

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.960 of 1998

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Alok Raj, son of Late Bijay Kumar Roy, resident of Mohalla- North Mandiri, P.S.-
Buddha Colony, District- Patna.

.... Petitioner/s

Versus

1. The Food Corporation of India, through its Managing Director, 16-20 Bara Khambha Lane, New Delhi-1.
2. The Managing Director, Food Corporation of India, Bara Khambha Lane, New Delhi-1.
3. The Zonal Manager (E), Food Corporation of India, 10A Middleton Road, Calcutta-71.
4. The Senior Regional Manager, Food Corporation of India, Regional Office, Patna-1.
5. The District Manager, Food Corporation of India, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok, Advocate

For F.C.I. : Mr. Prabhakar Tekriwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date: 19-04-2018

Heard Mr. Alok, learned counsel for the petitioner and
Mr. Prabhakar Tekriwal, learned counsel appearing for the Food
Corporation of India and its authorities.

The petitioner prays for quashing of the order dated
11.3.1991 of the Senior Regional Manager, Food Corporation of India
whereby he has been reverted for a period of five years and his salary
was ordered to be determined on the basis of what the petitioner was
drawing prior to promotion to Grade-I. The order is impugned at



Annexure-5 to the writ petition and was affirmed in appeal which was dismissed vide order dated 8.5.1992 of the Zonal Manager, East, a copy of which is impugned at Annexure-9. Not being satisfied that the petitioner preferred a review application alleging discrimination on the quantum of penalty in reference to the case of one Ramanand Prasad, who according to the petitioner had taken over charge from him of the stock in question and which has also been dismissed vide order passed in January, 1999, a copy of which has been enclosed at Annexure-16 to I.A. No.1197 of 1999. The petitioner along side has prayed for other reliefs which are ancillary in nature.

Perusal of the orders passed in the present proceedings would confirm that though I.A. No.1197 of 1999 was placed for consideration but no order was passed thereon even at the stage of admission of the case on 21.4.1999.

Having heard learned counsel for the parties and considering that the order on review is a consequential in nature, I.A. No.1197 of 1999 is allowed.

Reverting to the matter in contest, the memorandum of charges served on the petitioner dated 10.3.1989 is enclosed at Annexure-1 and contains three articles of charge. While Charge no.1 related to shortage in stock of food grains as well as some items being found in excess, Charge Nos.II and III also related to irregularities in



stocks but since these two charges were not proved during the course of the proceedings nor the Disciplinary Authority chose to differ from the opinion of the Enquiry Officer, I do not deem it necessary to deal with these Charges.

A plain look at the item of shortages would confirm that it runs into several thousand quintals. The petitioner placed his defence at Annexure-2 and the report of the Enquiry Officer is placed at Annexure-3. The enquiry report was delivered on the petitioner to file his representation thereon at Annexure-4. Not being satisfied by the explanation and satisfied with the report of the Enquiry Officer that the Disciplinary authority vide his order dated 11.3.1991 passed the punishment order at Annexure-5 and which has been affirmed by the Appellate Authority vide Annexure-9 while dismissing the appeal of the petitioner vide order passed on 8.5.1992 and the review order at Annexure-17 follows suit. Feeling aggrieved, the petitioner is before this Court.

I have heard Mr. Alok, learned counsel for the petitioner and Mr. Tekriwal, learned counsel appearing for the Corporation and I have perused the record.

While in substance, the contention of the learned counsel appearing for the petitioner is that the petitioner has been discriminated inasmuch as his successor in the office of the Store



Incharge, has been let off by a lesser punishment at the review stage when similar order of reversion has been reduced to two years, no such privilege has been given to the petitioner by the Reviewing Authority.

Per contra, it is agreement of Mr. Tekriwal that the punishment order is resting on the admission of guilt by the petitioner as confirmed from his reply where he admits to the shortage during his tenure but attributes the same to his predecessors in office. The aspect which went against the petitioner is that even while admitting to detection of such loss, the petitioner never bothered to draw the attention of the superiors nor did take any steps in this regard. Responding to the charge of discrimination, it is submitted by Mr. Tekriwal that while the Store Incharge Ramanand Prasad was posted in the Depot when the petitioner went on Compensatory Casual Leave, the distinct punishment is because while the petitioner was a full time Store Incharge, the said Ramanand Prasad with whom the petitioner draws parity came as his successor.

There is no dispute on facts nor the distinctive punishment handed over to the two employees is in dispute. The difficulty of the petitioner is that since he held post of Store Incharge on permanent basis, he was wholly responsible for the shortage and cannot be permitted to shift this responsibility either to his



predecessor or his successor in office.

