

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3325 of 2019

1. Ozair Alam and Ors Son of Late Habibur Rahman Resident of Mohalla-R.K. Nagar, New Masjid FCI Road Phulwari Sarif, P.S.-Phulwarisarif Distt.-Patna
2. Atul Prasad Sharma Son of late Bhagwat Singh Resident of Village-Anandpur P.S.-Bihta Distt.-Patna
3. Sanjeev Kumar Singh Son of Vinod Prasad Singh Resident of Village-Murgiachak P.S.-Islampur Distt.-Nalanda

... .. Petitioners

Versus

1. The Food Corporation Of india through the Chairman cum Managing Director and Ors through the Chairman Cum Managing Director, 16-20 Barakhambha Lane New Delhi.
2. The Chairman Cum Managing Director Food Corporation of India 16-20 Barakhambha Lane New Delhi
3. Executive Director (East Zone) Food Corporation of India 10-A Middleton Row Kolkata-71 Kolkata-71
4. General Manager (Region) Food Corporation of India Regional Office Arunachal Building Patna

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar No1
For the Respondent/s : Mr.Prabhakar Tekriwal

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 16-09-2019

Heard learned Counsel for the petitioners as well as learned Counsel appearing for the respondent Corporation.

In respect of some irregularities at the godowns of the respondent Food Corporation of India, the petitioners were proceeded against. The charges were in respect of ill maintenance of the godown of the Corporation. Non maintenance of stock



register and non maintenance of documents showing receipt of food grains at the godown was also alleged.

Petitioners 1 and 2 were exonerated in the proceedings conducted against them. Petitioner No. 3 was awarded a minor punishment of censure by order dated 07.03.2014 of the Disciplinary Authority. Petitioners 1 and 2 are Assistant Grade II category (hereinafter referred to as Cat II) whereas petitioner No. 3 was in Cat III of the respondent Corporation.

The writ petition has been filed since the order passed in the departmental proceeding on 7.3.2014 by the General Manager (Region) of the FCI has been reviewed by a decision dated 4.1.2019 passed by the Executive Director (East) FCI (respondent No. 3). Power of review has been exercised under Regulation 74 of the Food Corporation of India (Staff) Regulation 1971. It is this exercise of power of review which is impugned in the instant proceedings.

This Court would consider it useful to reproduce relevant provisions since the relief claimed in the instant writ petition would rest on the scope and object of Rule 74 and whether it permitted such review after a period of five years in the facts and circumstances of the instant case:-



74. Review:

(1) *(Notwithstanding anything contained in these regulations, the Board may, at any time either on its own motion or otherwise, call for the records of any inquiry and review any order made under these regulations), and

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit;

****Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Regulation 54 or to enhance the penalty imposed by the order sought to be viewed to any of the penalties specified in those clauses; no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation 58.**

(2) No proceeding for review shall be commenced until after:

i) the expiry of the period of limitation for an appeal, or

ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these regulations.

(4) Powers similar to those specified in clause(1) above may be exercised by the (Chairman)*, Managing Director, Zonal Manager (Additional)/ Joint Manager) in respect of orders passed by authorities subordinate to them.



Bare perusal of Regulation 74 of FCI (Staff) Regulation 1971 would show that the same provides discretion to the Board to exercise the power of review “at any time”. The discretion has to be exercised on its own motion or otherwise after calling for the records of enquiry.

Petitioners’ Counsel submits that the manner in which the discretion has been exercised is contrary to the object and purport of Rule 74. The expression “at any time” cannot be implemented in the way it has been done in the case of the petitioners. After a detailed and thorough enquiry the disciplinary proceedings concluded by order dated 7.8.2014. The petitioners were subsequently considered for, and also granted one promotion. The petitioners were thus of the opinion that the decision of the disciplinary authority had attained finality, and effect of the same had been wiped out/washed off.

The reviewing authority on 4.1.2019 has suo motu exercised the power of review after a period of about five years. The exercise is without any basis apart from being impermissible on account of delay in exercise of power. It is submitted that the expression “at any time” does not give respondent authorities discretion to exercise the power of review at their own sweet will. Once the Rule does not provide any limitation the obligations are



to be discharged within a reasonable time. In support of submission advanced by petitioners' Counsel he has placed reliance on the decision of House of Lords in the case of ***Pantland Hick vs. Raymond & Reid (1893) AC 22***. Submission is that exercise of jurisdiction by reviewing authority is not within reasonable time, more so in view of petitioner's promotion in the meantime, and as such is unsustainable in the eyes of law. The same is also without giving any show cause notice and violative of the principles of natural justice.

Counsel for the respondent Corporation, on the other hand, submits that action has been taken by the reviewing authority having regard to gravity of the allegation. After disciplinary authority passed the order, matter was still being looked into by the higher authorities having regard to the large ramification of the lapse committed at various godowns of the Corporation including the godowns where the petitioners were posted. The authorities were constantly examining the issue as would be apparent from the annexures placed on record in the supplementary counter affidavit filed in the instant proceeding.

Specific reliance is placed on Annexure 'N' of the supplementary counter affidavit dated 20.7.2017. It is submitted that the matter was being examined for referring it to the Central



Bureau of Investigation. The issue was directed to be reexamined by the department by the order of General Manager (Vigilance) of the respondent Corporation. Decision to review the disciplinary proceedings had already been taken on 20.7.2017. The authorities therefore, in the circumstances cannot be said to have exercised power of review belatedly and in unguided and arbitrary manner. The matter was constantly under scrutiny and the procedure genuinely time consuming action by the reviewing authority under Clause 74 of the Regulation, cannot be said to be illegal in any manner.

It is submitted by Mr. Tekriwal, learned Counsel appearing for the Corporation, that the principles relied upon by the petitioners in the decision of House of Lords cannot be denied or disputed. But for what is the reasonable time has to be deciphered from bare perusal of para 9 of the judgment of the Supreme Court of India in the case of of Ibrahimpatnam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy reported in 2003(7) SCC 667.

Mandate of the Apex Court is that when statute or rule contemplated exercise of jurisdiction at any time the same cannot be unguided and arbitrary and has to be based on sound discretion. He submits that since the issue was pending



consideration. Decision to review is on the basis of continuous correspondence within the organisation and exercise of sound discretion in accordance with and within the scope of the provisions contained in Rule 74 of the Regulation.

This Court would find that judgment of the Apex Court referred to by the learned Counsel for the Corporation has dealt with the expression “at any time” used in Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land 1950. The said judgment clearly lays down that interpretation of the expression “at any time” has to be contextual and reasonable construction of the expression. The suo motu power of review without any limitation must be exercised within a reasonable time. What is reasonable time? has to be determined on the facts of each case. Thus arises the requirement of contextual and reasonable construction of the expression.

In the instant case expression “at any time” has been used in a service regulation. The expression therefore has to be construed so as to conform to the general principles of service jurisprudence. This Court would therefore examine whether exercise of review jurisdiction by the authorities was within a reasonable time having regard to the requirement of fairness and other general principles governing service jurisprudence. It is



only if same is justifiable in the said background, and with due diligence that the action of reviewing authority can be sustained.

The fact that after the order of punishment dated 7.3.2014, petitioners have been given promotion is an admitted position. Effect of the promotion granted to the petitioners subsequent to the order of punishment is that the punishment stands wiped off. Once the effect of the punishment stood wiped off and issue stood concluded. Thereafter it would not be open to the reviewing authority to reopen and consider the issue.

The other aspect of the matter is that prior to the order of the reviewing authority the petitioners were not afforded any opportunity even though the punishment has been enhanced by reviewing authority on 4.1.2019 and directed for fresh enquiry into the charges.

