IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 1440 of 2013
Date of decision : 17.08.2016

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Ram Chander Jain

...........Petitioner

Versus

State of Haryana and others

..........Respondents

CWP No. 2885 of 2013
Date of decision : 17.08.2016

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Ram Chander Jain

...........Petitioner

Versus

State of Haryana and others

..........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Pankaj Sharma, Advocate for the petitioner.
Mr. Hitesh Pandit, Addl. A.G., Haryana.
Mr. Ashwani Talwar, Advocate
for respondents nos. 2 and 3.

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RITU BAHRI, J

By way of this common judgment, two writ petitions bearing CWP No.1440 of 2013 and CWP No.2885 of 2013 shall be decided.

In CWP No. 1440 of 2013, petitioner is seeking writ of certiorari for quashing of the order dated 27.2.2009 (Annexure P-8) passed by respondent no.3-Managing Director, Haryana State Ware Housing Corporation, Panchkula, whereby penalty of 10% cut in gross pension for a period of five years has been imposed upon the petitioner and for quashing the order dated 27.10.2009 (Annexure P-10) whereby the appeal of the petitioner was dismissed by the Executive Committee of the Corporation. Petitioner has further sought directions to the respondents to release to him the IIIrd ACP pay scale to which he is fully eligible as the same was due towards him w.e.f. 1.1.1997 after completion of 10 years regular satisfactory service w.e.f 1.1.1987.

In CWP No. 2885 of 2013, the petitioner has prayed that his suspension period from 13.5.2007 to 24.10.2007 be treated as duty period in view of the order dated 24.10.2007 and in continuation of the same another order issued later on 29.3.2010 (Annexure P-4 and P-4 colly) and office order dated 29.3.2010 (Annexure P-5).

For the sake of convenience, facts are being extracted from CWP No. 1440 of 2013.

The petitioner joined the respondent-Department as Accounts Clerk and thereafter he was designated as Godown Keeper. He was promoted as Manager Grade-III in January 1987 and was posted at Kunjpura in Distt. Karnal. He was posted at Safidon, Distt. Jind in October 1998 and he remained there till 2001. During this period, a complaint was filed by one Jagat Singh, Chowkidar. On the said complaint, a committee was constituted comprising of Junior Analyst, DFSC Safidon, Head Analyst Safidon, Inspector HAIC Safidon, Technical Assistant, HWC, Rohtak, Inspector DFSC Safidon and as per the report submitted by the District Manager dated 23.6.2000 (Annexure P-1), there was no kind of mixing in the stock and it was not the case of loss during the storage. FCI had shown its inability to accept the said lot due to excessive foreign matter in the same. Damage to the bags was due to lying stored in open for two years, change of colour was due to sunlight and non-acceptance by FCI. The wheat was without germs and was of `A' category. Despite, the above said report, a chargesheet (Annexure P-2) was issued to petitioner on 24.5.2001 with regard to various acts of omission and commission from the period 1.4.1998 to 3.3.2001. The petitioner filed his reply to the charge sheet on 28.1.2002 (Annexure P-3). Thereafter an enquiry officer was appointed and finally on 19.5.2006 Enquiry Officer submitted the enquiry report (Annexure P-4). In the enquiry report dated 19.5.2006 (Annexure P-4), a finding has been recorded that all the charges levelled against Mr. R.C Jain, Manager stood proved. After a gap of three years, a show cause notice had been issued on 16.1.2009 (Annexure P-5) proposing to impose penalty of cut in gross pension @ 25% for a period of 6 years. The petitioner retired on 31.1.2008 vide office order dated 16.1.2008 (Annexure P-6). The petitioner gave a detailed reply on 3.2.2009 (Annexure P-7) and thereafter the impugned order dated 27.2.2009 (Annexure P-8) by which a penalty of 10% cut in gross pension for a period of five years has been imposed on the petitioner, R.C Jain, Manager (Retd.) and

Sh. Laxmi Narain JTA (Retd.). The appeals against the said order has been dismissed on 28.10.2009 (Annexure P-10) by the Executive Committee of the Haryana Warehousing Corporation.

