

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP NO. 13975 OF 2014
DATE OF DECISION : 06.05.2019**

Jaswant Singh

...Petitioner

versus

**The Punjab State Warehousing Corporation
and another**

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Aditya Grover, Advocate,
for the petitioner.

Mr. Anil Chawla, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Petitioner herein seeks quashing of the order dated 24.10.2013 (Annexure P-31) upholding partially the order dated 16.03.2007 (Annexure P-15), whereby penalty of recovery for damage of stock and stoppage of three annual increments was imposed upon the petitioner.

2. First the facts briefly. The petitioner had been working as Ware House Manager in the respondent-Corporation and retired as such on 30.04.2011. In the year 2002, while working as Godown Assistant, he was transferred to State Warehouse, Morinda. On joining, the petitioner noticed that wheat stock pertaining to year 2000-2001 had already deteriorated as the same was lying in open on kaccha plinths. He made the same

known to the respondent-Corporation but no action was taken. Again for the crop year 2002-2003 and 2003-2004, the wheat stock was stored in the open on kaccha plinths. This was an unscientific way to store the crop, hence the petitioner time and again made known to the respondent-Corporation that the stock will start deteriorating if no action is taken. But his suggestions to protect the stocks were not heeded to.

3. Due to the negligence of the Food Corporation of India (FCI) wheat stocks were not moved as per the First in-First out (FIFO) policy which led to the stock being auctioned at a reduced price causing loss to the respondent-Corporation. The reason for low price being paid for the wheat stock was deterioration due to 'prolonged storage in open plinths' as can be evidenced from the fact sheets at Annexures P-20 to P-25. The petitioner was issued charge-sheet dated 12.04.2004 (Annexure P-11), to which he filed a detailed reply refuting the charges imputed to him. Finally an enquiry officer, Mr. S.S. Lamba was appointed to look into the charges.

4. The enquiry officer, in his report dated 07.01.2005 (Annexure P-12), exonerated the petitioner of any negligence for the loss caused to the respondent-Corporation for the crop year 2000-2001 but held him responsible for the loss caused for the crop year 2002-2003 and 2003-2004. Consequently, vide order dated 08.03.2006 (Annexure P-13), passed by the Managing Director of the respondent-Corporation, recovery was ordered to

be effected from the petitioner and other charge-sheeted employees for the loss caused during the period 2000-01, 2002-03 and 2003-04. As noted above, the enquiry officer had exonerated the petitioner of any negligence for the loss caused during the period 2000-01. Pursuant to that order, loss was worked out and vide order dated 16.03.2007 (Annexure P-14), three annual grade increments were stopped with cumulative effect and recovery was ordered.

5. In the year 2005, pursuant to orders of this Hon'ble Court in CWP No. 7557 of 2003, policy guidelines (Annexure P-16) were framed regarding the movement, storage and procedure to be followed by Markfed, the nodal agency reporting to FCI, so that there is no loss/damage due to faulty storage. The State Government also made a policy regarding the reimbursement of losses caused to the State due to damaged/rejected stocks from the year 1995-1996. Vide letter dated 16.01.2003 (Annexure P-19), the policy proposed was that the FCI be made liable to reimburse the State Government for the losses caused by violation of FIFO Policy. In COCP No. 132 of 2006, respondent-Corporation undertook to give the benefit of the above-stated policy to the employees against whom recovery had been initiated but the same was not done.

6. Petitioner, being aggrieved against the punishment order dated 08.03.2006/09.03.2007 filed a statutory appeal but the appeal was not decided. Due to inaction on the part of the

Corporation, he filed CWP No. 16150 of 2007, wherein vide order dated 27.02.2008 (Annexure P-27), this Court ordered the respondent-Corporation to decide the appeal and stayed the order of recovery.

7. Vide order dated 07.01.2010 (Annexure P-28), the petitioner's appeal was rejected. Consequently, he again came before this Court in CWP No. 5369 of 2010, wherein the Court, while disposing of a bunch of similar matter, set aside the impugned order vide order dated 17.05.2011 (Annexure P-29) and directed the respondent to pass a speaking order while considering the claim of the petitioner. Pursuant to order dated 17.05.2001 (Annexure P-29), representation dated 05.07.2011 (Annexure P-30) was made by the petitioner seeking rehearing of his appeal in compliance of the order passed by this Hon'ble Court.

8. The appeal was heard and was partly allowed by the appellate authority vide impugned order dated 24.10.2013 (Annexure P-31) which upheld the punishment orders passed against the petitioner to effect recovery for the loss caused to the respondent-Corporation for the year 2002-2003 and 2003-2004 and stoppage of two annual increments with cumulative effect. Being aggrieved from the order passed by the appellate authority, the petitioner filed the present writ petition.

