

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.383 of 2011

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Radha Sharan, son of late Ram Uchit Ram, at present resident of Mission Road, Pakri Arrah, P.S. Arrah, Nawada, District- Bhojpur, Ara.

.... Petitioner/s

Versus

1. F.C.I.-cum- M.D. West, F.C.I, New Delhi.
2. Executive Director (East Zone), Calcutta.
3. General Manager (Region), Regional Office, Patna.
4. Area Manager, F.C.I., Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma
		Mr. Sahjanand Sharma
		Mr. Shiv Kumar
For the Respondent/s	:	Mr. Prabhakar Tekriwal

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-08-2016

Heard Mr. Banwari Sharma, learned counsel appearing for the petitioner and Mr. Prabhakar Tekriwal, learned counsel appearing for the Food Corporation of India (hereinafter referred to as 'the Corporation').

The petitioner is aggrieved by the order dated 31.3.2006 passed by the General Manager (Region), whereby the petitioner has been visited with the punishment of recovery of Rs.50,000/- for the alleged storage loss of paddy and which punishment is accompanied with withholding of one increment for one year from 1.1.2007. The punishment order is impugned at Annexure-6 and has been affirmed by the appellate authority i.e. the Executive Director, East Zone who vide order dated 18.10.2006 has dismissed the appeal and the memorial preferred by the petitioner has also been rejected by the Managing Director of the 'Corporation' vide order passed on

30.6.2008.

The allegation against the petitioner is of negligence in maintenance of stock resulting in loss of 2,780.09 quintals of paddy quantified at Rs.11,53,737.35. A copy of the charge memo is impugned at Annexure-4 and it is on the declaration made by the petitioner that the proceeding in question has been initiated. The petitioner at the relevant time was posted as Shed Incharge of the 'Corporation' situated at Buxar. The loss though quantified at Rs.11,53,737.35 at the rate of Rs.415/- per quintals of paddy but the disciplinary authority taking note of the circumstances existing has on a lenient expression ordered for imposition of penalty of Rs.50,000/- together with withholding of one increment and which is affirmed by the superior disciplinary authorities.

Mr. Banwari Sharma, learned counsel appearing for the petitioner has questioned the imposition of penalty on grounds that the paddy received by the petitioner itself lacked quality and by passage of time deteriorated further which was duly reported by the petitioner but instead has resulted in penalty in question. The argument of Mr. Sharma with reference to the document present at Annexure-11 series is that the petitioner had duly intimated the Assistant Manager regarding deterioration in paddy but no attention was paid. According to Mr. Sharma, once the respondents have accepted that the loss is due to long storage and due to absence of moisture then there was no occasion for the disciplinary authority to



have imposed the penalty. Mr. Sharma has relied upon the reply filed by the petitioner to the charge, a copy of which is placed at Annexure-5 to submit that in fact it is for a lapse made by the Technical Assistant namely, R.K. Pathak for having purchased low quality of paddy that the petitioner is made to suffer while the said Technical Assistant has gone scot free.

The argument of Mr. Sharma is contested by Mr. Tekriwal, learned counsel representing the 'Corporation' and who submits that the shifting of onus by the petitioner on the Technical Assistant is an afterthought for no such objection has been raised by the petitioner at the time of receiving of paddy, if it was of bad quality. The argument of Mr. Tekriwal is that no such objection was ever raised by the petitioner and even the documents placed vide Annexure-11 series to the rejoinder, was never relied upon by the petitioner during the entire stage of the proceedings. With reference to the reply filed by the petitioner to the show cause present at Annexure-2, the reply to the memorandum present at Annexure-5 and the appeal at Annexure-7 as well as the memorial at Annexure-9, he submits that in none of the petitions, there is even a whisper of these papers which goes to prove that these documents are manufactured for defence.

While producing the records of the proceedings in compliance of the order passed on 7.7.2015 of this Court, and accepting that these letters do find place in the connected file, it is



submitted that even the inclusion of these documents raise doubts for though it is enclosed with the reply to the show cause but the show cause reply does not make any reference thereto. Learned counsel has relied upon a decision of the Supreme Court reported in **(2012)6 SCC 357 (Registrar General, High Court of Patna vs. Pandey Gajendra Prasad)** and with a particular reference to the findings of the Supreme Court at paragraph 18 onwards it is submitted that the jurisdiction for interference in orders of punishment in a disciplinary proceeding stands well settled and unless it is found to be a perversity or *de hors* the evidence on record a mere second opinion would not be sufficient for interference therewith. Learned counsel has also referred to a judgment of the Supreme Court reported in **(2001)1 SCC 165 (Food Corporation of India, Hyderabad vs. A. Prahalada Rao)** and with reference to paragraph 5 of the judgment he submits that even when the Regulation 60 of the Food Corporation of India (Staff) Regulation, 1971 (hereinafter referred to as the 'Regulation') provides for procedure for imposition of minor penalty and also provides for holding of an enquiry but in such cases the discretion is left open for the disciplinary authority to form its opinion whether it is necessary to hold inquiry.

Reverting to the case in question he submits that since there is no dispute on facts and it is the reporting of the petitioner himself regarding the alleged loss that the orders have been passed

attributing negligence of duty against the petitioner.

Responding to the argument of Mr. Tekriwal, a reference is made to the rejoinder filed by the petitioner and Mr. Sharma submits that since the recovery order is also accompanied with an order of withholding of increment, it would require a proceeding as provided under rule 60 (1)(b) of 'the Regulation'.

I have heard learned counsel for the parties and I have perused the records.

As noticed above, there is no contest on facts. A loss had taken place in the Depot, of which the petitioner happened to be the incharge. The loss is quantified at more than Rs.11.53 lacs and has been duly intimated by the petitioner himself which is eloquent from the charge memo itself. There is thus no dispute that a loss of 2,780.09 quintals of paddy took place, of which the petitioner was the incharge. Although the burden is sought to be shifted by the petitioner on the Technical Assistant on grounds that the paddy so received lacked quality and by passage of time further deteriorated but there is nothing on record which would show that the petitioner made any complaint regarding receipt of rotten paddy. Being the Depot Incharge he was under bounden duty to take steps for maintaining the quality of the stored paddy and any excuse would not exempt the petitioner from the liability entrusted upon him of keeping the depot in a situation where it does not result in loss in quality of paddy. Since there was no complaint made by the

petitioner regarding bad quality of the paddy received from the Procurement Officer, this aspect cannot be raised by the petitioner at the present stage.

The issue which falls for consideration is whether the communication placed at Annexure-11 series would make any departure to the opinion on record. I would reserve my opinion on the issue whether these letters are written in the normal course of business by the petitioner or have surfaced following initiation of this proceeding. I say so because it is not in dispute rather it is a confirmed position that these letters which are now sought to be relied upon by the petitioner, does not find mention in the response filed by the petitioner at any stage of the proceedings.

In the uncontested circumstances discussed above, I find that the order imposing penalty is rather reasonable. No cause for interference is made out therewith.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
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