IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25450-2012 (O&M)
Date of decision: 23.11.2016

Gurinder Singh

…..Petitioner

versus

Punjab Agro Industries Corporation and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.J.P.Rana, Advocate for the petitioner
Mr.I.S.Sidhu, Advocate for the respondents

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J. (Oral)

Petitioner who was working as District Manager in the office of Punjab Agro Industries Corporation, Fatehgarh Sahib, was charge sheeted on 23.9.2009 with the following charges:-

1. He was negligent in performance of his duties as Sr.District Manager, Fatehgarh Sahib.

2. 20992 Mts of paddy was procured during 2007-08 and was stored in M/s Thakur Singh Open Plinth and M/s Ranwan Open Plinth, Khamano out of which 9548 Mts of paddy remained unmilled due to his carelessness and negligence.

3. He failed to exercise proper control on the staff working under him and due to his gross negligence the paddy stocks were kept in uncountable form at M/s Thakur Singh Open Plinth and M/s Ranwan Open Plinth, Khamano to avoid conducting of physical verification of stocks. Due to *improper unkeep of paddy, the P.V. could not be conducted by a team constituted by Head Office.*

4. *Due to carelessness and negligence of Sh.Gurinder Singh paddy stocks were damaged and the corporation was put to heavy loss.*
5. *During a meeting held on 8.1.2009, he was directed to make the stocks in countable form upto 23.1.2009 but he failed to do so.*

Ultimately, the inquiry was entrusted to Shri G.S.Bhatia, Inquiry Officer, who conducted the inquiry and submitted the inquiry report (Annexure P3) (colly), wherein, charge no.2 was held to be not proved, whereas, the other charges were held to be proved. The findings/ conclusions in the inquiry report is reproduced as under:-

> *"Findings/ conclusions:*
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> *I have carefully considered the allegations/ charges as contained in the charge sheet and the evidence produced by the P.O. as well as the submissions made in the written defence statement submitted by the C.O. The main charges against the C.O. were that as a supervisory Manager (C.O.) has failed to perform his supervisory duty as a DM and thus the charge nos.1, 3, 4 & 5 are proved against him."*

Thereafter, a show cause notice dated 25.10.2011 (Annexure P3) was issued to the petitioner and after obtaining his reply (Annexure P4) and giving him personal hearing, the impugned order of punishment dated 15.11.2011 (Annexure P6) was passed whereby the punishing authority, by agreeing with the report of the inquiry officer, passed the order. The operative extract from the said order reads as under:-

"Owing to the above reasons I Sanjay Kumar, IAS, Managing Director, PAIC being the competent authority order that it is a fit case that the concerned official should be given severe punishment. However, owing to the fact that his retirement is due in next 8 months, he is demoted to the post of Executive (G) in the initial scale of an Executive (G) with immediate effect which will be ordinarily a debarment for promotion till his retirement.

The office has reported that Rs.8.25 crore losses has accrued on this account and in the fitness of things I order that a sum of Rs.one crore be recovered from him.

The recovery of this amount should be started immediately from his salary. 50% of gross salary be deducted and accounted for this loss. He is directed to deposit the balance of amount within 6 months failing which the same shall be recoverable by following due process of law as well as from his retiral dues."

The petitioner has challenged the said order, claiming that it is illegal and arbitrary. Appeal of the petitioner against the said order was dismissed by the appellate authority i.e. Chairman, Punjab Industries Corporation vide order dated 5.10.2012 (Annexure P9).

In the reply, the respondents have maintained that due procedure was followed. He was found guilty and the punishment order was passed in accordance with law. It was stated that as per policy of 2007-2008, it was not permissible to have the paddy stored in his custody as the same was to be stored with the allotted rice millers in joint custody. However, the petitioner kept the paddy in his own custody. It was also not denied that the petitioner has retired from service on 31.7.2012 on attaining the age of superannuation.

I have heard learned counsel for the parties and have carefully gone through the file.

The perusal of the inquiry report shows that the inquiry officer has examined certain lapses on the part of the petitioner and it was found that the petitioner was negligent in performance of his duties. He failed to exercise control over his subordinates. Hence, charge nos.1, 3, 4 and 5 were held to be proved. The findings were recorded after going through the evidence. Therefore, this Court cannot sit over the conclusions drawn by the inquiry officer and the findings recorded on charge nos.1, 3, 4 and 5, in which, there is no patent illegality. At the same time, charge no.2 was held to be not proved.

Now, the question is as to whether this Court can interfere in the punishment order?

So far as first part of the order is concerned i.e. demoting the petitioner to the post of Executive (G) in the initial scale of Executive (G) with immediate effect, which will be ordinarily a debarment of promotion till his retirement, this Court does not find any reason to substitute its own opinion with the punishment awarded by the punishing authority.

So far as second part of order regarding recovery of Rs.one crore is concerned, the punishing authority has recorded that the office has reported that Rs.8.25 crore loss has been caused on this account. I am of the view that if any loss was caused to the Corporation, the evidence was required to be led regarding the same before the inquiry officer and it was the inquiry officer, who was to determine as to how much loss has been caused to the corporation. However, no such evidence of actual loss was ever produced before inquiry officer and the inquiry officer did not submit any finding as to how much loss has been caused to the corporation because of the negligence of the petitioner. He has merely mentioned that the loss has been caused due to the negligence and lack of supervision over the staff. Therefore, in the absence of the evidence, the punishing authority was not justified in calling for the report of the office and holding the petitioner guilty of charges, of which he was not held guilty by the inquiry officer. Therefore, the second part which hold that the petitioner caused loss to the tune of Rs.8.25 crore and Rs.one crore was ordered to be recovered from the petitioner, is set aside, being beyond the competence of the punishing authority since no specific charge was framed in this regard and no findings in this regard were recorded by the inquiry officer. As such, the petition is partly allowed and partly dismissed. The impugned order so far as demoting the petitioner to the post of Executive (G) is upheld, whereas punishment order, ordering the recovery of Rs.one crore from the petitioner is hereby quashed.

23.11.2016 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: Yes