

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2154 of 2013

=====

Upendra Prasad Singh Son Of Late Saryug Singh Resident Of Paharpur, Shastri Path, Anisabad, Police Station- Gardanibagh, Post Office- Anisabad, District- Patna

.... Petitioner/s

Versus

1. The Food Corporation Of India through Its General Manager, Arunachal Bhawan, Exhibition Road, Patna
2. The General Manager, Food Corporation Of India, Arunachal Bhawan, Exhibition Road, Patna
3. The Assistant General Manager (Personnel), Food Corporation Of India, Arunachal Bhawan, Exhibition Road, Patna
4. The Area Manager, Food Corporation Of India, Having Office at Firdosh Building Exhibition Road, Patna
5. The Executive Director (Ed), Food Corporation Of India, Zonal Office, Terimeditar Road

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s : Mr. P.K. Verma, Sr. Advocate
Mr. Suman Kumar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 10-08-2018

Heard learned counsel for the petitioner and the respondent Corporation.

2. The petitioner is aggrieved by order of punishment imposed upon him under order dated 07.09.2012 by the General Manager (R) of the respondent Corporation. Petitioner has been awarded compulsory retirement and order of recovery of Rs. 10 lacs from the terminal dues of the petitioner.

3. The charge memo dated 13.09.2011 was issued alleging that while the petitioner was In- charge of Shed-D at



Mokama a physical verification (PV) was conducted in between 05.05.2011-31.05.2011 wherein shortage was revealed in the number of bags of wheat stored in the shed. Total loss on account of shortage was 83,44,690.00. The enquiry report dated 04.07.2012 recorded that charges against the petitioner could not be held to be proved.

4. The petitioner's defence is that he was not the In-Charge of Shed – D, as he had not taken charge of the same from one Chandra Bhusan Singh, who was in fact In-charge of Shed – D, weighed before the Enquiry Officer in exonerating the petitioner. In support of his claim petitioner had produced one letter dated 23.12.2011 along with another defence exhibit, both were marked as Exhibit D-1 and D-2.

5. The letter dated 23.12.2011 relied upon by the petitioner is an order passed in another proceeding instituted against the petitioner alleging some loss of food grains in transit from Shed -D to Jai Nagar. In those proceedings same defence of the petitioner that he was not In-charge of Shed-D appears to have been accepted by the Disciplinary Authority. The Disciplinary Authority has taken note of the fact that petitioner joined at Shed-D on 21.08.2009. The allegation of loss in transit was in relation to the period between 15.04.2010 to 17.04.2010. Taking note of the fact that petitioner had not assumed the charge of Shed D. The order dated 23.12.2011 records as follows :

“.....it reflects that he was only writing letters to escape from the



responsibilities and was not function properly rather being of equal cadre of shed-in-charge, he has not contributed to the work of the Corporation for which he was deployed and paid salary. He under the influence of such mentality had neglected in contributing to load the stock properly.

Now, therefore, the undersigned, in exercise of the power conferred under Regulation-56 and Appendix-II of the FCI (Staff) Regulation, 1971 hereby imposes the penalty of token recovery of Rs. 9,000/- (Rupees nine thousands only) each upon S/Sri Madan Mohan Rai, Manager(QC), Krishna Murar Prasad Verma Verma, Manager(D), Ram Deo Manjhi, Manger(D), Upendra Prasad Singh, AG.I(D), Shambhu Sharan Sinha, AG.I(D), Jaihind Prasad, AG.I(D), Ram Deo Raidas, AG.I(D) and Dinkar Jha, AG.I(D) to compensate the losses to some extent that has been sustained by the Corporation.”

6. The Disciplinary Authority did not agree with the findings of the Enquiry Officer. Accordingly, he has issued a show cause notice dated 25.08.2012.

7. The petitioner’s counsel has argued that issuance of show cause was contrary to the established law. In this regard he submits that the second show cause dated 25.08.2012 was a post decisional



hearing. It is also submitted that the same is on a wrong premise. Referring to ground no. 2 for differing with the findings of the Enquiry Officer as contained therein it is submitted that even though the letter dated 23.12.2011 was considered by the Enquiry Officer, the Disciplinary Authority has wrongly proceeded on the premise that “....the Enquiry Officer has not taken cognizance of the office order of this office bearing no. Vig. 4 (1283)/2/2010 dated 23.12.2011 in which Sri Upendra Prasad Singh Ex-AG.I(D) C.O has been imposed penalty with details of his functioning status in the Shed.”

8. The petitioner has reiterated same submissions in his response on 03.09.2012. Once again the petitioner has taken the same plea. He has tried to persuade the Disciplinary Authority to agree with the findings of the Enquiry Officer that the letter dated 23.12.2011 has been appreciated in the proper perspective by the Enquiry Officer and is glaring proof of the fact that petitioner had not taken charge of Shed D.

