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

**CWP No. 20348 of 2012 (O&M)
Reserved on: 09.07.2019
Pronounced on: 31.07.2019**

Paramvir Singh

.....Petitioner

vs.

Punjab State Warehousing Corporation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. A.K. Walia, Advocate,
for the petitioner

Mr. S.S. Bedi, Advocate,
for respondents No. 1 and 2

Mr. R.K.S. Brar, Advocate,
for respondent No. 3

ARUN MONGA, J.

1. The present writ petition has been filed, *inter alia*, seeking quashing of appellate order dated 16.08.2012 (Annexure P-8) upholding the major penalty awarded to the petitioner, effecting recovery of Rs. 25,32,817/- from his pay.

2. Brief facts first. The petitioner was working as Godown Assistant at State Warehouse, Chamkaur Sahib at the relevant time. Vide memo dated 22.06.2007 (Annexure P-1) the Managing Director, Punjab State Warehousing Corporation (PSWC) issued charge-sheet to the petitioner, charging him as under:-

> "*That you have failed to maintain the health of the wheat stocks of crop year 2003-04 while in storage at State Warehouse, Chamkaur Sahib resulting in damage and shortage*

of 11.725 MT on auction of 302.6 MT of stock and causing a financial loss of Rs.25,32,817/- to the Corporation for which you are responsible."

3. Detailed reply (Annexure P-2) was filed by the petitioner, to the said charge-sheet, stating that the crop had been stored in open plinths and there was severe shortage of usable covers to protect it from the oncoming monsoons and heavy rain. It was stated that due to the these reasons, damage to the crops was caused and it could not have been attributed to the petitioner alone on the sole basis that he was working there at the relevant time. It was further stated that the petitioner himself, on two separate occasions, had written to the District Manager regarding shortage of serviceable covers but no action was taken. He categorically stated that storage on open plinths could be made only for 3-4 months as per the Circular dated 10.03.1997 by the Punjab State Warehousing Corporation itself.

4. In the reply, the petitioner placed reliance on the Guidelines issued by the State Government, in pursuance to the orders of this Hon'ble Court in CWPs No. 7285 of 2002 and 7557 of 2003. Under these guidelines the following rules were framed:-

"3.4

Cover and plinth (CAP) storage of the stocks shall be arranged only in extremely unavoidable circumstances. CAP storage shall be invariably on pucca elevated, dry and termite resistant plinths. CAP storage shall be erected in the shape of inverted 'U' letter of the English alphabet and in the matter of size, dunage, cover and lashing of the CAP the respective norms given in the Quality Control Manual and other guidelines of FCI shall be followed.

4.3

The regional offices of the FCI will chalk out a detailed programme to move out the stocks of wheat available in the respective States including those available with the State procuring agencies while duly adhering to FIFO principles, ***within six months.*** *Where this is not possible priority shall be given to State Agencies stocks and stocks kept under CAP-storage. It shall be ensured that the FCI take cover the current years procured stocks from the State Agencies* ***not later than within a period of twelve months from the date of cessation of procurement."***

5. Pursuant to the reply filed by the petitioner, an enquiry was ordered to be conducted by one Sh. Dharam Pal to look into the charges leveled against him. Vide enquiry report dated 23.07.2008 (Annexure P-4 colly), the enquiry officer found that loss was caused to the Corporation. However, he did not hold the petitioner guilty but held that due to inaction on the part of the Food Corporation of India (FCI) and them not following the 'First in First Out' policy, damage was caused to the crops. The open plinths should have been used only for a period of 6 months but were actually used for 3 years in the present case. He held that the claims had been submitted to the FCI and pending decision thereon the case ought to be kept pending.

6. Notwithstanding, the respondent-Corporation passed the order dated 23.08.2011 (Annexure P-5) ordering recovery to be made from the petitioner to the tune of Rs. 25,32,817/-. The petitioner filed statutory appeal against the punishment order but the appeal was dismissed and the punishment order upheld vide appellate order dated 16.08.2012 (Annexure P-8). Being aggrieved, the petitioner filed the present writ petition.

7. Petitioner has averred that the impugned orders herein are liable to be set aside. He submitted that the charge-sheet, issued to the petitioner, was silent as to any specific wrong-doing on the part of the petitioner. Even the enquiry officer has held that the petitioner was not at fault. The damage to wheat stock was found to have been caused due to prolonged storage in open plinths, much longer than the prescribed period. He had further mentioned in his report that the petitioner had approached the higher authorities regarding the acute shortage of serviceable covers but no action was taken regarding the same.

