

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5567 of 2007**

- Dr. Hargovind Chaurasia S/o Late Shri Munnalal Chaurasiya, Aged About 57 Years Presently Working As Senior Assistant Manager, R/o Mahavir Nagar, Raipur District Raipur (C.G.)

---- Petitioner**Versus**

1. Chhattisgarh State Warehousing Corporation, through Its Managing Director, Chhattisgarh State Warehousing Corporation, 22- Anand Nagar, Raipur (C.G.)
2. Madhya Pradesh Warehousing & Logistics Corporation, Through Its Managing Director, Office Complex, Block - A, Gautam Nagar, Bhopal - 482023 (M.P.)
3. Regional Manager, Madhya Pradesh Warehousing & Logistics Corporation, Regional Office Gwalior, District - Gwalior (M.P.)

---- Respondents

For Petitioner : Shri Ashish Surana, Advocate
 For Respondent No.1: Shri B. D. Guru, Advocate
 None for respondents No.2 & 3.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/05/2017**

Heard.

2. This petition has been filed by the petitioner aggrieved by order dated 28-07-2007 and order dated 02-02-2005, by which, the petitioner has been subjected to penalty of recovery of Rs.1,01,739/-.

3. The facts necessary for decision making of the petition are that the petitioner, during the period when he remained posted as Branch Manager of

Madhya Pradesh Warehousing Corporation at Guna and Sagar, it was alleged that shortage of wheat and rice under the control of the petitioner was noticed. In some of the matters, the petitioner was called and later on, first impugned order was passed on 02-02-2005 directing recovery of Rs.1,01,739/- from the petitioner. It was followed by another order passed by the respondent No.1- Chhattisgarh State Warehousing Corporation on 28-07-2007 against the petitioner as at that time, the petitioner was posted and working within the jurisdiction and employment of newly created Chhattisgarh State Warehousing Corporation, after re-organization of State of Madhya Pradesh. The petitioner submitted representations followed by appeal. However, both the Corporation sending the petitioner's appeal, to each other, maintaining that the other Corporation was to hear the appeal, having waited for some time, the petitioner filed this petition in the year 2007.

4. The impugned order is assailed by the petitioner mainly on the ground of procedural impropriety on the submission that the impugned order amounts to imposition of penalty as provided under Regulation 22 of the Madhya Pradesh Warehousing Corporation Staff Regulations, 1962, (In short "the Regulations of 1962") since it involves civil consequences and in the case of the petitioner, huge amount was recovered from him, he was entitled to proper opportunity of hearing, even if it did not require issuance of formal charge sheet and holding of detailed enquiry. According to learned counsel for the petitioner, this is implicit in the provisions itself. As no opportunity of hearing was afforded, the impugned order is illegal.

5. On the other hand, learned counsel for respondent No.1 submits that the record speak that before issuance of impugned order, the petitioner was called for personal hearing to have his version recorded by the competent authority before taking the decision to effect recovery for alleged losses. As the

petitioner's reply was not found satisfactory, the authorities decided to recover the amount, because huge quantity of rice and wheat was found short in the stock verification. It is also submitted that the petitioner having filed an appeal, ought to have waited for the decision of the appeal and as the appeal has not been decided, this petition is pre-mature.

6. It cannot be disputed that the two orders have been passed against the petitioner, one by the Madhya Pradesh State Warehousing Corporation and other by the Chhattisgarh State Warehousing Corporation. Learned counsel for respondent No.1 submits that the proceedings were drawn by the Chhattisgarh State Warehousing Corporation, because the matter relates to recovery of shortage during the period, when the petitioner was posted at Sagar and Guna, which is now in the territorial jurisdiction of successor State of Madhya Pradesh. The decision taken and order of recovery when communicated to the respondent No.1, within whose jurisdiction, the petitioner is working, order was communicated. He submits that the order was passed by the Madhya Pradesh State Warehousing Corporation and grievance of the petitioner, if any, would be against the Madhya Pradesh State Warehousing Corporation.

7. The return of Madhya Pradesh State Warehousing Corporation as well as that of Chhattisgarh State Warehousing Corporation have been filed. Though, there is no representation made during the course of hearing by the Madhya Pradesh State Warehousing Corporation, the return is on record, which does not indicate that prior to issuance of impugned order, the petitioner was given any show cause notice, affording opportunity of hearing.

