

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 19.02.2016

CWP No.8215 of 2010

Baldev Singh Sandhu & others

...Petitioners

Vs.

The Financial Commissioner, Cooperation, Punjab, & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jagdeep Bains, Advocate, for the petitioners.

Mr. Vaibhav Sharma, DAG, Punjab, for respondents No.1 & 2.

Mr. Anuj Ahluwalia, Advocate, for respondents No.3 & 4.

RAJIV NARAIN RAINA, J.

1. Petitioners 1 & 3 retired from service in the year 2006 and 2008 respectively i.e. before the filing of the petition, while petitioner 2 was still in service. The respondent is Markfed. The case is this: during the period 1994-95, the petitioners were posted either as Branch Officers and Field Officers for covering the area Budhlada and Mansa. Charge of misconduct against the petitioners relate to custom milling of paddy for which agreements were drawn between Markfed and the Millers. Clauses 7 & 9 of the agreement clearly stipulate that the Millers shall be responsible for the safe custody of the paddy and shall be responsible for the losses caused due to delay in dispatch and milling of the food crops. The actual custody of the stock remains with the Millers and the custody of the stocks of employees of Markfed, the procuring agency, is only notional. Milling of paddy crop for the season 1994-95 had led to 50 arbitration references initiated against the millers in the year 2000 by

Markfed. A decision was taken on 7th September, 2001 in a meeting held under the chairmanship of the Secretary, Food & Supplies Department, where it was decided that the employees who had earlier informed superior authorities about lifting of paddy by the millers no action should be taken against them and proceedings should be initiated against the Sheller owners and not the employees. As a result, disciplinary proceedings initiated against the employees for kharif 1994-95 issued vide charge-sheets were dropped in accordance with the guidelines. Consequently, the petitioners stood exonerated. But that was not the end of the woes of the petitioners. There was more in store for them by way of continued disciplinary action for causing loss by negligence to Markfed.

2. The other facts relevant for determining the residual issues involved for determination are narrated hereafter. The petitioners say they were instrumental in getting FIRs registered against the millers. The complaint of the petitioners is that similarly situated employees have been exonerated in the same cause, whereas the petitioners have been discriminated against. They refer to orders passed by the Managing Director, Markfed dated 23rd May, 2007 and 18th September, 2007, the latter passed by the Appellate Authority in much the same circumstances as the petitioners were placed, with Markfed shifting the entire burden on the Millers for not complying with the Milling Policy and all the acts of omission and commission committed by them in the unauthorized lifting of paddy by the Millers. Such orders have been placed at Annex P-10 to P-16. They would urge that different yardsticks could not be adopted by Markfed for its employees.

3. The history of disciplinary proceedings against the petitioners relates to charge-sheet dated 11th February, 1997 for causing loss. In the departmental enquiry that followed, the charges of mis-appropriation and

connivance were not proved against the petitioners. No shortage of stock was proved against them and it was categorically held that the defaulting Millers shifted the paddy stocks unauthorizedly. The witnesses of the Markfed deposed in favour of the petitioners. The amounts of alleged loss, which was sought to be saddled on the petitioners, were initiated for recovery from the rice millers through initiation of arbitration references. The corpus was the same in the case of the petitioners and the Millers. Even FIR No.31 dated 4th June, 1996 was registered against the Millers for the defalcations. The disciplinary authority vide order dated 26th October, 2004 held that although the petitioners were not physically holding the charge of the stock yet they were supposed to keep an eye on the stock of Markfed for milling purposes. The disciplinary authority completely ignored the aspect of delay in milling due to non-acceptance of rice by the Food Corporation of India (FCI) and the distress sale of paddy during the year 1994-95, but still ordered down grading of 4 annual grade increments in the time scale of the petitioners with cumulative effect and also ordered that in case recovery of loss is not made from the Millers then the same be made from the petitioners and other custodians of paddy stock.

4. The appeal before the Appellate Authority was rejected on 8th September, 2005. Aggrieved, the petitioners took legal recourse before the Additional Registrar (Admn.), Cooperative Societies, Punjab of remedy provided under Rule 14-D of the Markfed Punishment & Appeal Rules, 1990. However, these revisions were dismissed on 30th December, 2005. It is noteworthy that the Appellate Authority segregated the case of Anil Kumar, who was similarly situated in all respects vis-à-vis the petitioners but remanded his case back to the Managing Director for examining the case

afresh. Thereupon, Anil Kumar stands exonerated of the charge vide order dated 30th March, 2010 (Annex P-24).

5. Having lost the petitioners then preferred their last resort of revision before the State Government challenging the previous orders. However, the State Government vide order dated 7th May, 2005 upheld the punishment imposed modifying it to the extent of down grading pay by 4 annual increments by cumulative effect. However, more materially it was held that the recovery for loss sustained could not be placed at the door step of the petitioners and to that extent the previous orders were set aside and thereafter arbitration proceedings remained pending consideration between the Miller and Markfed. Against this last order, the petitioners are before this Court praying that the same be set aside to the extent it has gone against him. As a result of the action taken, the petitioners have not been paid gratuity and leave encashment, which have been withheld due to disciplinary proceedings.