9. The Disciplinary Authority has thereafter, passed the final order dated 07.09.2012. The plea taken by the petitioner on the basis of letter dated 23.12.2011 which was produced by him as a defence exhibit has been considered. Disciplinary Authority has also referred to the counting sheets prepared during the course of physical verification wherein the petitioner has signed as Shed In-charge. He has accordingly arrived at a conclusion that the findings of the



Enquiry Officer was incorrect.

10. The Disciplinary Authority has arrived at the same conclusion with respect to letter dated 23.12.2011, that petitioner had been posted there since August, 2009 as Shed In-Charge, and that the PV was conducted in May, 2011, thus he cannot be permitted to absolve himself of his responsibility/liability for not completing the records and not taking over charge of Shed-D from one Chandra Bhushan Singh who was posted there as A.G.II. The Disciplinary Authority has also relied upon the census declaration (stock details) which was furnished by the petitioner during the course of physical verification wherein the petitioner has signed as In-charge of Shed D.

11. The census declaration is annexed to the counter affidavit (Annexure A). Petitioner has signed on the said declaration during course of PV as In-charge Shed- D. It is apparent from Annexure A that in fact Chandra Bhushan Singh was the Assistant. The conclusion of the Disciplinary Authority that petitioner was In-charge and Chandra Bhushan Singh, was the Assistant is therefore, well founded on the basis of the census declaration prepared during the PV. Annexure A has not been controverted or denied by the petitioner by filing any reply or rejoinder. The same stands admitted.

12. The counsel for the Corporation referring to Annexure A points out that perusal of the same would reveal that Upendra Prasad was in fact AG-II which is subordinate to AG-I on which post



the petitioner was posted as In-charge Shed-D at the relevant time. He points out that all officials/staff posted there have been proceeded against. The petitioner's negligence towards duty is axiomatic since the letter dated 23.12.2011 which was relied upon by the petitioner also finds the petitioner guilty. The Disciplinary Authority has rightly rejected the petitioner's plea that since he had not assumed charge, he could not be held responsible. Disciplinary Authority has taken the same view as was taken in order dated 23.12. 2011 (Annexure A) which has been relied upon by the petitioner that he had failed to assume charge even though he had joined way back on 21.08.2009, thus the same could not be made a pretext for denying his own responsibility and shifting the blame on anyone else.

13. Conclusion/findings under letter dated 23.12.2011 was never objected to or challenged by the petitioner before the Appellate Authority. Thus, non-assumption of charge of records of Shed D since 21.08.2009 till May, 2011, when the PV was conducted cannot be relied upon by the petitioner to absolve himself of his responsibility and duty to protect the interest of the food grains stored in the Shed which was for the benefit of the public at large. The Disciplinary Authority therefore, was right in concluding that under similar circumstances here also the petitioner could not be permitted to take his own lapse in not assuming charge of records of Shed-D as a defence in the instant proceedings. The findings of the Disciplinary



Authority are therefore, in line with the findings of the Disciplinary Authority in the order dated 23.12.2011, which the petitioner is relying upon. For the same set of fact there cannot be two conclusions.

14. The Disciplinary Authority while issuing the second show cause notice dated 25.08.2012 has communicated the points of difference by indicating the grounds, such indication of grounds cannot lead to a conclusion that at that stage the Disciplinary Authority had made up his mind. Such submission of counsel for the petitioner does not merit consideration. This Court has also gone through the second show cause notice dated 25.08.2012. The same does not appear to be a post decisional opportunity. Petitioner's reliance upon the judgment in the case of **Punjab National Bank & Ors. vs. Kunj Behari Mishra** reported in **1998 (7) SCC 84** therefore, appears to be misplaced. The same has no application in the facts of the instant case.

15. The entire procedural formality has been observed by the authorities, the order of punishment has been issued taking into consideration the defence of the petitioner, documents produced by the petitioner and the Corporation. The conclusions are well founded. The conclusion is also in line with the conclusion on the same set of facts contained in the order dated 23.12.2011, which has all along been relied upon by the petitioner. In the aforesaid circumstances, this



Court is not inclined to interfere with the punishment awarded under order dated 07.09.2012 by the General Manager (R) of the Corporation

16. I.A. No. 8604 of 2016 was filed challenging the order of the Appellate Authority dated 03.05.2016.

17. In view of the fact that this Court is not interfering with the order of the Disciplinary Authority, there is no scope for interfering with the order of the Appellate Authority. The same has in fact provided some relief to the petitioner and reduced the punishment by bringing down amount to be recovered from the petitioner to 9 lacs from the earlier amount of recovery awarded by the Disciplinary Authority which was 10 lacs.

18. Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