Counsel for the petitioner has argued that enquiry report (Annexure P-4) dated 19.5.2006 was not given to the petitioner before issuing the show cause notice dated 16.1.2009 (Annexure P-5) and this is against the settled law in ***Jitender Singh vs. State of Haryana and others 2006 (3) RSJ 669 (PH)***. He has further argued that without supplying the enquiry report, the competent authority while issuing show cause notice (Annexure P-5) had already made up his mind to impose the punishment of cut into the pension. The initial preliminary enquiry (Annexure P-1) has also been considered while passing the impugned orders (Annexures P-8 & P-10). Finally he has further referred to the circular issued by the Chief Secretary, Haryana dated 6.7.2007, in which it has been mentioned that enquiry report should be forwarded to the concerned employee and if the disciplinary authority do not agree with the enquiry report or any part thereof, then disagreement should also be communicated to the employee along with report who may thereafter submit his reply to the same, if so desired. The petitioner after having retired in 2008, the Department has chosen to issue show cause notice to the petitioner after three years of the enquiry report. Impugned order is liable to be set aside and the benefit of 3rd ACP be granted to the petitioner which has not been granted to him on the pretext of penalty awarded to him.

On notice, a written statement has been filed by the respondents. The stand taken by the contestant respondents no. 2 & 3 in the written statement is that in pursuance to the charge sheet (Annexure P-2) issued against the petitioner for inflicting major penalty as per the Haryana Civil Service (Punishment and Appeal) Rules, 1987 on account of various acts of omission and commission as mentioned in the statement of charges and statement of allegations detailed in the memorandum, a regular enquiry was got conducted. The enquiry officer vide his report dated 19.5.2006 copy of which is annexed as Annexure P-4 held that all the allegations no. 4 to 7 were proved against the petitioner. The competent authority i.e the Managing Director of the Corporation perused the enquiry report and was of the opinion that penalty of cut in gross pension to the extent of 25% for a period of six years be imposed upon the petitioner and before imposing the punishment, a show cause notice was given to the petitioner. Along with the show cause notice, a report of the enquiry officer was furnished to the delinquent. After affording him personal hearing on 13.2.2009 and going through the reply (Annexure P-7) impugned order dated 27.2.2009 (Annexure P-8) has been passed. Since the appeal was filed against the orders of the Managing Director and the said Managing Director was also one of the members of the Executive Committee, he recused himself from the proceedings of the Executive Committee when this issue was taken up. While dismissing the appeal, the Executive Committee held that variations in the gunny bags accounts show intent to misappropriate stocks by the staff. The wheat stocks of Food & Supplies Department and Haryana Agro Industries Corporation were not preserved well resulting into damages, shortages and less storage gain leading to claims by depositors and bringing bad name to the respondent-Corporation. The proceedings had been initiated before the date of his superannuation i.e 31.1.2008 and the charge sheet dated 24.5.2001 (Annexure P-2) was issued to him. The time taken in deciding the departmental proceedings cannot be a ground to set aside the punishment order. Moreover he was granted 100% provisional pension in the year 2008 itself. The penalty of imposition of 10% cut in the gross pension for a period of 5 years is not excessive and his claim for grant of 3rd ACP has been rightly declined vide letter dated 5.10.2010 (Annexure R-2/1) in view of the departmental proceedings against him. The petitioner completed 30 years of service on 17.4.2002 and his case for grant of 3rd ACP was examined on 1.1.2006 and it was found that he was charge sheeted which was decided on 27.2.2009 by way of imposing penalty and he was specifically held not eligible for grant of 3rd ACP scale w.e.f 1.1.2006. The writ petition is sought to be dismissed on the ground of delay as the impugned order dated 27.2.2009 (Annexure P-8) and that of the appellate authority dated 28.10.2009 (Annexure P-10) has been challenged in the year 2013 after a gap of four years.

In replication, the petitioner has highlighted that stocks of the FSD and HAIC had been cleared by April 2004. The agencies and other depositors never lodged any complaint or preferred any claim in this regard. The stocks were related to the crop year 1998-99 and 1999-2000. The damage took place on account of the long storage i.e for more than 32 months. As per the report of the District Manager, HWC, Rohtak (Annexure P-1), damage to gunnies and stocks and atta formation was natural due to long storage. The petitioner joined the services of the Corporation on 18.4.1972 and completed 34 years of regular satisfactory service on 1.1.2006. On account of the charge sheet issued to the petitioner in the year 2001, he cannot be deprived from 3rd ACP.

