IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2487-2015 (O&M)
Date of decision:08.12.2017

Harmail Singh ... Petitioner

Vs.

State of Punjab & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Parveen Kumar Garg, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Petitioner, who was holding the post of AFSO under the Food Supplies and Consumer Affairs Department, State of Punjab stands superannuated. While he was serving as Inspector Grade-I, a show cause notice dated 21.02.2012 (Annexure P-1) was served upon him and the precise article of charge formulated was to the following effect:

> *"Sh. Harmail Singh S/o Sh. Pritam Singh, Inspector Grade-I, Circle Sangrur.*
>
> *When, in the year of 2009-10, he was posted as Inspector Incharge at PR Centre Sunam in District Sangrur, then they, as per list enclosed with show cause notice, have submitted the sale documents of the wheat issued to the Depot Holder/Flour Mills against lease order under APL Scheme from 20.12.2009 to 20.07.2010, to the Circle office, Sangrur after obtaining the same from FCI after great delay, whereas they should have immediately received these documents from the FCI and sent.*

Due to their negligence and late submission of the documents to the Circle Office, due to delay in receipt of due amount of the wheat, Government has suffered financial loss of Rs.52,57,465/- on account of interest.

From the above it is clear that he is non-trustworthy, irresponsible, careless and undisciplined employee of the government.

Sd/-
Additional Secretary, Punjab Government
Food Civil Supplies and Consumer Affairs Department."

Identical show cause notices were served on three other colleagues as well. The Punishing Authority after having sought a response to the show cause notice, issued order dated 20.03.2013 (Annexure P-3) directing a recovery of a total amount of Rs.52,57,465/- and which was apportioned in the following manner:

Sr. No.	*Name of the Employee*	*Amount of share*	*Total recoverable amount*
1.		*(1/3rd share)*	
	Harmail Singh, IG-1 *Sukhdeep Kaur, IG-1* *Sant Singh, IG-1* *Ruldu Singh, IG-1*	*Rs.8,24,095/-* *Rs.8,24,095/-* *Rs.93,561/-* *Rs.10,740/-*	*Rs.17,52,488/-*
2.	*Concerned employees of the Account wing of the circle office*	*(1/3rd share)*	*Rs.17,52,488/-*
3.	*From FCI*	*(1/3rd share)*	*Rs.17,52,488/-*

The specific recovery imposed upon the present petitioner was to the tune of Rs.8,24,095/-. The same was directed to be made good by deducting Rs.5000/- per month from the salary. Petitioner preferred an appeal against the order passed by the Appellate Authority and which has been dealt with vide order dated 15.07.2014 (Annexure P-6) passed by the Secretary to Govt. of Punjab, Food, Civil Supplies and Consumer Affairs

Department and whereby, the order of recovery has been temporarily stayed and the matter has been remitted back to the Punishing Authority for a decision afresh after affording opportunity of personal hearing to the delinquent employees.

The instant writ petition has been filed assailing the show cause notice dated 21.02.2012 (Annexure P-1), order of recovery passed by the Appellate Authority dated 20.03.2013 (Annexure P-3) as also the order passed in appeal dated 15.07.2014 (Annexure P-6).

It may be taken note that at the stage of preliminary hearing of the writ petition, this Court while issuing notice of motion on 13.02.2015 had stayed further proceedings pursuance to the order passed by the Appellate Authority qua the petitioner.

Reply to the writ petition has been filed.

Having heard counsel for the parties at length, this Court is of the considered view that the matter does not require to be examined on merits and a case for remand to the Appellate Authority is made out. Such view is being taken for the following reasons:

It is not in dispute that the show cause notice dated 21.02.2012 (Annexure P-1) was in terms of initiation of proceedings under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Petitioner had submitted his detailed reply and thereafter, a preliminary inquiry was directed by the Punishing Authority. In pursuance thereto, the Deputy Director (Field), Food Supplies Department, Patiala Division, Patiala submitted a report dated 30.11.2012 (Annexure P-2) returning findings that the field staff (including the petitioner) is not responsible for the alleged losses as delay in the issuance of Weight Check Memo/Quality Certificate was attributable only to the concerned FCI staff. It was concluded that for the financial loss that has occurred, FCI, Sangrur is responsible. The Punishing Authority, however, passed the impugned order dated 20.03.2013 (Annexure P-3) directing recovery as afore noticed.

Petitioner availed of the statutory remedy of appeal. Apart from other contentions and submissions, petitioner stated that even though the punishment of recovery is a minor penalty under the Punishment and Appeal Rules, yet imposition of such a huge amount of recovery could not have been directed without holding a regular detailed inquiry. It was also contended that the preliminary inquiry had come in favour of the petitioner, yet the Punishing Authority has discarded the same without recording a dissenting note. It was also emphasized by the petitioner in the appeal that the charge is not of embezzlement but rather pertaining to delayed submission of the dispatched documents and on which subject, no instructions whatsoever had been issued by the respondent/department so as to serve as guidelines to be followed/complied with. In any case, in the preliminary inquiry which had been placed before the Punishing Authority, a finding had been recorded that the requisite dispatched documents were not prepared by the FCI staff and as such, delay in submission of such documents was attributable only to the FCI staff.

