

Sr. No. 222

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

**CWP No.5597 of 2015 (O&M)
Date of Decision: 21.02.2019**

Ashwini Kumar

... Petitioner

Versus

Food Corporation of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kamal Gupta, Advocate,
for the petitioner.

Mr. Maninder Arora, Advocate,
for the respondent-FCI.

ARUN MONGA, J.(ORAL)

The present petition has been filed, *inter alia*, praying for issuance of a writ in the nature of certiorari to quash the impugned order dated 21.09.2006 (Annexure P-4), whereby penalty of "Reduction in time scale of pay to the minimum scale of the present post with cumulative effect for three years" has been imposed on the petitioner.

2. Against the imposition of the said penalty by the Disciplinary Authority, the petitioner filed an appeal which was rejected vide impugned order dated 06.11.2007 (Annexure P-6) and thereafter review petition preferred by the petitioner was also dismissed vide impugned order dated 18.10.2014 (Annexure P-8) upholding the orders of the Appellate Authority as well as

Disciplinary Authority.

3. The delinquency attributed to the petitioner as has been upheld by the Appellate Authority vide order dated 06.11.2007 is that he was in-charge of stock for all the purposes being Assistant Grade-III (d) but failed to protect the FCI stocks, thereby, causing unjustifiable financial loss in association with his other colleagues. The Inquiry Officer has also given his report whereby the petitioner was indicted. The specific delinquency attributed to the petitioner was that while working at Jalalabad Centre, during the period 1998-1999, he failed to maintain absolute integrity and due devotion to duty. The same resulted in a loss of 791.489 MT wheat stored at Laxmi Open Plinth at Jalalabad. Resultantly, financial loss of Rs.41,90,386.50/- was caused to the FCI due to the negligence of the Depot/technical staff including the petitioner.

4. It was attributed to the petitioner that he allowed the stocks to deteriorate without any safety measures. In addition to this, heavy variation/shortages of full bags were noticed in the wheat/paddy/rice stocks stored at various units at Jalalabad Centre.

5. In the above factual backdrop, an inquiry officer was appointed, who submitted his findings, vide his inquiry report dated 05.04.2004 (Annexure P-2) and concluded that the charges against the petitioner are partially proved. The Disciplinary Authority accepted the inquiry report and passed the impugned order. Hence the present writ petition.

6. In the written statement filed by the FCI, the stand taken is that petitioner has been rightly punished for the delinquency which stood clearly proved as reflected from the inquiry report. Based thereon, the disciplinary Authority has rightly imposed the penalty on the petitioner for reduction in time scale of pay to the minimum scale of present post with cumulative effect for 3 years. The Disciplinary Authority further observed that the petitioner will start earning increment from the reduced stage of pay after expiry of penalty period.

7. I have gone through the respective pleadings filed by the parties herein and have also heard the learned counsel for the petitioner as also the respondent FCI.

8. Learned counsel for the petitioner has drawn my attention to the Regulation 54 (of Section 5 Discipline and Appeal Regulations) of Food Corporation of India (Staff) Regulations, 1971. Before proceeding further, it would be instructive to reproduce the relevant thereof;

Major Penalties:

*“(v)** Save as provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;”*

9. A perusal of the above shows that the pay scale to be reduced as penalty is prescribed as “reduction to a lower stage in

the time scale of pay for a specified period.” As against the above, in the present case, the Disciplinary Authority has imposed the penalty whereby, the pay scale of the petitioner has been reduced not to the immediately next lower stage, but to the lowest stage which is the minimum scale of the present post. On the face of it, the same is unfair and unjustified and is in violation of the provisions for the major penalty prescribed as per Regulation 54, *ibid.*

10. Learned counsel for the petitioner has also relied on a judgment rendered by ***Rajasthan High Court*** titled as ***Satya Narain Gupta Vs. UCO Bank and others***, reported as ***2004 (3) SCT.*** In the said case, Regulation 4(e) of UCO Bank Officer Employees (Disciplinary and Appeal) Regulations, 1976, was interpreted which the learned counsel for the petitioner contends is absolutely *peri-materia* with the Regulation 54 as applicable in the present case. For ready reference, the relevant of the judgment rendered by the Rajasthan High Court is reproduced hereinbelow:-

44. *Perused the regulation 4 (e) which stipulates reduction. The petitioner has interpreted the provision of regulation 4 (e) and contended that regulation does not permit reduction to more than one stage in the time scale. Had the intention of the Regulation Making Authority been to reduce the pay to more than one stage, it would not have prefixed 'a' to lower stage. 'A' is an article which connotes 'one' and not 'many'. Certainly, it does not connote/postulate 'many'. So also the 'lower' does not tend to mean the 'lowest'. It is an accepted*

principle of law of interpretation that when a provision is susceptible to two interpretations, one favourable to the employee should be adopted.”

11. Per contra, learned counsel for the respondent-FCI states that the penalty has been rightly inflicted on the petitioner and same is in consonance with Regulation 54. He submits that in the present case penalty of reduction in time scale to the minimum of the scale of the present post would mean minimum of the pay scale admissible for the post of Assistant Grade-III (d).

12. I am of the opinion that the argument of the learned counsel for the respondent is devoid of any merit. Same, if accepted, would mean the lowest stage of pay scale in which the petitioner was placed at the relevant time.

13. I am in agreement with the judgment of Rajasthan High Court, wherein, by interpreting an analogous provision, it has been held that the penalty cannot be imposed to bring the employee to the minimum of the scale, which is the lowest stage. Reduction to a lower stage of pay scale can only be to the lower stage from the stage on which employee is drawing his salary at the relevant time.

14. Accordingly, the impugned order dated 21.09.2006 passed by the Disciplinary Authority as upheld by the Appellate Authority is modified to the extent that the pay of the petitioner shall be treated as reduced to one step lower to the one being drawn by him at the relevant time instead of its reduction to the minimum/ lowest stage of the pay scale.

15. It is made clear that the petitioner shall be entitled to all

consequential benefits with interest @ 6% per annum.

16. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

17. Accordingly, petition is partially allowed in the aforesaid terms.

21.02.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No