dishonesty in connection with the business or property of the Corporation or property of another persons within the premises of the Corpn.,
- ii) Acting in a manner prejudicial to the interest of the Corporation;

iii) Neglect or work or negligence in the performance of duty including malingering or slowing down of work; and

iv) Commission of any act subversive of discipline or good behaviour;”

6. The petitioner took the plea before the Appellate Authority that the Disciplinary Authority failed to consider his response to the report of the Inquiry Officer as also that adequate opportunity to defend his case was not afforded to him by the Inquiry Officer. He also took a plea that the presenting Officer become a witness in the departmental enquiry which was impermissible and if at all he (the presenting Officer) was allowed to depose as a witness before the Inquiry Officer, the petitioner ought to have been given an opportunity to cross-examine him. The Appellate Authority upon dealing with the contention raised by the petitioner on various aspects came to a finding that on the basis of evidence available on the record of the disciplinary proceeding, charges against the petitioner stood proved and accordingly refused to interfere with the order of the Disciplinary Authority and thus, rejected the appeal. The petitioner’s application for revision before the Board of Directors, was dismissed in their 164th meeting on 1.4.1997, which was communicated to the petitioner through letter dated 29.9.1997, issued under the signature of



Deputy General Manager (Marketing), New Delhi. As has been noted above, a counter affidavit has been filed on behalf of the respondent Corporation, justifying the action of imposition of penalty. In reply to the stand of the petitioner that the petitioner had acted under the instruction of said K.K.P. Sinha, it has been pleaded in the counter affidavit that the petitioner was required to follow the rules, directions and policies of the Corporation and if there was any instructions of his superior contrary to such policies of the Corporation, he could have reported the matter to the higher authorities. It has further been stated in the counter affidavit that there was nothing on record to show that the petitioner issued delivery orders on the instruction of the Area Manager.

7. Mr. Ram Suresh Roy, learned senior counsel appearing on behalf of the petitioner has submitted, referring to the averments made in paragraph 10 of the writ application and paragraph 8 of the counter affidavit that there is no specific denial of the fact that petitioner acted under the oral instruction of his superior Sri K.K.P. Sinha, Area Manager. He submits, referring to paragraph 19 of the writ application that a departmental proceeding was initiated against Sri K.K.P. Sinha under whom the petitioner was working for similar nature of charge. Drawing my attention to Annexure-9 of the writ application, which is punishment order dated



19.9.1997 passed by the Disciplinary Authority i.e. the Chairman-cum-Managing Director of the Corporation imposing punishment of reduction of basic pay to lower stage by one increment in the time scale for a period of one year, Mr. Roy submits that said Sri K.K.P. Sinha was also charged for issuance of instruction to the petitioner in the matter of issuance of delivery orders to M/S A.K. Srivastava against cheque. He contends that said Sri K.K.P. Sinha was also charged of withholding deposits of payment instrument for considerable time when there was considerable outstanding against the dealers on account of bouncing of cheques, but he was meted out with lesser punishment whereas major punishment of removal from service has been imposed upon the petitioner. He submits that action of the respondents is discriminatory and warrants interference on this ground alone. He would next submit, referring to the order of the Disciplinary Authority dated 25.5.1995 to contend that it is perverse inasmuch as, it is too vague and cryptic. The Disciplinary Authority has not discussed the materials on record of the disciplinary proceeding and has not duly considered the petitioner's representation on the Inquiry report. He has submitted that the disciplinary authority passed the order on incorrect facts. He submits that there was no allegation of theft or fraud or dishonesty against the petitioner in connection with the business or property of



the Corporation as has been noted in the impugned order dated 25.5.1995 passed by the Disciplinary Authority. He has contended that the Disciplinary Authority did not even notice the nature of allegation levelled against the petitioner and passed the impugned order without discussing the defence of the petitioner that he had acted under the instruction of his superior.

8. He has also submitted, in order to explain the bonafide of the petitioner that the petitioner took all possible measures to realize the amount from such dealers to whom delivery orders were issued. He would further contend that on the basis of almost same nature of allegation, the Chairman-cum-Managing Director of the Corporation while passing his order dated 15.5.1996 as an Appellate Authority on the petitioner's appeal, affirmed imposition of penalty of removal from service passed by the Disciplinary Authority. The same Chairman-cum-Managing Director of the Corporation while acting as Disciplinary Authority in case of Sri K.K.P. Sinha, imposed the punishment of reduction of basic pay to lower stage by one increment for a period of one year. He submits that the petitioner's defence that he acted under the instruction of Sri K.K.P. Sinha was as a matter of fact, charge against Sri K.K.P. Sinha which came to be proved, not only by the Inquiry Officer but was accepted by the Disciplinary Authority, Chairman-cum-Managing Director of the Corporation. Mr.



Roy has submitted that in the facts and circumstances of the case, even if the charges of misconduct as levelled against the petitioner are treated to be proved, punishment of removal from service as imposed upon him is too harsh. He submits that the nature of punishment imposed upon the petitioner should be reconsidered in the light of the order of Chairman-cum-Managing Director of the Corporation dated 19.9.1997, imposing punishment upon Sri K.K.P. Sinha. I find force in submission made by Sri Roy, learned senior counsel appearing on behalf of the petitioner that the disciplinary authority while passing the order dated 25.5.1995 acted in most casual manner which is not expected from an authority exercising quasi-judicial function. The article of charges, which according to the Disciplinary Authority were framed against the petitioner have been quoted hereinabove. I have compared what has been recorded by the Disciplinary Authority in his order dated 25.5.1995 as the article of charges against the petitioner with the article of charges which have been brought on record by way of Annexure-1 to the writ application. There is no allegation of theft or fraud against the petitioner in the article of charges, which have been mentioned by the Disciplinary Authority in his order. Secondly, I am of the view that even if agreeing with the report of the Inquiry Officer, the Disciplinary Authority ought to have discussed at least briefly, the evidence on record on the basis of which the charges could

be said to have been proved.

9. As noted above, I am also of the view that the question of quantum of punishment will have to be considered taking into account, the nature of punishment imposed upon Sri K.K.P. Sinha by the Chairman-cum-Managing Director of the Corporation. In normal circumstance I would have remanded the matter back to the disciplinary authority for reconsideration of the matter after quashing his order dated 25.5.1995 but taking into account the fact that the Chairman-cum-Managing Director of the Corporation imposed lesser punishment on Sri K.K.P. Sinha on the basis of the charges which arose out of same sets of transaction and affirmed imposition of punishment of removal from service upon the petitioner, I consider it appropriate to remand the matter back to the Appellate Authority. Accordingly, the order of the Appellate Authority dated 15.5.1996 (Annexure-3) is quashed. The Appellate Authority, on remand, will be required to pass an order afresh on the petitioner's appeal dealing with the various points raised by him and will deal in particular with the plea that for the charges arising out of same sets of transaction, Sri K.K.P. Sinha has been visited with a lesser punishment. The Appellate Authority will be required to consider the petitioner's plea that he had acted under the instruction of said Sri K.K.P. Sinha. The Appellate Authority will, accordingly, be required to pass an order

afresh within a period of six months from the date of receipt/production of a copy of this order.

10. Mr. Roy, learned Senior counsel appearing on behalf of the petitioner informs this Court that the petitioner retired on attaining the age of superannuation in the month of February, 1999. The Appellate Authority will be required to consider this aspect of the matter also while disposing of the petitioner's appeal in the light of the present order.

11. This application is allowed to the extent as indicated above.

(Chakradhari Sharan Singh, J)

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