Although, it is the stand of the delinquent that the losses were being carried forward from before but the moot question which arises for consideration is even if it was being carried forward from before and the petitioner detected the same within a month of his assumption of charge at the Depot, what stopped him from reporting losses to his superior. There is no answer to this query and this is the foundation for the penalty handed over to the petitioner as it confirms from the punishment order at Annexure-5. The Disciplinary Authority has assigned his reasons for the punishment imposed and which runs under:

“ And whereas, the undersigned has carefully examined the enquiry report submitted by the Enquiry Officer along with all evidences, facts, materials of the case together with reply dated 15.11.90 submitted by Shri B.K. Roy and after applying independent mind on each aspects of the allegations/evidences. The undersigned observed that the charged official, Shri B.K. Roy has himself confessed in his representation that shortages were existing since long. It means while taking over charge, he did not take adequate precaution. It is found that after working for a period of one month, he took over the charge after satisfaction and therefore irregularities took place during his tenure and tenure of Shri R.N. Prasad,



AG-I (D) worked as Depot Incharge subsequently as detected by P.V. Squad, Shri B.K. Roy, AG-I (D) is responsible for all irregularities/lapses/shortages. He can not be absolved from the responsibility just on the plea that irregularities existed prior to his joining. The undersigned fully agrees with the findings of Enquiry Officer and hold Shri B.K. Roy, AG-I (D) guilty of the charges framed against.”

Once the petitioner has accepted the losses which occurred during his tenure as a Depot Incharge and has not given any explanation as to why the same was not reported to the superiors despite a detection within a month of assumption of charge, the punishment certainly cannot be held to be dis-proportionate to the charge. In fact in my opinion, in the nature of charge faced by the petitioner and considering the enormity of losses which is public money, the petitioner should be thankful to the leniency of the Disciplinary Authority in imposing the punishment which stood exhausted in 1996 and the petitioner superannuated with effect from 31.12.1996 after restoration to his original position.

The issue of discrimination raised by Mr. Alok for interference on the quantum of punishment also does not hold merit in the nature of explanation advanced by Mr. Tekriwal in reference to the reasons assigned by the Reviewing Authority while rejecting the



review of the petitioner at Annexure-17 :

“ The Disciplinary Authority i.e. Sr. Regional Manager imposed the penalty after looking into the gravity of the charge which was quite serious in respect of Article of charge No.1 which has been established by the Inquiry Officer. The same penalty to Sh. RN Prasad, AG.I(D) i.e. the other co-accused was imposed by the Disciplinary Authority and upheld by the Appellate Authority i.e. Zonal Manager (East). The penalty was modified by the Managing Director being the Reviewing Authority on a review petition filed by Sh. RN Prasad to that of reversion to the post of AG.II for a period of two years instead of 5 years or till retirement. The relief was given to Sh. R.N. Prasad on the ground that he was not the regular Depot Incharge. As he was posted at District Office Gaya he was sent on tour to FSD, Suriya to relieve Sh. B.K. Roy the regular Depot Incharge who was to proceed on leave on the ground of serious illness of his wife. On reaching the Depot he requested Sh. Roy to hand over the complete charge of the Depot which Sh. Roy declined as it was time consuming and he had to proceed immediately due to serious illness of his wife and more so as he was going on a short leave. Instead of giving the complete charge, Sh. Roy prepared the charge report on a plain paper and proceeded on leave. After joining of Sh. Roy, Sh. R.N. Prasad went back to Gaya at his original



place of posting. Moreover shortages detected were prior to the period when Sh. R.N. Prasad was Depot Incharge.

Taking into consideration the totality of the circumstances of the case, I feel that the order of the Disciplinary Authority is reasonable and rightly upheld by Appellate Authority.

Therefore, in exercise of the powers conferred under Regulation 74 of the FCI (Staff) Regulations, 1971, I, as Reviewing Authority do not find any reason in interfering with the orders passed by the Disciplinary Authority and Appellate Authority and reject Review Petition.”

The petitioner has deceased and has been substituted by his son Alok Raj who has chosen to pursue the matter. In my opinion, apart from the fact that the deceased petitioner has failed to make out a case for indulgence on merits even otherwise the punishment order handed over to him in 1991, his appeal was dismissed in 1992 and yet the petitioner waited for six years to file this writ petition after suffering the punishment. Taking a refuge under the pending review petition would hardly explain the delay of 6 years. It is a different matter that the review petition got disposed during the pendency of this writ petition but that in no manner would condone the delay of the petitioner in approaching this Court. Neither thus, on merit nor on the issue or delay, is this Court persuaded to grant indulgence or interfere



with the punishment imposed.

The writ petition is dismissed but without any order of costs.

(Jyoti Saran, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19-05-2018
Transmission Date	