9. Learned counsel for the petitioner submits that the petitioner had been working as Godown Assistant, at the relevant

time, and was not in-charge of the movement of the wheat stock. It was the responsibility of the respondent-Corporation and FCI to ensure that the stock was not damaged. The petitioner had notified the respondent-Corporation that the wheat stock had started deteriorating due to its being stored in open kaccha plinths which was an unscientific way to store them.

10. Learned counsel further submits that the employees of the State Warehouse could not have been attributed negligence in performance of their duties as the State and the Corporation had failed to provide adequate storage facilities and scientific ways to cover the stock to ensure that the stocks are not damaged due to storage for very long. Even otherwise, the fact sheets annexed at Annexures P-20 to 26 show that the stocks were damaged due to 'prolonged storage on open kaccha plinths' and that no officer had been held responsible for the loss caused to the Corporation.

11. It is averred that the computation of the loss, attributed to the petitioners alleged negligence, was also made arbitrarily and there was no way to ascertain how the respondent-Corporation calculated to the amount to be recovered from the petitioner. As per decision dated 17.06.2005 taken by the Ministry of Food, Government of India, FCI was responsible to reimburse the Government for the loss caused due to unsatisfactory and shoddy storage practices, but there is nothing mentioned in the charge-sheet and the punishment orders on

these aspects.

12. Learned counsel for the petitioner submits that the delinquency attributed to the petitioner and the punishment imposed on him were not proportionate. He points out cases of similarly situated persons, who had been charge-sheeted for causing loss to the Corporation due to auction of damaged stock, but who were given a clean chit by the Managing Director of the Corporation as is reflected from Annexure P-36 and Annexure P-37, respectively.

13. Per contra, the stand taken by respondent-Corporation is that the petitioner, being in-charge of maintaining the health of wheat stock at State Warehouse, Morinda for the years 2000-2001, 2002-2003 and 2003-2004, was rightly held liable for the loss caused to the Corporation. He had been entrusted with the responsibility of maintaining the health of the wheat stock but due to his negligence, the Corporation had to suffer huge losses and consequently, the punishment of stoppage of his two annual increments with cumulative effect and recovery of loss was rightly inflicted upon him.

14. It is stated that before passing an order of punishment, the petitioner was afforded opportunity to show cause and punishment order is reasoned one. The loss caused pertained to the stocks of crop year 2000-2001. It is also stated that the petitioner had, during the enquiry admitted that the stock would have lasted longer if it had been stored in crates.

The Corporation had provided polythene covers and usual material, but the petitioner failed to utilise the same and performed his duties negligently.

15. It is averred that the amount of loss caused to the Corporation was calculated on the basis of the inspection report and the loss was due to the negligence of the petitioner. The contention of the petitioner that FCI was responsible for reimbursing the Corporation is refuted. It is stated that any claims liable to be paid by the FCI stand on a separate footing.

16. I have gone through the pleadings and have heard learned counsel for both the parties.

17. The conceded factual stand taken by the corporation reflected in fact sheets (which have not been disputed by the Corporation and which were prepared by the respondent-FCI), is that the food-grain was stored in open plinths and the admitted reasons of degradation in its quality leading to rejection was prolonged storage in open plinths.

18. As regards the delinquency of officers to be disclosed in the fact sheets, the information provided by the Corporation is that the damage to the stock has happened owing to natural loss and therefore no officer of Corporation is responsible.

19. I am in agreement with the argument of learned counsel for the petitioner that once the Corporation has submitted its claim for reimbursement of losses suffered due to damaged/rejected wheat owing to prolonged storage, for

approximately 480 crores based on the fact sheet supra and the quantum/quantity thereof was duly admitted by the FCI, The responsibility of its loss/damage cannot be fastened on the petitioner. Whether or not the said reimbursement was made, is a separate matter and I refrain from going into the validity and/or admissibility of the claim made by the Corporation as the same is not subject matter of the present proceedings.

20. On perusal of the pleadings, as also having heard learned counsels for the parties, I am of the view that the impugned order dated 24.10.2013 (Annexure P-31) does not stand judicial scrutiny and is liable to be set-aside. Accordingly, the writ petition is allowed and impugned order dated 24.10.2013 (Annexure P-31) is set-aside. The respondents are directed to grant consequential benefits to the petitioner.

(ARUN MONGA)
JUDGE

MAY 06, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No