Perusal of the impugned order dated 15.07.2014 (Annexure P-6) passed by the Appellate Authority would reveal that the specific grounds and contentions raised by the petitioner in the appeal have not been dealt with. This Court would have no hesitation in terming the order of the Appellate

Authority as a cryptic non-speaking order.

That apart, it may be noticed that the Appellate Authority embarked upon a novel procedure. On the basis of the submissions advanced by the petitioner as also other delinquent officials during the course of personal hearing, a Departmental Committee was constituted by the Appellate Authority. A report was submitted by the Committee containing certain recommendations and which have been accepted. Strangely, the recommendations of the Departmental Committee have not been incorporated in the impugned order. No reasons whatsoever have been assigned by the Appellate Authority justifying the acceptance of the recommendations of the Departmental Committee. Suffice it to observe that the Appellate Authority while dealing with the statutory appeal preferred by an employee is exercising powers akin to a quasi judicial authority. It was imperative for the Appellate authority to have assigned reasons in the order reflecting independent application of mind. By merely stating in the impugned order that the report submitted by a Departmental committee has been accepted tantamounts to delegation of the decision making process by the Appellate Authority and which cannot withstand judicial scrutiny. The impugned order dated 15.07.2014 (Annexure P-6), as such, cannot sustain.

Furthermore, it would be apposite to notice that the show cause notice had been issued to the petitioner as also his three colleagues on the charge of having caused financial loss to the Government of a sum of Rs.52,57,465/- on account of interest. The Punishing Authority had passed an order dated 20.03.2013 (Annexure P-3) holding FCI to be responsible for 1/3rd share i.e. Rs.17,52,488/-. In the impugned order dated 15.07.2014

(Annexure P-6) passed by the Appellate Authority, the responsibility affixed upon FCI has been absolved by observing as follows:

> *"In this case, FCI has been held responsible by the Punishing Authority for 1/3rd share of the loss caused to government. I considered that it is ought not to recovered from the FCI and nor, recovery is being effected from the FCI for the loss caused to the government in such case."*

No reasons whatsoever have been assigned to absolving FCI of its responsibility qua 1/3rd share of the total loss as per allegations contained in the show cause notice at Annexure P-1. Even though, the matter has been remanded back by the Appellate Authority to the Punishing Authority, yet such view taken in favour of FCI would be detrimental to the interest of the petitioner. It was not open for the Appellate Authority to have decided part of the dispute which on the face of it would adversely effect the interest of the petitioner and then to remit the case to the Punishing Authority for passing of an order afresh.

On yet another ground, the order dated 15.07.2014 (Annexure P-6) passed by the Appellate Authority cannot sustain. While remitting the matter back to the Punishing Authority, it has been observed that fresh orders be passed by taking into account the recommendations of a Departmental Committee that had been constituted by the Appellate Authority during pendency of the statutory appeal. The uncontroverted position of fact is that the Departmental Committee having been constituted issued certain guidelines vide Memo dated 30.06.2014 (Annexure P-5) on the subject of procedure regarding submission of dispatched documents relating to issuing of wheat to depot holders/Atta mills under TPDS Scheme. The show cause notice dated 21.02.2012 (Annexure P-1) was issued to the petitioner relating to allegations for the year 2009-10. The moot question that would arise in this case is as to whether the guidelines issued by the Departmental Committee dated 30.06.2014 (Annexure P-5) would apply retrospectively and would cover even the allegations raised against the petitioner in a show cause notice dated 21.02.2012 (Annexure P-1) for allegations relating to the year 2009-10. Surprisingly, even though the Appellate Authority has remitted the matter back to the Punishing Authority, yet on such point has already taken a view against the petitioner and by directing the Punishing Authority to pass an order afresh by taking into account the guidelines dated 30.06.2014 (Annexure P-5) issued by the Departmental Committee. It is settled law that in a matter of remand, observations and views are not to be expressed on merit and the authority to whom the matter has been remitted for taking a decision afresh would proceed further totally uninfluenced.

For the reasons recorded above, the instant writ petition is partly allowed. Order dated 15.07.2014 (Annexure P-6) passed by the Secretary, Government of Punjab, Food Civil Supplies and Consumer Affairs Department qua the present petitioner is set aside. Matter is remanded back to the Appellate Authority to pass an order afresh after affording an opportunity of personal hearing to the petitioner within a period of three months from the date of receipt of a certified copy of this order. The order dated 20.03.2013 (Annexure P-3) passed by the Punishing Authority shall in the meantime be kept in abeyance and would be subject to the outcome of the fresh order to be passed by the Appellate Authority as has been directed.

Learned counsel representing the petitioner has even brought to the notice of this Court the passing of an order dated 20.02.2017 by the Director, Food Civil Supplies and Consumer Affairs Department, Punjab placed on record at Annexure P-8 in the case of Ram Partap Sharma, Inspector Grade I and other employees and where under against identical circumstances/charges, the employees have been exonerated on the basis that there were no specific instructions for dispatch of the documents/bills of the wheat distributed under TPDS Scheme. Without even ascertaining the authenticity of such submission as also contents of the order dated 20.02.2017 (Annexure P-8), liberty is granted to the petitioner to furnish written submissions before the Appellate Authority so as to fortify the contentions/grounds already raised in the appeal. In the eventuality of any such written submissions being furnished within a period of two weeks from today, the Appellate Authority would be obligated to consider the same as well while passing the final order.

Petition is allowed in the aforesaid terms.

08.12.2017 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No