

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

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CWP-3907-2014 (O&M)
Date of decision: 11.08.2017

Sushil Kumar

....Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. V.K.Jindal, Sr. Advocate with
Mr. Amardeep Sheoran, Advocate for the petitioner.

None for respondent No.1.

Mr. Arvind Mittal, Advocate for respondents No.2 and 3.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged various orders in the disciplinary proceedings. Disciplinary authority imposed the penalty of removal from service. Aggrieved by the order of removal from service, petitioner submitted appeal before the appellate authority. Appellate authority while taking lenient view modified the penalty of removal from service to that of reduction in rank (reverting to the lower post to the post held by the petitioner). While ordering notice of motion on 26.03.2014 grievance of the petitioner is restricted to whether he should be reverted to the post of Assistant Manager (Materials) or Assistant Manager (Marketing).

2. Learned counsel for the petitioner submitted that he has joined

service as a Field Assistant and he has earned promotions to various cadres like Assistant Manager (Marketing) and Deputy Manager (Marketing). When the initiation of inquiry was ordered by the respondents, he was holding the post of Deputy Manager (Marketing). Therefore, it was contended that appellate authority while modifying the penalty of removal from service to reduction to the lower post ordered that petitioner be posted at Bathinda unit in materials discipline and designated as Assistant Manager (Materials). It was submitted that petitioner never hold the post of Assistant Manager (Materials). On the other hand, he was holding the post of Assistant Manager (Marketing) and further he was promoted to the post of Deputy Manager (Marketing). Consequently, as a measure of penalty in a disciplinary proceedings, question of reduction in rank to a different post other than post held by an officer or employee is impermissible. To that extent order of the appellate authority is liable to be set aside and the petitioner be treated as reverted to the post of Assistant Manager (Marketing).

3. Per contra, learned counsel for the respondents while resisting the claim of the petitioner pointed out policy decision of the respondent-National Fertilizers Limited vide Annexure R1 which is inter office memo dated 08.05.1986. Subject is relating to policy regarding diversification of employees from one discipline to another. He has pointed out specifically para 2 where the respondents are empowered to take a suo moto decision in the administration to shift employees from one post to another post in a different wing also. Thus, there is no infirmity in the order of the appellate

authority reverting to the post of Assistant Manager (Materials) instead of Assistant Manager (Marketing).

4. Heard learned counsel for the parties.

5. Crux of the matter in the present petition is whether reduction in rank as a measure of penalty passed by the appellate authority while modifying the order of removal from service to the post of Assistant Manager (Materials) is correct or not? National Fertilizers Limited Employees (Conduct, Discipline and Appeal) Rules provides for initiation of departmental inquiry and also for imposing certain penalties. In the present case, petitioner was subjected to disciplinary proceeding. It was concluded in imposing the penalty of removal from service. Thereafter, petitioner submitted appeal before the appellate authority and in appeal penalty order was modified from removal from service to that of reduction in rank. Statutory power has been exercised by the appellate authority under National Fertilizers Limited Employees (Conduct, discipline and appeal) Rules, therefore, the appellate authority is empowered to order reduction in rank (reversion). Since the petitioner was holding the post of Deputy Manager (Marketing) and the feeder cadre (lower cadre) is Assistant Manager (Marketing) therefore, reversion should be only to the post of Assistant Manager (Marketing) and not Assistant Manager (Materials). Any reliance on policy decision of the respondents like inter office memo dated 08.05.1986 (Annexure R-1). The same cannot be taken into consideration for the reasons that National Fertilizers Limited Employees (Conduct, Discipline and Appeal) Rules, prevail over the policy decision. That apart

as a measure of penalty petitioner has been reverted. Therefore, reversion must be against the post held by him prior to his promotion to the higher cadre. In other words, petitioner while holding the post of Assistant Manager (Marketing) was promoted to the post of Deputy Manager (Marketing). Therefore, any reversion order as a measure of penalty should be only to the post of Assistant Manager (Marketing).

6. In view of the above facts and circumstances, appellate authority's order dated 07/08.07.2011 insofar as "he is posted at Bathinda Unit in Materials discipline and designated as Assistant Manager (Materials)" is to be read as Assistant Manager (Marketing). If the post of Assistant Manager (Marketing) is not available in Bathinda Unit in that event, petitioner be accommodated elsewhere as Assistant Manager (Marketing) within a period of one month from today.

7. CWP stands allowed in part.

11.08.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No