Heard counsel for the parties.

In the present case enquiry was with respect to 7311 MT of wheat of HAIC of crop year 1998-99, 5286.56 Mt of wheat of FSD of crop year 1998-99, 1993.8 Mt of wheat of HAIC of crop year 1999-2000. While imposing punishment vide impugned order dated 27.2.2009 (Annexure P-8), it has been observed that the normative storage gain for wheat stocks stored in the open expected by FCI is 0.7%. A reference has been made to the inspection by a Committee comprising of Head Analyst, Jr. Analyst of Food and Supplies Department, Jind and TA, HWC, Rohtak. A reference has also been made to the report dated 1.11.2000 by DFSC to DC that proper care has not been taken by the then Manager and JTA posted at SWH, Safidon. The report of the Committee shows that there was atta formation and living infestation in the wheat samples drawn from HSWC open plinth Safidon. Report dated 23.6.2000 (Annexure P-1) was sent by the District Manager, Haryana Warehousing Corporation, Rohtak to the District Food and Supply Controller, Jind. Paragraphs 2, 3 and 4 of the aforesaid report are reproduced as under:

2. *Warehouse do understand the accountability of any kind of loss in the storage, but this is not the case of loss during the storage, rather FCI has showed its inability to accept the said lot due to excessive foreign matter in the same. Hence it appears to be a matter of negligence took place at the time of purchase.*
3. *There are only 3765 bags out of 55,117 bags. Further reasons are damage to bags due to lying stored in open for two years, change of colour due to sunlight and non-acceptance by FCI. Your department has violated the rules at the time of discharging the material from FCI on the basis of FO.*
4. *The wheat is still without germs and is of `A' category. Hence there is no negligence in storage. Whatever reason may be there behind non-acceptance of wheat by FCI, but Corporation is not at all responsible for the same.*

The respondents in the written statement have not disputed the report dated 23.6.2000 (Annexure P-1) given by the District Manager. A perusal of the impugned order 27.2.2009 (Annexure P-8) further shows that the expected shortage in wheat stocks stored in the open was 0.7% by FCI but there was overall shortage of at least 1.48% for the wheat stocks of HAIC for the crop year 1999-2000. This report duly corroborated the actual shortages observed in HAIC wheat for the crop year 1999-2000 and less gain in FSD wheat for the crop year 1998-1999.

Question for consideration would be whether as per the report dated 5.12.2000, atta formation and living infestation in the wheat stocks was on account of any negligence which could be attributed to the petitioner. As per the proceedings on 26.10.2000, a team headed by Sh. Dharamvir Mittal, Teshsildar, Safidon conducted inspection of wheat bags lying on the open plinth of Warehouse situated at Ratta Khera. This inspection was carried out on account of a complaint made by Jagat Singh, Chowkidar, HWC alleging that the employees of HWC have brought out good quality wheat from bags lying in open plinth and sold out the same and have put there inferior quality wheat in its place which is totally damaged. The team was consisting of Sh. O.P Ram, Naib Tehsildar, Kapur Singh Gill, DM HAFED, Sh. M.P Sharma, Manager, HAFED, Sh. Daljit Singh Punia, Inspector, Food Supply, Safidon Sh. Ranjit Singh, Inspector, Haryana Agro, Safidon and Jagat Singh, SHO, Police Station Safidon. In the presence of the complainant, Jagat Singh, Chowkidar, the wheat was found to be up to the mark. The wheat bags were sorted on 27.11.2000 in the presence of HWC staff. Checking was done on 28.11.2000,29.11.2000, 30.11.2000 and 1.12.2000 and in all the bags wheat was found up to the mark and it was found that wheat crop for the year 1998-99 belonging to Food & Supply Department and Haryana Agro, Safidon, was stored in the open stacks of HWC and the particulars are as under:

	DFSC	***HAIC***
Wheat stored in stock	29654 bags	32720 bags
Stock given to FCI	26272 bags	30080 bags
Remaining stock	3382+146 bag seepage	2640+236 bag seepage

The said stock was lying stored since the past 32 months and it was obvious to have minor damage to wheat and bardana (bags) during such a long period. It was natural that there would be formation in the wheat flour. The Committee came to the conclusion that there was no adulteration in the same and all was due to natural climate. This report has been given by Sushil Kumar, Junior Analyst, DFSC Safidon, V.P Aggarwal, Head Analyst, DFSC, Safidon, Ranjit Singh, Inspector, HAIC, Safidon, RC Wassan, TA, HWC, Rohtak, Daljit Singh Punia, Inspector, DFSC, Safidon.

