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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7002/2017, CM Nos. 29085-29087/2017

R S PANWAR

..... Petitioner

Through: Mr. Nikhil Rohatgi & Mr. Shashank
Khurana, Advs.

versus

FOOD CORPORATION OF INDIA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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16.08.2017

CM Nos. 29085-29087/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 7002/2017

1. The present petition has been filed by the petitioner challenging the orders dated November 08, 1996 and May 09, 1997 to the extent, the penalty of demotion to the post of Assistant Manager (General) at the lowest scale applicable for the said post and recovery of Rs.50,000/- has been imposed by the Disciplinary Authority and the appeal thereof has been rejected by the Appellate Authority.

2. The facts are, the petitioner was issued a charge sheet on May 18, 1996. The charge sheet resulted in a penalty order of demotion from the post of District Manager to Assistant Manager at the lowest scale applicable for the said post and recovery of Rs.50,000/- as compensation for loss caused to the Corporation. On May 09, 1997, the petitioner preferred an appeal, which was dismissed by the Appellate Authority. Aggrieved by the orders passed against him, the petitioner filed a Civil Writ Petition No. 9463/1997 before the High Court of Punjab and Haryana. It is the case of the petitioner, on December 19, 2007, the High Court ordered to treat the writ petition as a plaint and reply filed by the respondents as written statement and the same be heard by the District Court as a suit.

3. On March 10, 2008, the learned Civil Judge (Senior Division) Chandigarh dismissed the suit of the petitioner. The petitioner preferred an appeal against the order of the learned Civil Judge (Senior Division) before the Additional District Judge, Chandigarh who partially allowed the appeal on October 13, 2008 whereby he modified the order dated November 08, 1996 to the extent, it could have imposed only a major penalty and not compensation of Rs.50,000/-. In other words, the compensation of Rs.50,000/- was waived.

4. The petitioner filed Regular Second Appeal bearing No. 400/2008 in the High Court of Punjab & Haryana at Chandigarh. A Cross Appeal was also filed by the respondents before the same Court. On March 08, 2010, the High Court vide a common order dismissed both the appeals. On July 08, 2010 the petitioner filed a SLP before the Supreme Court, which was also dismissed by the Supreme Court affirming the order of the High Court. On March 28, 2011 the petitioner filed a Review Petition before the Directors of the Board of the Food Corporation of India against his demotion to lowest pay scale of Assistant Manager. On November 22, 2012, the Review Petition filed by the petitioner was dismissed. On September 18, 2014 the petitioner filed a Mercy Appeal before the Corporation for restoration of status and exoneration from charges. On December 26, 2014, the Mercy Appeal was also rejected. On December 05, 2014, the petitioner filed W.P.(C) No. 8739/2014 before this Court challenging order dated November 22, 2012. This Court dismissed the writ petition holding that the filing of the Review Petition by the petitioner before the Board of Directors was itself flawed as the Board of Directors of the Corporation had no Authority or jurisdiction to set aside the judgments passed by the Civil Courts and which had attained finality on the SLPs filed

by both the parties being dismissed by the Supreme Court. It is stated by the petitioner, on December 09, 2016 the petitioner made a representation to a Hon'ble Member of Parliament for reconsideration of his Mercy Appeal. The said representation was forwarded to the Hon'ble Minister of Food and Public Distribution. Thereafter, he filed an RTI application. It was informed to the Hon'ble Member of Parliament by the Minister that the matter is being looked into. On March 06, 2017, the respondent Corporation has taken a stand that there is no provision for considering the Mercy Appeal.

5. Mr. Nikhil Rohatgi, learned counsel for the petitioner would submit that the very initiation of disciplinary proceedings against the petitioner were without jurisdiction. He also states, if the colleague of the petitioner namely Roshan Lal, Deputy Manager (General) who was also charge sheeted, there cannot be any charge for the same period against the petitioner.

6. Having noted the facts above, this Court is of the view that the present petition is an abuse of the process of law. It is clear that the challenge of the petitioner against the orders impugned in this petition has attained finality till the Supreme Court. Despite rejection of the SLP, a writ petition was filed in this Court in the year 20014. I note, this Court has

rejected the writ petition by holding as under:-

“6. The review petition filed by the petitioner before the Board of Directors in accordance with the rules would have been maintainable only if the review petition was immediately filed after the decision of the appellate authority on 9.5.1997, however, once civil suit is thereafter filed challenging the orders of the departmental proceedings and the petitioner is not successful in the civil proceedings right till the Supreme Court, the doctrine of res judicata has to necessarily come into play and the same will prevent not only filing of the review petition by the petitioner and nor will the same give any ground to the petitioner to question the decision now passed by the Board of Directors of the respondent No.1 on 22.11.2012, rejecting the review petition filed by the petitioner.”

7. The order of this Court is very clear, there cannot be a further writ petition against the same cause of action. Filing of a Mercy Appeal, which is also not provided statutorily would not entail the petitioner to file a further writ petition in this Court.

8. Having said that the present petition is an abuse of process of law and by noting that the petitioner is of 77 years of age, I refrain from imposing cost.

9. Insofar as the judgment relied upon by Mr. Rohatgi in the case of ***Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Ors***

and connected appeal in support of his contention that the Supreme Court has held, the Tribunal which inherently lack jurisdiction, appeal to the High Court against the decision of the Tribunal questioning its jurisdiction held not barred by res-judicata or estoppel, is concerned, the judgment is not applicable in the facts of this case, more particularly it is not the case of the petitioner that the Courts which passed orders in the earlier round of litigation had no jurisdiction. The petitioner's case is the disciplinary proceedings initiated against the petitioner were without jurisdiction. If that be so, the issue of Disciplinary Proceedings are conclusive against the petitioner. The judgment has no applicability to the facts of this case. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

AUGUST 16, 2017/ak