Fresh enquiry, as has been directed by the reviewing authority (Executive Director East) is not contemplated under Rule 74 of the Staff Regulation 1971. Regulation 74(C) contemplates remand for further enquiry as considered proper in the circumstances. The effect of the order of the reviewing authority however is that the proceedings have been directed denovo. It is trite law that it is not open to the authority to direct denovo enquiry repeatedly if the earlier enquiry report is not to



the liking of the Disciplinary Authority. In the instant case the Appellate Authority has assumed jurisdiction to direct denovo enquiry even though Regulation 74 of the Staff Regulation 1071 does not contemplate any fresh enquiry. Such action of the reviewing authority is in excess of the scope and object of Regulation 74.

This Court would also observe that after the order of punishment dated 7.3.2014 authorities have found similar irregularity at other godowns. Based on a broader scrutiny at other godowns authorities were contemplating to refer the matter to Central Bureau of Investigation. As per Annexure 'N' to the supplementary counter affidavit dated 20.7.2017 authorities have taken a decision to invoke the power of review only for the reason that the matter was to be referred to the Central Bureau of Investigation. It was considered that the issue would have lost its seriousness before the CBI if the petitioners had been exonerated and let off lightly. Decision to invoke the power of review is therefore based on extraneous consideration. The same is apparent from para 20 and more specially 21 of Annexure 'N' which has been relied upon by the Corporation to sustain invocation of the power of review under Regulation 74. For



better appreciation this Court would reproduce para 21 of the correspondence of Annexure 'N' dated 20.7.2017.

“21. However, in the Video Conference held on 17.03.2017 between this office and FCI, Hqrs, the then ED (Vig) opined that as most of FCI staff have been exonerated it will not be prudent to refer the case to CBI. Instead a self contained note was sought. The same has again sought by FCI, Hqrs vide its letter under ref. no. Vig.21(218)/2012/EZ dated 07.06.17 and 03.07.17 (CP 387, 388 of File No. Vig. 21(22)/12/Misc./All Region).

In view of the aforesaid facts this Court is of the opinion that by applying the contextual and reasonable construction of the expression “at any time” in Regulation 74 of the Staff Regulation of 1971 the exercise of review jurisdiction cannot be sustained. Exercise of jurisdiction in view of the above observation is unreasonable, on the basis of extraneous consideration which are not based on any specific flaw in the proceedings conducted by the Enquiry Officer leading to conclusion of the proceedings against the petitioner and the order of earlier punishment dated 7.3.2014.

The reviewing authority has also directed for proceeding afresh, whereas sub-clause (C) of Regulation 74 only contemplated a further enquiry. Further enquiry could have been directed if the reviewing authority was of the opinion that the



Disciplinary Authority or the Enquiry Officer had omitted to consider any material or any aspects of the matter arising out of the charges and the proceeding arising hereof. There is no such consideration. The effect of the order passed by the reviewing authority is to set at knot earlier entire proceedings based on the earlier charge memo dated 26.11.2012.

The reviewing authority has also over looked the fact that, since the petitioners had been granted promotion subsequent to the order of punishment dated 7.4.2014 the effect of the same had lost its relevance and could not be made the basis of any further consideration. The petitioners had been granted promotion and considerable time had lapsed after passing of the order of punishment dated 7.3.2014. The service regulation also did not provide for directing proceeding denovo/afresh. If at all the same was to be done, the authorities would be obliged to comply with the principles of natural justice and afford the petitioners an opportunity of hearing before taking such a decision, the effect of which was to take away the rights which had accrued to the petitioners on account of the exoneration/punishment of censure in respect of the charges and by virtue of subsequent grant of promotion, in the meantime.

The action of the reviewing authority for the reasons indicated hereinabove are not sustainable. Order dated



04.01.2019 passed by the Executive Director (East) FCI is quashed.

Writ petition is allowed.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	AFR
CAV DATE	28.08.2019
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