

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *October 09, 2018*

1.

Civil Writ Petition No.18961 of 2015 (O & M)

Harbhajan Singh Riar

..... PETITIONER

VERSUS

State of Punjab & another

..... RESPONDENTS

. . .

2.

Civil Writ Petition No.88 of 2015 (O & M)

Harbhajan Singh Riar

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Ms. Jatinder Jit Kaur, Advocate, with Mr. Ish Puneet Singh, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General,
Punjab.

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Jaspal Singh, J

This judgment shall decide aforementioned two petitions viz. CWP No.18961 of 2015 and CWP No.88 of 2015 as they involve similar questions of law and facts.

By virtue of CWP No.18961 of 2015, preferred under Article 226/227 of the Constitution of India, petitioner prays for issuance of a writ in the nature of certiorari, quashing order dated March 29, 2010 (Annexure P-7) passed by respondent No.2 as well as order dated July 17,

2015 (Annexure P-11) passed by respondent No.1 and grant of consequential benefits.

Through CWP No.88 of 2015, petitioner prays for issuance of a writ in the nature of mandamus, directing the respondents to release regular pension to him through the Accountant General, Punjab after calculation and fixation of pension as per the revised pay scale as well as to release leave encashment, gratuity etc. to him alongwith interest @ 18% per annum on the delayed payment.

For reference to facts, file of CWP No.18961 of 2015 is being taken up.

Petitioner joined respondent – Department as Inspector in the year 1977, promoted as Assistant Food & Supplies Officer (for short, 'AFSO'), District Food & Supplies Officer (for short, 'DFSO') and thereafter as District Food & Supplies Controller (for short, 'DFSC'). The petitioner joined as DFSO at Ferozepur in October 2000 and continued to serve as such till August 2002 i.e. prior to his promotion as DFSC. Subsequent thereto, he was served with chargesheet dated November 29, 2004 (Annexure P-1) by respondent No.1 unfolding the allegations that while he was posted as DFSO, Ferozepur during the period from October 2000 to August 2002, the stock of 35100 bags of wheat was rejected by Food Corporation of India which was lying stored in open plinth of M/s Shiv & Company in the year 1998-99 at PR Centre, Ferozepur Cantt., thus causing loss to the respondent – Department. The aforesaid chargesheet was duly replied by the petitioner vide detailed reply/comments dated December 27, 2004 (Annexure P-2). A bundle of documents concerned with the case and instructions issued by the Department, from time to time, were also

annexed with the reply. However that reply did not find favour to the respondents. Ultimately, departmental enquiry was initiated and Enquiry Officer submitted his report dated December 20, 2006, endorsed to petitioner vide Memo dated March 14, 2007 (Annexure P-5). The detailed comments/ reply was also submitted to Disciplinary Authority against the findings arrived at by the Enquiry Officer. However, vide order dated March 29, 2010 (Annexure P-7), penalty was imposed. The petitioner being aggrieved against aforesaid order dated March 29, 2010, preferred a departmental appeal but that was dismissed vide order dated February 25, 2011 (Annexure P-9) by an incompetent authority which necessitated the filing of CWP No.20799 of 2011. Order dated February 25, 2011 passed in appeal was set aside and competent authority/ appellate authority was directed to decide the appeal afresh within a period of three months. Again, appellate authority dismissed the appeal vide order dated July 17, 2015 (Annexure P-11) which necessitated the filing of instant petition.

The contention of learned counsel for the petitioner while challenging the impugned orders is that charges levelled against the petitioner are absolutely vague and indefinite, and due to the said reason, no proper reply to the chargesheet could be filed/given by the petitioner. Moreover, there is no positive evidence brought on record by the Department to show that petitioner did not discharge his duties satisfactorily. He has been punished on account of deterioration of the stock pertaining to the year 1998-99.

While referring to the various documents, it has been argued with vehemence by learned counsel for the petitioner that petitioner was posted as AFSO at Ferozepur on October 12, 2000 and stock on account of

which he has been penalized, was rejected by Food Corporation of India on March 28, 2001 i.e. only after five months of his joining. Prior to the joining of petitioner as DFSO, the stock remained stored at an open plinth for a period of 2 ½ years, whereas the shelf life of wheat stored in an open is only one year as is evident from letter dated October 06, 2008 (Annexure P-19) issued by the Food Civil Supplies Consumer Affairs & Information Technology Minister, Punjab and letter dated November 07, 2000 (Annexure P-13) issued by the Director, Food & Supplies, Punjab and an affidavit of the Principal Secretary, Department of Food & Supplies has been filed before this Court in Criminal Miscellaneous No.M-13372 of 2012. So, imposition of penalty upon the petitioner, who is only a supervisory officer, is not only against the letter & spirit of aforesaid instructions issued by the Department concerned from time to time but also the provisions of law.

It was next argued by learned counsel for the petitioner that in similar cases of previous occasions, Department has exonerated the employees where the wheat stock had been lying open for a period of more than one year whereas petitioner has been discriminated and punished. To buttress this contention, learned counsel for the petitioner has made a reference to letter dated March 05, 2003 (Annexure P-17).

