

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 24222 of 2011

DATE OF DECISION: 13.8.2015

Piara Singh

.....Petitioner

Versus

FCI and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. V.K. Shukla, Advocate
for the petitioner.

Mrs. J.J. Kaur, Advocate
for the respondents.

DAYA CHAUDHARY, J.

Petitioner-Piara Singh was initially appointed as AG III (D) in Food Corporation of India on 31.12.1971. Thereafter, he was promoted to the post of AG II (D) on 16.9.1983 and was awarded penalty of reduction to the post of AG III (D) for a period of five years on account of some disciplinary proceedings pending against him vide order dated 6.8.1991. It was also mentioned in the order that after expiry of period of five years, the petitioner was to be restored to his original post. On the expiry of period of penalty of five years, the petitioner submitted his joining report/representation for restoring him to the post of AG II (D) as per the condition stipulated in the aforesaid order but no action was taken

thereupon. The petitioner made various representations but still the same were not considered. The petitioner was asked to give a fresh representation vide letter dated 31.8.2001 for restoration of his promotion as AG II (D) but still no action was taken. The petitioner was informed vide memo dated 4/5.6.2009 that his claim for restoration to his original post was rejected on 17.8.1996, whereas, prior to that many representations were moved but nothing was conveyed to him.

The present petition has been filed by the petitioner for issuance of a direction to the respondents to consider his claim for restoration to the post of AG-II on the expiry of period of penalty of five years in view of order dated 6.8.1991.

Learned counsel for the petitioner contends that the penalty of reduction in rank was only for a period of five years, which continued upto 5.8.1996. As per the clause mentioned in the order of penalty, he was to be restored to his original post but no such order was passed. Learned counsel further contends that inspite of making representations, no action was taken and ultimately he retired on 31.5.2009. The petitioner is entitled to be reverted back to his earlier post. The pension as well as other consequential benefits are to be refixed after the date of retirement. He has also relied upon the judgment of Hon'ble the Apex Court in the case of **Jagat Narain Vs. Food Corporation of India and others** 2010 (4) SLR 697, in support of his contentions.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioner on the ground that the petitioner was involved in another vigilance case and was served with chargesheet dated 8.8.1994, which resulted into penalty of proportionate recovery of an amount of ₹ 994.60 out of total loss of ₹ 1889.25/-. Learned counsel further contends that the present petition is liable to be dismissed on the ground of

delay and laches. The petitioner was having effect of penalty till the date of retirement and as such he is not entitled to be reverted to his earlier post of AG-II (D) even after expiry of period of five years.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, the petitioner was working as AG-II (D) after the promotion from the post of AG-III (D). On account of disciplinary proceedings pending against him, he was awarded the penalty of reduction to the post of AG III (D) for a period of five years vide order dated 6.8.1991. As per the conditions stipulated in the aforesaid order, he was to be restored to his original post of AG II (D) on expiry of period of five years, which expired on 5.8.1996. The petitioner made representations for restoration to his earlier post on expiry of period of five years but inspite of that he was not restored to his original post and ultimately he retired on 31.5.2009 on attaining the age of superannuation. The claim of the petitioner was rejected on the ground that one vigilance inquiry was pending against him. As per stand of the respondents, the petitioner could not be restored to his original post as the earlier order was merged with the subsequent order. It is not disputed that before 7.8.1996, no charge-sheet was ever served upon the petitioner during the period from 6.8.1991 to 5.8.1996. Moreover, said charge-sheet was served upon the petitioner under Regulation 60 of Food Corporation of India (Staff) Regulations, 1971, whereby, minor punishment of recovery of ₹ 994.60/- was imposed upon the petitioner vide order dated 30.12.1997, which cannot even have any effect upon an employee with regard to promotion. The petitioner was entitled to be restored to his earlier post of AG II (D) on the expiry of period of penalty of five years as during that period no charge-sheet was served upon him. The petitioner made several representations but inspite of his

repeated requests, he was not restored to his earlier post of AG II (D) and as such the action of the respondents is contrary to the condition contained in the order of awarding punishment dated 6.8.1991. Moreover, imposition of minor penalty i.e. by way of recovery of ₹ 994.60/- would come to an end on deposit of the amount. There was no justification in not restoring the petitioner to his earlier post. It has been also held by Hon'ble the Apex Court in **Jagat Narain's (case)** supra that merely due to the pendency of minor penalty, the promotion cannot be withheld. The petitioner was earlier considered for promotion but subsequently the order of promotion was cancelled because of imposition of minor penalty.

In view of the facts as mentioned above, there is merit in the contentions raised by learned counsel for the petitioner. The petition is, therefore, allowed and the petitioner is held entitled for restoration to his earlier post of AG II (D) along with all other consequential benefits. The respondents are directed to refix his pension after restoring to the post of AG II (D). The necessary benefits be released to the petitioner including arrears within a period of three months from the date of receipt of certified copy of the order.

13.8.2015
pooja

(DAYA CHAUDHARY)
JUDGE