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

204/A

CWP No.9721 of 2014 (O&M)
Date of decision: 03.08.2017

RC Verma ...... **Petitioner**

Versus

Food Corporation of India and others ...... **Respondents**

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

Present:- Mr. Kamal Gupta, Advocate and
Mr. Sparash Gupta, Advocate
for the petitioner.

Mr. J.S. Puri, Advocate
for the respondents.

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P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner has questioned the validity of penalty order dated 22.12.2009, Appellate Authority order dated 14.03.2011 and Reviewing Authority order dated 22.11.2013 (Annexures P-5, P-8 and P-11 respectively).

The petitioner while in service, he was subject to disciplinary proceedings by framing charges on 22.10.2007. During pendency of the disciplinary proceedings, petitioner has attained the age of superannuation and retired from service on 31.08.2009. Disciplinary proceedings would be continued which were initiated on 22.10.2007 even after petitioner's retirement under Regulation 60-A of Food Corporation of India (Staff) (1st Amendment) Regulations, 2007. On completion of disciplinary proceedings on 22.10.2009, the penalty of recovery of ₹ 1,50,000/- was imposed on the petitioner. Petitioner aggrieved by the order of penalty preferred an appeal

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as well as revision in which he has suffered orders. Thus the present petition.

Learned counsel for the petitioner submitted that question of imposing any penalty on the petitioner as on 22.12.2009 under Sub-clause (ii) of Regulation 60-A of Food Corporation of India (Staff) (1st Amendment) Regulations, 2007 notified on 30.04.2007 prohibits competent authority to impose any penalty after lapse of one year from the date of delivery or charge-sheet against retired employee or officer of FCI. It was submitted that in the present case, having regard to the date of charge memo issued on 22.12.2007 read with date of retirement of petitioner on 31.08.2009 and the penalty imposed on 22.12.2009, the regulations permits the Competent Authority to complete the disciplinary proceedings expeditiously and within 12 months from the date of delivery of charge-sheet to the charged official, subject to Court orders, if any, in other words, there is a prohibition beyond 12 months.

Per contra, learned counsel for the respondents submits that Sub-clause (ii) of Regulation 60-A of Food Corporation of India (Staff) (1st Amendment) Regulations, 2007, is only directory and not mandatory. The said issue was considered by the Calcutta High Court in the case of *Dipak Kumar Das* Vs. *Food Corporation of India and others*, therefore, it is the discretion of the disciplinary authority or competent authority to pass final order in the disciplinary proceedings beyond the time limit stipulated in the aforementioned regulation to the extent of within twelve months from the date of delivery of charge-sheet to the charged official read with date of retirement. Thus, the petitioner has not made out a case to interfere with the order of penalty and consequential orders passed by the Appellate and

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Revisional Authorities.

Heard learned counsel for the parties.

The crux of the matter in the present petition whether disciplinary authority or competent authority are empowered to impose the penalty on a retired employee who has been charge-sheeted, who has retired and if the order in the disciplinary proceedings are not passed within twelve months from the date of delivery of charge-sheet to the charged official, would be directory or mandatory. For the purpose of appreciating the factual aspects read with regulation, it is necessary to re-produce the relevant Regulation of 60-A which reads as under:-

> *"**60-A** – Procedure for disciplinary proceedings after retirement:*
>
> *(i) Any disciplinary proceeding, if instituted by issue of chargesheet while the employee was in service, whether before his retirement or during his reemployment, shall, after the retirement of the employee, be continued and concluded by the authority by which it was commenced, in the same manner, as if the employee had continued in service.*
>
> *(ii) Such proceeding after retirement should be completed expeditiously and within twelve months from the date of delivery of charge sheet to the charged official, subject to Court Orders, if any.*
>
> *(iii) During the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence or misconduct as mentioned in the relevant Sections of the Payment of the Gratuity Act, 1972 (39 of 1972) or to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-*

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employment after retirement, provided that the provisions of relevant Sections of the Payment of Gratuity Act, 1972 shall be kept in view in the event of delayed payment, in case, the employee is fully exonerated."

(i) Empowers the competent authority to continue the disciplinary proceedings against retired employee if the charge-sheet was already filed when he was in service.

(ii) Proceeds for completion of disciplinary proceedings expeditiously and within twelve months from the date of delivery of charge-sheet to the charged official, subject to Court orders, if any.

Having regard to the fact that the petitioner has been charge-sheeted on 22.10.2007, he has retired on 31.08.2009 and penalty was imposed on 22.12.2009, in this background in not complying with the Sub-clause (ii) of Regulation 60-A of the Regulation,2007 is the question. Sub-clause (ii) of the Regulation 60-A of Regulation, 2007 mandates competent authority for the reasons that the word used is 'such proceedings after retirement should be completed expeditiously and within twelve months'. In other words, competent authority has been specifically empowered to complete the disciplinary proceedings expeditiously and within 12 months which mandates. Therefore, the question of holding Sub-clause (ii) of Regulation 60-A of Regulation, 2007 cannot be read as directory. The Calcutta High Court has not taken note of the specific words i.e. 'such proceedings after retirement should be completed expeditiously and within twelve months'. Reading of expeditiously and within twelve months, one has to read expeditiously as well as within twelve months. The word of expeditiously and within twelve months cannot be read in isolation.

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Therefore, the respondents while imposing the penalty on 22.12.2009, i.e. much after one year from the date of issuance of charge memo (22.10.2007) read with the date of retirement of the petitioner in the present case i.e., 31.08.2009. Supreme Court in the case of *CIT Vs. Anjum M.H. Ghaswala (2002), 1 SCC 633*, Supreme Court referred to interpret the word 'Shall' in Sections 234-A, 234-B and 234-C in the Income Tax Act as 'May'. The Court said the expression 'Shall' used in the Sections cannot by any stretch of imagination be construed as 'May'. There are sufficient indications in the scheme of the Act to show that expression 'Shall' used in Sections 234-A, 234-B and 234-C is used by legislature deliberately and it has not left any scope for interpreting the said expression as 'May'.

Supreme Court in the case of *P.T. Rajan Vs. T.P.M. Sahir, (2003) 8 SCC 498* laid down the following provisions as regards the interpretation of the words 'May' and 'Shall' used in a statutory provision.

> (i) A statute must read in the test and context thereof whether a statute is directory or mandatory would not depend on the user of the words 'Shall" or 'May'. Such a question must be posed and answered having regard tot he purpose and object it seeks to achieve.
>
> (ii) Where a statutory functionary is asked to perform statutory duty within a prescribed time, the same would be directory and not mandatory.

In the present case, word is both expeditiously and within twelve months from the date of delivery of charge-sheet to the charged official. Therefore, question of reading it as 'May' do not arise. Since Sub-clause (ii) of Regulation 60-A of Regulation 1997 mandated authority with

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a duty in a particular manner.

In view of the above facts and circumstances, impugned orders dated 22.12.2009, 14.03.2011 and 22.11.2013 Annexures P-5, P-8 and P-11 respectively are set aside.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

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Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No

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