

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.6331 of 2014 (O&M)

Date of decision : December 12, 2016

R P Sharma

..... Petitioner

Versus

Food Corporation of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kamal Gupta and Mr. Sparsh Gupta, Advocates
for the petitioner.

Mr. K.K. Gupta, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Petitioner Sh. R.P. Sharma, who retired as Technical Assistant Grade-I from Food Corporation of India, has impugned the order dated 27.04.2006 (Annexure P-3), order dated 09/10.08.2006 (Annexure P-4) and order dated 09.05.2013 (Annexure P-6), whereby vide order Annexure P-3 the penalty of reduction in time scale of pay by three stages till superannuation was imposed and token recovery of ₹3,00,000/- was ordered to be recovered from his salary/dues, which was affirmed in appeal, vide order dated 09/10.08.2006 (Annexure P-4) and in the review vide order dated 09.05.2013 (Annexure P-6) while affirming the penalty of reduction in time scale of pay by three stages till superannuation, the recovery was reduced to ₹2,00,000/-.

On 20.07.2004, the petitioner was issued a memorandum Annexure P-1 under Regulation 60 of Food Corporation of India (Staff) Regulations, 1971 (for short 'the Regulations') for imposition of minor penalty on the allegations that he accepted inferior quality of rice stocks during the year 1995-96, when posted at Bhuchu Centre. The rice stock accepted by the petitioner was got checked at the level of respondent No.3, during January 1998, i.e. after about two years of transfer of the petitioner from Bhuchu Centre, when the same were found to be deviated from the prescribed specifications. It is alleged that the exercise of checking of the quality of rice stock had been completed at the back of the petitioner and the checking report was prepared, showing the signatures of the petitioner on the said test checking report. The petitioner accepted the rice stock well within the specification to the satisfaction of his superiors, who at the time of acceptance of the stock and till the stay of the petitioner did not raise any finger of delinquency against him. Therefore, on the basis of ex parte checking, the petitioner could not be made liable. The petitioner also referred to the "Training Manual on Scientific methods of Storage of Foodgrains" issued by the Ministry of Food, Government of India, to claim that the rice stock could remain safe up to two years. In the present case, the rice stock remained stranded for more than two years. Therefore, the petitioner is not responsible for the same on the basis of said report. No liquidation of the rice stock in the timely manner was done, which ultimately downgraded the quality of the rice. It is stated that minor and major penalties are mentioned in Regulation 54 and the procedure for major penalty is mentioned in Regulation 58 and for minor penalty is in

Regulation 60. The penalty of stoppage of down grading in time scales is a major punishment, as per Regulation 54. Therefore, the same could not be imposed without holding regular departmental inquiry.

In the reply, it was stated that the penalty of reduction in the time scale by three stages is not a major penalty. As per amended Regulation, the reduction to a lower stage in time scale of pay for a period of not exceeding three years without cumulative effect and not adversely affecting his pension is a minor penalty. Therefore, the procedure for minor penalty as provided at Regulation 60 was followed. It was stated that it was a job of the petitioner as Technical Assistant to accept the stock as per specifications of FCI but the stock was not maintained as per specifications of FCI. Hence, the order was passed.

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

First of all, it is noticed that the Regulation 54 reproduced in the petition is incorrectly reproduced. It is in fact, unamended Regulation. It comes out that the said Regulation was amended vide Notification No.EP-36(1)/2000, dated 25.08.2000, the minor penalty mentioned therein is reproduced below:

“Minor Penalties:

- (i) *censure;*
- (ii) *withholding of his promotion;*
- (iii) *recovery from; his pay of the whole or part of any pecuniary loss cause by him to the Corporation by negligence or breach of orders;*
- *(iii) (a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative*

effect and not adversely affecting his pension.
(iv) withholding of increments of pay.”

The minor penalty (iii) (a) was inserted by way of amendment in which the reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting his pension, is a minor penalty. As such, procedure for imposing minor penalty was correctly followed.

It also comes out that at the time of imposition of punishment, only little more than one year service of the petitioner was left.

Learned counsel for the respondents has clarified that the reduction in three scales means reduction in three increments.

In the present case, the impugned order specified that it is till superannuation, which means that it will not affect his pension. Since, his remaining service was only one year and three months, therefore, the order will be effective only for one year three months.

Learned counsel for the respondents has further informed that the order was wrongly implemented with cumulative effect. He has produced on file the letter dated 01.12.2016, vide which the said error has been corrected in implementing the order.

It being so, the order of imposition of penalty of reduction in time scale of pay by three stages till superannuation is minor penalty and for that correct procedure was followed.

Learned counsel for the petitioner has vehemently argued that in this case, two penalties were imposed. One reduction in time scale of pay by three stages and second is recovery of ₹3,00,000/-, which was later on reduced to ₹2,00,000/- by the Reviewing Authority.

It has also been argued that as per Regulation 54, the recovery for pecuniary loss is mentioned at serial No.(iii) and penalty of reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting his pension is mentioned at serial No.(iii)(a). In this way, two penalties have been imposed, which are contrary to law. It is again vehemently argued that two minor penalties could not be imposed.

On the other hand, learned counsel for the respondents has argued that punishment is only in reduction in the time scale of pay by three stages till superannuation. The recovery of ₹2,00,000/- is only for pecuniary loss caused to the department and both the orders could be passed simultaneously.

In case of **“A.S. Wadhawan vs UCO Bank and others”, 1996 (2) S.C.T. 33**, this Court dealt with the question of imposition of minor and major penalties and held that as per Regulation of Bank, there is nothing to show that more than one punishment cannot be awarded to an employee. It was observed as under:

“ 13. We are unable to accept these submissions. The petitioner is admittedly governed by the provision of the United Commercial Bank Officer Employees' (Discipline and Appeal) Regulations, 1976. These regulations have been framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Regulation 4 enumerates the minor and major penalties which can be imposed by the Bank. Withholding of increments and of promotion have been mentioned as minor penalties. Reduction to a lower grade or post or to a lower stage in a time scale has been prescribed as a

major penalty. There is nothing in the rule to indicate that the disciplinary authority is not competent to impose more than one penalty on an employee. Even otherwise, in principle, we find no warrant for holding that only one of the prescribed penalties can be imposed in one case. Supposing an employee acts negligently or dishonestly and caused loss to the Bank, he cannot only be awarded one of the enumerated penalties but even orders for the recovery of the loss suffered by the Bank can be passed. The authority can say that the employee is censured and the loss caused by him shall be recovered from his pay. Both these penalties have been mentioned in the rule. Similarly, in the present case, the authority has imposed the penalty of withholding of promotion (which is a minor penalty) and reduction to a lower stage in the time scale (which is a major penalty) on the petitioner, the action is in strict conformity with the rules.”

Under Regulation 54, five minor penalties are mentioned. There is no mention that only one minor penalty can be imposed. After every penalty word 'or' is not used, so as to denote that only either of the penalties could be imposed. In the cases, where official violates the service rules and also caused pecuniary loss to the Department, the Department can certainly impose one of the minor penalties and simultaneously also, order the recovery of loss caused to the Department.

In the present case, the reduction to a lower stage in time scale of pay for a period of not exceeding three years without cumulative effect and not adversely affecting his pension is a minor penalty and recovery of Rs.2,00,000/- is imposed on account of loss caused to the Department. Therefore, both the penalties can coexist and could be imposed.

It being so, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.

(KULDIP SINGH)
JUDGE

December 12, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes