

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.225 of 2016 (O&M)

Date of Decision: February 09, 2016

Food Corporation of India and others

.....Appellants

versus

Ram Chand Garg

.....Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present: Mr.R.S.Bajaj, Advocate, for the appellants.

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1. Whether Reporters of Local papers 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?

Surya Kant, J. (Oral)

This letters patent appeal assails the order dated 01.10.2015 whereby learned Single Judge has set-aside the order dated 29.04.2013 passed by the Managing Director of the appellant-Corporation imposing recovery of Rs.1.0 lac alongwith reduction in time-scale of pay by three stages for a period of three years with cumulative effect on the respondent.

[2] The facts may be noticed briefly.

[3] The respondent joined the appellant-Corporation as Assistant Grade-III in the year 1972 and retired as Manager on 31.01.2011. While in service, the respondent was served with a charge-sheet dated 29.03.2000 alleging pilferage of the stock which was in joint custody of the respondent alongwith three other employees. A regular enquiry was conducted in

which the respondent was exonerated. The Disciplinary Authority accepted the enquiry report and dropped the charges against the respondent vide order dated 23.05.2001.

[4] After five years, the respondent was served with a show-cause notice dated 13/14.07.2006 by the Executive Director of the Corporation. The respondent submitted his reply but the same was turned down vide order dated 29/30.03.2007 and it was held that the respondent was 'wrongly exonerated of the charges against him'. Consequently, the punishment, as noticed in the opening paragraph of this order, was imposed. The respondent filed an appeal which was also declined.

[5] The learned Single Judge has set-aside the order of punishment on two counts. Firstly, it has been held that there was no reason for the authorities to re-open the matter after five years and secondly, the action was discriminatory.

[6] Ignoring the second ground taken by learned Single Judge, we have heard learned counsel for the appellants at a considerable length with reference to the first ground held against them. In our considered view, the learned Single Judge has rightly intervened in the matter. It is an admitted fact that the matter was re-opened against the respondent on the basis of some audit objection where a general observation was made that the Corporation has not been imposing effective recoveries to make good the abnormal shortages and thus the practice followed in the Corporation was in contravention of the provisions of CVC manual which provide that recovery of pecuniary loss could be made from the officials directly involved alongwith other penalty. Here was a case where such an accusation was made against the

respondent but in the domestic enquiry he was found innocent. That report was accepted by the Disciplinary Authority. The power of review under Regulation 72(1), if any, could be exercised within a reasonable period. The said provision cannot be construed as if the power of review can be invoked at any stage. It is not a case where the authorities have accused the respondent of any fraud, collusion or connivance for keeping them in dark about the alleged pilferage.

[7] In the disciplinary matters, nothing precludes the Disciplinary Authority or a Superior Authority to disagree with the findings returned by the Inquiry Officer. Such disagreement, however, must precede with reasons. Those reasons are required to be communicated to the affected employee in compliance of the principles of natural justice. After considering his response to those reasons, an appropriate order can be passed. No such procedure was followed in the instant case. Similarly, no further enquiry was held, if at all there were any new facts which came to the knowledge of the authorities.

[8] Reliance placed by the appellants on Regulation 74 (3) which provides that an application for 'review' shall be dealt with in the same manner as if it was an 'appeal' under this Regulation, is also misconceived. Regulation 72 which deals with as to how an appeal is to be considered, enables the Appellate Authority to enhance the penalty and while doing so, it is not necessary for the Appellate Authority to hold a further enquiry if an enquiry has already been held under Regulation 58 and the enhanced penalty can be imposed only by giving a show-cause notice. This provision does not advance

the case of the appellants for the reason that in the instant case the respondent was exonerated in the enquiry and it was not a case of enhancement of penalty.

[9] For the reasons afore-stated, we do not find any ground to interfere with the impugned order.

[10] Dismissed.

[SURYA KANT]
JUDGE

February 09, 2016
mohinder

[RAJ MOHAN SINGH]
JUDGE