IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 26217 of 2013 (O&M)
Date of decision : October 01, 2015

Ram Chand Garg .....Petitioner

Versus

Food Corporation of India and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Rajesh Garg, Senior Advocate with
Mr. Sundeep Kumar, Advocate
for the respondents-FCI.

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LISA GILL, J.

Petitioner prays for quashing of order dated 29/30.03.2007 (Annexure P-5) passed by Executive Director, Food Corporation of India, Zonal Office North Zone – respondent No. 3 whereby exoneration of the petitioner by the disciplinary authority vide order dated 23.05.2001 has been set aside and recovery of ₹1,00,000/- alongwith reduction in time scale of pay by three stages for a period of three years with cumulative effect has been imposed upon the petitioner. Challenge is also laid to order dated 29.04.2013 passed by Managing Director, Food Corporation of India – respondent No. 2 whereby review petition filed by the petitioner has

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been dismissed.

Brief facts of the case are that the petitioner joined Food Corporation of India (hereinafter referred to as 'FCI') as Assistant Grade-III in the year 1972. He ultimately retired as Manager on 31.01.2011. While he was in service, he was served with a charge sheet dated 29.03.2000 (Annexure P-1) with an allegation that while posted at Food Service Distribution (FSD), Bhikhi, he in connivance with other employees namely R.C. Pandhi, Ram Karan and S.K. Gupta committed pilferage of the stock. Sh. J.K. Kapoor, Lt. Col. (Retd.) was appointed as inquiry officer, who after taking into consideration evidence led by the parties as well as facts and circumstances concluded that the petitioner was innocent as charges were not proved against him. Disciplinary authority i.e. Senior Regional Manager, FCI, Punjab while agreeing with the findings of the inquiry officer exonerated the petitioner from the charge levelled against him vide order dated 23.05.2001 (Annexure P-2).

After a lapse of about five years, matter was again taken up by respondent No. 3 and show cause notice dated 13/14.07.2006 (Annexure P-3) was issued to the petitioner alongwith other employees. Reply to show cause dated 13/14.07.2006 (Annexure P-4) was submitted by the petitioner, however, respondent No. 3 vide impugned order dated 29/30.03.2007 (Annexure P-5) concluded that the petitioner has been wrongly exonerated of the charges against him. His involvement in malpractice and indulgence in pilferage of stock cannot be denied, therefore, the punishment as detailed above was imposed upon the petitioner. Appeal (Annexure P-6) was

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preferred by the petitioner on 30.06.2007 before the Managing Director, Food Corporation of India. Appeal was ultimately dismissed vide order dated 29.04.2013 (Annexure P-9) communicated vide letter dated 17/20.08.2013 (Annexure P-8).

Learned counsel for the petitioner submits that impugned orders are liable to be set aside being unjustified, illegal and arbitrary. Once disciplinary authority found the petitioner to be innocent after proper inquiry was conducted, there was no occasion to rake up the issue again. It is submitted that after lapse of so many years, proceedings could not be initiated in violation of Regulation 74 of the FCI (Staff Regulations) 1971. No inquiry in terms of Regulation 58 as stipulated in Regulation 74 was ever conducted. Therefore, punishment is liable to set aside.

It is further submitted that the petitioner remained posted at Bhikhi Centre from November 1997 to May 1998. He was relieved from the Bhikhi Centre on 16.05.1998 on transfer to Sangrur. He was joint custodian of the paddy stock for only about seven months. Stock verification was done in January, 1999 at the time of its issuance. Petitioner already stood transferred at this time and there is no evidence to show his complicity, therefore, he cannot be held liable in any manner. It is further contended that no reason whatsoever has come forth for taking action after so many years. Surprisingly all the other officials, who were charge sheeted alongwith the petitioner, have since been exonerated and no action has been taken against them. Petitioner has been singled out and victimised. There is no

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evidence on record to prove the petitioner's involvement in the pilferage in any way. Thus, it is prayed that impugned orders be set aside.

Learned counsel for the respondents, however, refutes the said averments and submits that exercise for review was undertaken in view of the objection raised in the Audit report. Regulation 74 provides that action can be taken in consonance with the rules and regulations. No time limit has been prescribed in the regulations which provide that the Board may at any time call for records of any inquiry and can review any order made under the regulations. He, thus, prays for upholding the impugned orders.

I have heard learned counsel for the parties and gone through the file. Undisputed fact is that charge sheet dated 29.03.2000 was served upon the petitioner with the following article of charges:-

> " that the said Shri R.C. Garg, Asstt Grade I (Depot) while working at FSD Bhikhiwind during 1997 to 1999 failed to maintain absolute integrity and devotion to duty in so much so he in connivance with other custodians of stock indulged into acts of malpractice and pilferage of high order thereby causing extensive storage loss to the tune of 13795-17-6000 qtls i.e. 14.39% paddy valuing Rs. 60,16,766.01 in stock which remained under his charge and when these were finally liquidated/issued out said abnormal quantum of storage loss was observed.
>
> The said Shri R.C. Garg, Asstt Grade I (Depot) is thus charged of displaying dishonest conduct, cheating the Corporation hereby causing extensive financial loss of Rs. 60,16,766.01ps to FCI. By doing so, he contravened

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the provision of Conduct Regulations 31, 32 and 32 (A) of FCI (Staff) Regulations 1971".

Disciplinary authority clearly concluded that charge against the petitioner has not been proved as he left the depot midway and there was no evidence to substantiate that there was any discrepancy in the paddy stocks stored in the depot during his tenure at the centre or even at the time of his being relieved on his transfer to Sangrur.

Though Regulation 74 does not provide any specific time limit, it is expected that necessary action would be taken within a reasonable period and in a rational manner.

Case of the respondents is that matter was reopened on the basis of an audit objection. Reference is made to Annexure R-1 i.e. observations of the Controller Auditor General (CAG). In clause 2.1.6.4.2, it is observed as under:-

> " A review of the cases referred to vigilance wing of abnormal shortages for recovery and disciplinary action revealed that recovery of pecuniary loss was not effected with other penal action. In 20 cases decided during September 1999 to September 2001, penalty of recovery of Rs. 0.03 crore only (in two cases) was imposed against the abnormal shortages of Rs. 2.17 crore. The decision of the competent authority not to impose recovery of abnormal shortages already proved was in contravention of the provisions of CVC manual which stipulates that recovery of pecuniary loss could be made from the officials directly involved along with other penalty."

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It is solely on this basis that entire proceedings were raked up again. Learned counsel for the respondents is unable to point out any evidence on record which indicates petitioner's exoneration by the disciplinary authority at the outset, as reflected in order dated 23.05.2001 (Annexure P-2), to be suffering from any illegality or infirmity. It is not denied that proviso to Regulation 74(1) provides that when it is proposed to impose any of the penalties specified in Clause V to IX of Regulation 54 or to enhance the penalty imposed by the order sought to be reviewed, such penalty cannot be imposed, except after an inquiry in the manner laid down in Regulation 58. Proviso to Regulation 74 (1) reads as under:-

> " 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."

No such inquiry was held before imposition of penalty by the reviewing authority.

There is no denial of the fact that petitioner was relieved from the centre at Bhikhi on 16.05.1998. Shortage in the stock was detected in the year 1999 when supply was made. At the time of being relieved, petitioner admittedly gave charge of the post to his

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successor. Stock verification was never carried out till January, 1999. In these circumstances, petitioner cannot be held liable in any manner. There is not an iota of material on record to indicate involvement of the petitioner. Another glaring factor is that all the other officials have admittedly been exonerated. No action has been taken against them and there is no reason as to why the petitioner has been singled out in this manner.

Keeping in view the entire facts and circumstances of the case, impugned orders dated 29/30.03.2007 (Annexure P-5) and 29.04.2013 (Annexure P-9) are set aside.

Writ petition is, accordingly, allowed.

(Lisa Gill)
Judge

October 01, 2015
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