The next submission of learned counsel for the petitioner is that in the instant case, pick & choose policy has been adopted not only by the Enquiry Officer but by Punishing authority also to concur with the enquiry report. Manoj Bajaj and Madan Lal, AFSOs, have been exonerated whereas petitioner who was posted as DFSO and Mehar Singh, Inspector Grade – I, were held guilty. Manoj Bajaj was exonerated for the simple reason that his role was supervisory and could not have taken penal action

against the respondents but the petitioner was also in a similar position, especially when an action has to be taken against Inspector by the District Food & Supply Controller whereas disciplinary authority is the Director, Food & Supply. The petitioner cannot be fastened with any liability. Infact, petitioner performed his duties with dedication and devotion and had done everything which was within his power as DFSO to control or avoid the deterioration of the wheat stock by writing various letters (Annexures P-2/11 and P-4/2) and it was the senior authorities who did not take care of those letters and ultimately, fastened the liability upon the petitioner arbitrarily.

While concluding his arguments, it has been submitted by learned counsel for the petitioner that in the light of various submissions made by him, impugned orders dated March 29, 2010 and July 17, 2015 are not sustainable in the eyes of law and are liable to be quashed. Resultantly, the petitioner deserves disbursement of all the consequential retiral benefits which are being withheld by the State just on account of the impugned orders, accrued to him on account of his superannuation on October 31, 2015.

On the other hand, learned State counsel has ebulliently argued that there is no infirmity, illegality and impropriety in the impugned orders dated March 29, 2010 and July 17, 2015 (Annexure P-7 and P-11) passed by the Punishing Authority as well as Appellate Authority, respectively, and have been passed after affording an ample opportunity of being heard. Concededly, during his service tenure, petitioner was served with chargesheet dated November 29, 2004 (Annexure P-1) unfolding the allegations that he remained negligent in maintaining the wheat and timely disposal of wheat stock stored under his supervision. He was served with

chargesheet which ultimately culminated into punishment order dated March 29, 2010 (Annexure P-7) and subsequently, vide order dated January 28, 2011 (Annexure P-9), a recovery of ₹ 47,79,846/- (20% of loss) was imposed upon him, that too, after conducting a regular enquiry and adopting the procedure prescribed therefor. The punishment order was also challenged by way of statutory appeal which was upheld vide order dated July 17, 2015 (Annexure P-11). He further contends that various submissions made by learned counsel for the petitioner do not carry any legal and factual weight as it was the petitioner who was having the control of the stock and it was his duty to take care thereof, and to do the needful what was required at the relevant time. Since petitioner remained negligent and did not perform his duties properly, he has been rightly punished. The instant petition being devoid of merits, is liable to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and meticulously scanning all the various documents available on file, this Court is of the considered view that submissions made by learned counsel for the petitioner carry legal as well as factual weight.

The petitioner has not only been discriminated but appears to have been fabricated. A glance at Annexure P-17 i.e. letter dated March 05, 2003 transpires that in the similar cases of previous occasions, the employees where the stock had been lying in open for a period of more than one year have been exonerated, that too, by placing reliance upon other documents whereas in the instant case, punishment has been imposed despite the fact that wheat stock was stored 2 ½ years prior to joining of the petitioner. Other documents – letter dated November 07, 2000 (Annexure

P-13) issued by the Director, Food & Supplies, Punjab and letter dated October 06, 2008 (Annexure P-19) issued by the Food Civil Supplies Consumer Affairs and Information Technology Minister, Punjab also depict that the shelf life of the wheat stored in open is one year. Not only this, Principal Secretary, Department of Food & Supply also furnished a specific affidavit before this Court in Criminal Miscellaneous No.M-13372 of 2012 clearly unfolding that the shelf life of the wheat stored in open is one year. In the case in hand, there is nothing on record to suggest as to why these letters and instructions have not been taken into consideration either by the Enquiry Officer while submitting his report dated December 20, 2006 or by the Punishing Authority while passing order dated March 29, 2010 (Annexure P-7) or by the Appellate Authority while passing order dated July 17, 2015 (Annexure P-11). There is not even slightest reference of these documents/instructions in the aforesaid orders whereas it was clearly elaborated in the reply submitted by the petitioner.

Here it would be pertinent to mention that there is no specific evidence brought on record by the Department which could reflect that it was the petitioner who is responsible for the deterioration of the stock or the rejection of stock or that he did not discharge his duties properly or satisfactorily. The enquiry appears to have been initiated just on the rejection of the stock by FCI on March 28, 2001 and since it was the petitioner working as DFSO at the time he has been made liable. Moreover, being DFSO, he has also been dealing with stock in a supervisory capacity and he did whatever was required to be done by him, wrote various letters to different senior officers for making an arrangement for the disposal of stock and in that event, he cannot be fastened with any liability.

In the light of what has been observed above, both the petitions are allowed. Impugned orders dated March 29, 2010 (Annexure P-7) and July 17, 2015 (Annexure P-11) are not sustainable in the eyes of law and are set aside. Consequently, petitioner is entitled to all the consequential retiral benefits having accrued to him on his retirement. The respondents are further directed to calculate his retiral benefits and disburse the same to petitioner, if not earlier disbursed, within a period of two months from the date of receipt of a certified copy of this judgment. In case of default, petitioner shall be entitled to interest @ 9% per annum from the date of filing of petition i.e. September 07, 2015 till actual payment.

No order as to costs.

October 09, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No