8. Terms and conditions of services of an employee of Chhattisgarh State Warehousing Corporation is governed by the Madhya Pradesh Warehousing Corporation Staff Regulations, 1962. These regulations have been framed in exercise of power conferred under clause 42 of the Warehousing Corporations

Act, 1962 and therefore, the regulations have statutory force. Chapter-II deals with Recruitment, Appointment, Promotion, Probation, Discipline etc. and Clause 22 of the Regulations of 1962 provides imposition of penalty, the same being relevant is extracted hereinbelow:-

22. “Imposition of Penalties.

1. Any employee committing a breach of the regulations of the Corporation or being guilty of negligence, inefficiency or indolence in performance of his duties or knowingly doing anything detrimental to the interests of the Corporation or in conflict with its instructions or committing a breach of discipline or being guilty of any other act of misdemeanour or is convicted of a criminal offence shall be liable to the following penalties--

- (a) Fine
- (b) Censure
- (c) Delay or stoppage of increment or promotion.
- (d) Reduction to a lower post in his permanent class or to a lower stage in his incremental scale.
- (e) Recovery from pay of the whole or part of pecuniary loss caused to the Corporation by the employee.
- (f) Removal
- (g) Dismissal

Provided that the penalty of fine shall be imposed on employees of Class IV only.

22. The power to impose a penalty under sub-regulation(1) shall be exercised:

(i) In the case of Class I employees other than Managing Director, in respect of all penalties by the Board of Directors, and in the case of Class II employees in respect of all penalties except the penalty as specified in Clauses (b) & (c) of Sub-Regulation (1) by the Executive Committee subject to ratification by the Board.

(ii) In the case of Class III and Class IV employees, in respect of all penalties, and in the case of Class II employees as specified in Clause (b) & (c) of Sub-Regulation(1) by the Managing Director. *

*(Regional Managers to act as appointing authority, disciplinary authority and terminating authority in their Region for Class IV staff. Authority: Board of Directors' meeting Resolution No.14 dt. 04.07.1981)

(iii) In the case of the Managing Director, in respect of all penalties, except the penalties specified in Clause (f) & (g) of Sub-Regulation (1) by the State Government, in consultation with the Central Warehousing Corporation.

(iv) No punishment other than that specified in Sub-Regulation (1)(a), (1)(b) and (1)(c) shall be imposed on any employee without formal charges being framed against him and without giving him an opportunity for tendering an explanation in writing and cross-examining the witness against him, if any, and of producing defence.

(v) Notwithstanding any thing contained in these regulations, punishment to employee on deputation from the State Government or Government Institution or Cooperative Societies shall be imposed in accordance with the rules and procedure laid down in this behalf in their parent service.”

A perusal of the aforesaid provision would show that the recovery from pay of the whole or part of pecuniary loss caused to the Corporation by the employee is one of the penalties. In the aforesaid provision, penalties have been specified, which could be imposed by the Corporation, on an employee, who is found guilty of negligence, inefficiency or indolence in performance of his duties or knowingly doing anything detrimental to the interests of the Corporation or in conflict with its instructions or committing a breach of discipline or being guilty of any other act of misdemeanour or is convicted of a criminal offence. Apparently, the recovery is a measure of penalty. Therefore, it amounts to penal action against the petitioner. Recovery appears to have been made on the consideration that the petitioner was negligent or inefficient. It is crystal clear that the action taken against the petitioner is punitive in nature. The provision contained in the Regulation 22 in unmistakable terms indicates that the opportunity of hearing will have to be afforded. What has been stated in Clause iv impliedly indicates that though formal charge sheet would be necessary in the matter of imposition of penalty other than 1-(a), 1(b) & 1(c), requirement of principle of natural justice, is implicit that at least show cause notice would be required to be issued to the petitioner requiring him to file his reply and opportunity to satisfy as to why the petitioner could not be visited with such kind of penalty. This having not done, the impugned order cannot be sustained in law.

9. The submission that the records indicate that the petitioner was called in the matter, would not satisfy the salutary requirement of principles of natural justice. Though, detailed charge sheet may not be necessary, but in such a case, one show cause notice is required to be given with complete details of the shortage of wheat/rice, on the basis of which, allegations have been levelled against the petitioner and without complying with the principles of natural justice, penalty could not be imposed on the petitioner.

10. In view of the aforesaid defect in the enquiry and order of punishment, in my opinion, impugned order cannot be sustained in law only on this ground and the same is required to be set aside. At this stage, it would not be proper for the petitioner- a retired employee, to send the matter back for consideration in appeal, when the petitioner suffers from violation of principles of natural justice.

11. Accordingly, the petition is allowed. The impugned order dated 28-07-2007 and 02-02-2005 is set aside. The amount, which has been recovered, shall be refunded to the petitioner.

SD/-
(Manindra Mohan Shrivastava)
Judge

