

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4701 of 2013

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Satish Prasad Datta S/O Late Kamlakant Lal Datta Resident Of Mohalla
Dharamganj, P.O. Kishanganj, P.S. Kishanganj, District Kishanganj.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry Of Textile, Government of India, New Delhi.
2. The Secretary, Department Of Textile, Union of India, New Delhi.
3. The Board of Director through the Chairman cum Managing Director the Jute Corporation of India Ltd., Regd. And Head Office 15N, Nellie Sengupta Sarani, Kolkata-700087.
4. The Chairman cum Managing Director, the Jute Corporation of India Ltd., Reg. And Head Office-15N, Nellie Sengupta Sarani, Kolkata-700087.
5. The Manager, Personnel and Administration, the Jute Corporation of India Ltd., Regd. And Head Office-15N, Nellie Sengupta Sarani, Kolkata-700087.
6. The Deputy Manager, Personnel and Administration, the Jute Corporation of India Ltd., Regd. And Head Office-15N, Nellie Sengupta Sarani, Kolkata-700087.
7. The Regional Manager, The Jute Corporation Of India Ltd., Regional Office, N.H. 31, Purnea, P.S. Purnea, District Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Bhavendra Jha,
Ms Anju Jha, Advocates
For the Respondent/s : N O N E

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 11-07-2018

Heard learned counsel for the petitioner. None appears
on behalf of the respondent-Corporation.

2 The petitioner, while posted as Senior Inspector,
Incharge of the Departmental Purchase Centre (for brevity, *DPC*),
Panjipara of the respondent-Corporation was proceeded against for
two charges. The charges were in relation to purchase of 16,074.86



quintals of Jute from the growers indiscriminately without judging the quality, moisture-contents of the fibres etc. The second charge was also of the same nature. The sum and substance of the charges is that due to his indiscriminate purchase of Jute from the growers, he has caused heavy loss to the respondent-Corporation. In respect of the said charges, the Disciplinary Authority has recorded the findings which are being raised herein:

“After considering all facts, I observe that Panjipara DPC purchased a huge quantity of 16,074.86 quintals of raw jute under MSP Operation. Sri Dutta had taken personal interest for purchase of such huge quantity of raw jute from the growers which I feel a positive aspect on the part of an employee of JCI and for this reason the incumbent should get some relief. Further, on selling the jute procured by Panjipara DPC, the Corporation has not incurred any Financial Loss. Hence, the Financial Loss as shown in the Bin In & Out Statement should not be considered as loss. But the financial performance of the DPC would have been much better had Sri Dutta been little cautious about his responsibilities, judicious at the time of purchase and listen to his superior’s advises.”

3 On basis of such findings, the authority has proceeded to award major penalty of recovery of Rs 19,979/- that is 10% of the pecuniary loss of Rs 1,99,789.14 and which was to be recovered at the rate of Rs 2,000/- per month till his superannuation. The balance amount was to be recovered from the terminal dues. He was also awarded reduction of pay by one stage from Rs 15,810/- to Rs



15,340/- in his time scale of pay of Rs 5,200/- - 20,200/- for a period of one year with effect from 01.04.2010.

4 Being aggrieved by the said punishment, the petitioner has also approached this Court by filing *CWJC No 13110 of 2012*. The same was disposed of with liberty to the petitioner to approach the appellate Authority, namely, Board of Directors of the Jute Corporation of India. The petitioner, thereafter, has filed his appeal and the same has been rejected. Board's decision has been communicated under letter dated 25.10.2012 issued under the signature of Company Secretary –cum- General Manager. The finding/conclusion of the Appellate Authority is not necessary to be considered since the same is a mere repetition of the conclusion arrived at by the Disciplinary Authority.

5 In respect of the two charges alleging that the petitioner had caused heavy loss to the respondent-Corporation by virtue of his indiscriminate purchase, the specific finding of the Disciplinary Authority was that the purchase made by the petitioner was a positive aspect on his part and that for this, he was entitled to some relief. It has also been concluded by the Disciplinary Authority that “on selling the Jute procured by Panjipara DPC, the Corporation has not incurred any financial loss. Hence, the financial loss as shown in the Bin In and Out Statement should not be considered as loss”.



6 In view of this specific finding of the Disciplinary Authority, the award of punishment for the said charges is clearly unsustainable on facts as well as on law. Since the specific charge was of indiscriminate purchase and the specific finding is that the same was a positive aspect and no loss has been occasioned, this Court is of the opinion that petitioner cannot be met with any penal consequences in the circumstance. The award of punishment is clearly perverse and unsustainable. Since the finding of the Disciplinary Authority before proceeding to award the punishment is that the charges were substantially not established in the proceedings. The only reason which appears to have been made the basis for inflicting the punishment against the petitioner, which has also been recorded in the order of the Disciplinary Authority, is as follows:

“But the financial performance of the DPC would have been much better had Shri Datta been little cautious about his responsibilities, judicious at the time of purchase and listen to his superior’s advises.”

7 This did not constitute a charge either in Charge No I or Charge No II of the Charge Memo which was being enquired into in the proceeding. The findings are without any enquiry. Further, the finding is presumptuous inasmuch as it is in respect of possible better performance. The same, by no stretch of imagination, can be said to be misconduct, more so in view of the fact that there was no



allegation in this respect and the issue has not been enquired into. Clearly, the award of punishment by the Disciplinary Authority, which has been affirmed by the Appellate Authority, is shocking to the conscience of this Court, outrageous and defies logic.

8 This Court is conscious of the limitation in interfering with the quantum of punishment but this appears to be an appropriate case wherein perversity of the punishment is glaring.

9 In this connection, this Court would consider the law in this regard laid down by the Apex Court, as noticed in the case of *D V Kapoor –Versus- Union of India and Others*, (1990) 4 Supreme Court Cases 314:

“10The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution.”

10 In the case of *Ranjit Thakur –Versus- Union of India and Others*, (1987) 4 Supreme Court Cases 611, the Apex Court has held that such outrageous defiance of logic in the matter of award of punishment would not be immune to correction. The relevant extract of the judgment is being reproduced for the sake of reference:

“25 Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and



discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.”

11 In the circumstances, this Court would consider it appropriate that in view of the fact that the charges have not been established against the petitioner in the proceedings, as is apparent from the findings of the Disciplinary Authority as well as the Appellate Authority, the respondent-authorities should consider the desirability of awarding punishment to the petitioner and take a decision in this respect having regard to the observations of this Court in the instant judgment.

12 The petitioner should be allowed the benefit of the findings of the Disciplinary Authority and the Appellate Authority which has been quoted hereinabove. The final decision, after reconsidering the desirability of awarding punishment regarding the quantum of punishment should be taken by the Appellate Authority by a reasoned and speaking order within a period of four weeks from



the date of receipt/production of a copy of this order and the petitioner should be allowed his consequential benefits arising out of such reconsideration.

13 The orders passed by the Disciplinary Authority dated 19.04.2010 communicated under Communication dated 20.04.2010 by the Deputy Manager (Personnel and Administration) as also the communication dated 25.10.2012 issued under the signature of Company Secretary – cum- General Manager whereby appeal filed by the petitioner before the Board of Directors of the Corporation has been dismissed are quashed to the extent of punishment imposed in the said orders.

14 In case no final decision is taken within the said period, petitioner would be entitled to all consequential benefits arising out of quashing of the punishment.

15 Writ petition is allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.07.2018
Transmission Date	NA