6. Heard Ms. Jagdeep Bains appearing for the petitioners and Mr. Anuj Ahluwalia appearing for respondents No.3 & 4 at length and perused the file with their assistance.

7. Ms. Bains invites the attention of this Court to the order dated 26th October, 2004 passed by the Managing Director, Markfed inflicting punishment of down grading by 4 annual grade increments in their time scale with cumulative effect. But while doing so, the disciplinary authority has observed that in case the recovery of loss is not made good from the Millers in the pending arbitration proceedings between the Millers and Markfed then the same be made good from the custodians i.e. three of the petitioners and one Anil Kumar, Field Officer, mentioned above. They have been accused of allowing lifting of paddy by violating the instructions stipulated in the custom milling policy. She then draws attention to an order dated 30th March, 2010

(Annex P-24) setting aside the punishment orders of Anil Kumar on both aspects of down grading and recovery of financial loss though the rider is “if not recovered from the Miller through arbitration proceedings”. This rider placed in the case of Anil Kumar, was not placed in the case of the three petitioners but which has ultimately been set aside by the Financial Commissioner, Cooperation, Punjab, vide order dated 7th May, 2007 in the following words:

“6. In the circumstances, the punishment imposed to the extent of down grading their pay by four annual increments with cumulative effect is upheld. However, the recovery for the loss sustained in case the miller do not pay the same cannot be placed at their doorstep and is quashed as the agreement and the subsequent arbitration proceedings were between the miller and Markfed. The revision petition is disposed of accordingly. Order reserved on 30.04.2007 is announced today. Parties be informed.” [emphasis]

8. Consequently, the burden was removed from the shoulders of the petitioners and they are now left to contend with the imposition of major punishment. It is argued for the petitioners that even in the matter of imposition of penalty, principles of parity must be maintained to meet out equal treatment in the same set of facts and circumstances involved in the charge sheets. The case of the three petitioners and Anil Kumar is not distinguishable on facts. Mr. Ahluwalia, the learned counsel for the respondents has not been able to point out facts which may justify departure to treat the case of Anil Kumar differently. If the matter has been dropped in the case of Anil Kumar, then there is no fair reason why the same treatment should not be accorded to the petitioners to fulfill the fundamental protections in Article 14 of the Constitution of equal protection.

9. Ms. Bains has taken me for a reading of the order passed in Anil Kumar's case, which is placed at Annex P-23 in order to compare it with the case of the petitioners to examine areas of divergence or convergence. There is hardly any doubt that the petitioners and Anil Kumar were doing much the same thing at the same place for the same stock for the same season. It is also revealed that one Mr. A.P.S.Virk, the District Manager, Mansa who was the overall in-charge of operations at the relevant time has passed away. The cases of the petitioners were also considered in the same order which remanded the case of Anil Kumar. However closely one may read the common order in appeal, one remains baffled as to which of the facts are distinguishable in the case of Anil Kumar to separate him from the rest. The reasons for differentiating the cases of the three as against one of them are hard to find, but the fact remains that Anil Kumar has been given different and preferential treatment without recording reasons or returning relevant findings separating his case from the lot.

10. It is in the light of the above scenario that the impugned order dated 7th May, 2005 passed by the Financial Commissioner, Cooperation, Punjab, deserves to be read on punishment with the recovery of loss in terms of money aspect foreclosed, but still the punishment inflicted stands though considerably watered down, but still is a major penalty without sufficient proof of guilt even in its preponderance of probabilities. There is also no reason assigned by any of the authorities why such a harsh punishment was chosen when the recovery aspect ultimately stands detached from reckoning holding firmly that the petitioners were not responsible for the loss and liable for recovery of money when the fault squarely lies in the acts of the Millers. Then the punishment imposed appears excessively disproportionate to the charge leveled against the petitioners. It appears to this Court in its considered view

that the petitioners by all means deserve similar treatment as was accorded to Anil Kumar vide order dated 30th March, 2010 (Annex P-24) and this order has thus become the bedrock of relief in the present case to be handed down on the touchstone of Articles 14 and 21 of the Constitution of India and not in negation of fundamental rights of equal treatment in the matter of imposition of punishment.

11. For the foregoing reasons, sufficient merit is found in this petition worthy of its acceptance to remove unreasonable discrimination. The petition is, therefore, allowed and the impugned order dated 7th May, 2007 (Annex P-25) is set aside qua punishment with all consequential benefits flowing there from. Money withheld on account of the disciplinary proceedings shall now be disbursed to the petitioners within a period of one month from the date when the limitation provided for appeal against the present order expires. The amounts would earn interest at the statutory rates prescribed by Nationalized Banks on fixed deposit receipts from the due dates till realization.

[RAJIV NARAIN RAINA]
JUDGE

19.02.2016
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