A perusal of the detailed proceedings and report dated 23.6.2000 (Annexure P-1) shows that a thorough inspection was carried out on a complaint made by Jagat Singh, Chowkidar on 26.10.2000, 28/11/2000, 29.11.2000 and 30.11.2000 and 1.12.2000 and the conclusion was that wheat stocks were lying in the open for the last 32 months. As per the inspection conducted on 5.12.2000 by V.P Aggarwal, Head Analyst, Food Grains Lab Jind, Camp at Safidon, R.C Wasan, Tech. Asst. Office of DMSWC Rohtak Camp at Safidon and S.K Kansal, Jr. Analyst, Food Grains Lab, Safidon and report dated 23.6.2000 (Annexure P-1) collectively, the damage to the crop was on account of lying in the open for the past 32 months and the punishing authority while accepting the report dated 5.12.2000 has come to the conclusion that the petitioners were guilty of not taking proper care of the stock. It was specifically mentioned by DFSC in the report dated 1.11.2000 to DC, Jind that proper care has not been taken by the then Manager and JTA posted at SWH, Safidon. It is natural that there will be formation on the wheat floor. Moreover while dismissing the appeal of the petitioner order dated 28.10.2009 (Annexure P-10), the Executive Committee has observed that the wheat stocks of FSD & HAIC were not preserved well resulting in damages, shortages and less storage gain leading to claims by depositors and bringing bad name to the Corporation. However, more details of the claims made by the depositors has been given by them in the written statement. The necessary conclusion would be that no loss has been caused to the Corporation on account of wheat lying in the open beyond a period of 32 months. Moreover, a perusal of the record and the deposition of the prosecution witness R.C Wasan PW-11 shows that he has admitted that the atta formation in excess on the wheat can be on the ground of prolonged storage. Moreover, the examination of Luxmi Naryan JTA on 13.9.2005 is also relevant where he has stated that the stocks which had been stored in open were properly covered and the atta formation was limited to two bags in the peripherial bags. Even in the same manner the examination of N.S Chauhan shows that he had admitted that the stocks which had stored in the open had been found properly covered. Another thing from going through the record is that the District Manager on 18.2.2002 had informed the Managing Director that the petitioner R.C Jain, Manager and Luxmi Narain had inspected the record on 11.1.2002 and certified that the stock was to their satisfaction. Apart from the bags which contain atta formation rest of the wheat was found to be of `A' category as per the report dated 23.6.2000(Annexure P-1). Therefore, in the absence of any claims made by the depositors with regard the damaged wheat, the punishment upon the petitioner imposing 10% cut on his pension requires to be set aside. Hon'ble the Supreme Court in various judgments has held that imposing a cut on pension would have to be done in a very cautious manner by the punishing authority. Another fact which needs to be highlighted is that the petitioner had faced FIR No. 125 dated 12.5.2007 registered under Sections 420/511/120-B IPC at Police Station Uchana, District Jind. The allegations against him were that one Pushottam Kumar in connivance with R.C Jain tried to supply damaged wheat. Vide order dated 12.3.2011 passed by the Sub Divisional Judicial Magistrate, Narwana, they were acquitted from all charges framed against them giving them the benefit of doubt.

In view of all that has been discussed above, writ petitions are allowed. As regards CWP No. 2885 of 2013, in view of the acquittal of the petitioner in FIR No. 125 dated 12.5.2007 and in view of the order dated 24.10.2007 and in continuation of the same another order issued later on 29.3.2010 (Annexure P-4 and P-4 colly) and office order dated 29.3.2010 (Annexure P-5), his suspension period from 13.5.2007 to 24.10.2007 be treated as duty period. As regards CWP No. 1440 of 2013, impugned orders are set aside and the respondents are directed to release all the consequential benefits to the petitioner within a period of three months of the receipt of a certified copy of this order.

No order as to costs.

17.08.2016 **(RITU BAHRI)**
ritu **JUDGE**