8. It is further averred that in light of the findings of the Enquiry Officer for the punishing authority to hold the petitioner accountable for the loss caused to the respondent-Corporation is against the principles of natural justice. The show cause notice dated 19.08.2010 (Annexure P-4), disagreeing with the enquiry report had been issued in a totally non-speaking and arbitrary manner without assigning any reasons to reject the findings of the enquiry report.

9. Petitioner has pointed out that even though recovery of Rs. 25,32,817/- has been ordered vide the impugned order but the amount claimed as compensation from the FCI is merely Rs. 2,76,416/-, as reflected from the reply filed by respondent No. 1. No justification has been given as to the disparity in the two amounts. It is stated that the respondent-Corporation has not genuinely pursued the claim from the FCI as their own negligence will come to the fore.

10. He placed reliance on an earlier judgment passed by this Court in CWP No. 13975 of 2014, titled 'Jaswant Singh vs. Punjab State Warehousing Corporation' decided on 06.05.2019.

11. Per contra, the respondent-Corporation in its reply has refuted the stand taken by the petitioner. It is stated that the damage to the wheat crop was caused not due to non-movement of wheat stock by the FCI but due to the negligence of the petitioner. The Corporation had supplied the State Warehouses with adequate serviceable covers and no demand for covers was received by the District Manager as claimed by the petitioner.

12. It is further contended that the Policy Guidelines of 2005 (passed in pursuance to orders of this Court), ibid, were followed by the Corporation diligently and it was only due to the mismanagment by the petitioner, who was incharge of maintaining the health of the wheat stock, that the damage to wheat stock was caused. It is further stated that the petitioner had, in response to the punishment order himself assured the Corporation that he would get the amount claimed by them from the FCI released, which he failed to do so. By doing so he had also accepted the responsibility for amount of recovery.

13. Respondent-FCI, in its short affidavit, stated that the petitioner had not claimed any relief from FCI, however they had been impleaded as party to the present writ petition. It has been conceded that the wheat stock was damaged due to the poor preservation by the Warehousing Corporation. Vide circular dated 16.02.2004 (Annexure R-3/1), it had been resolved that FCI will reimburse the Corporation for any loss caused due to prolonged storage, over and above the prescribed period, due to the actions of the FCI. They had received a claim of Rs. 2,76,416/- and on processing the same a payment of Rs. 1,83,998/- was made as is reflected from Annexure R-3/2.

14. By way of replication the petitioner put forth that the short affidavit filed by respondent-FCI has demolished the stand of the

respondent-Corporation. He relied on the following:-

> *"Wheat which is purchased by the Warehousing Corporation on behalf of FCI is kept in the godowns of the Warehousing Corporation and it includes storage charges up to three months. However, after three months period, the storage charges and the interest etc. is paid by the FCI. The stored wheat is to be distributed throughout the country as it is a part of the Central Pool. As and when need arises, the FCI lifts the wheat for further distribution by paying the amount of purchase of wheat, storage, interest and other incidental charges etc. to the Warehousing Corporation.*
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> *For the year 2003-2004, the wheat which was stored at the Punjab State Warehousing Corporation at Chamkaur Sahib godown was got damaged due to poor preservation by the Warehousing Corporation. In the meanwhile, since the problem of disposal of damaged wheat was going on in the State of Punjab from sometime, the Government of India, in the department of Food and Public Distribution framed a scheme and issued a circular dated 16.02.2004 giving guidelines for the sale of such damaged wheat under the Open Market Sale Scheme (Domestic) at the notified places from time to time. A copy of this circular dated 16.02.2004 is attached herewith as Annexure R-3/1. A perusal of clause (vi) provides that the FCI will along with 'carry over' charges as applicable, reimburse the difference between the procurement price plus incidentals and sale value plus taxes, in relation to this sale, initially with reference to the stipulated OMSS(D) rate for the relevant crop year.*
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> *In pursuance of these guidelines, the Warehousing Corporation sold the damaged wheat of the year 2003-04 in open market in the year 2006. In this way, the reimbursement claim was made by the Warehousing Corporation to the FCI in pursuance with the above mentioned guidelines."*

15. I have heard the learned counsel for the respective parties and

have gone through the paper-book with their able assistance.

16. For the reasons stated hereinafter, the punishment order dated 23.08.2011 (Annexure P-5) and the appellate order dated 16.08.2012 (Annexure P-8) upholding the same are not sustainable in law particularly in view of the established position from the conjoint reading of the pleadings that the wheat stock stored for the year 2003-04 got damaged due to poor preservation i.e. storage in open plinths for prolonged periods way beyond the prescribed period. It is basic common sense since that wheat being a perishable commodity would for sure be damaged and/or perish beyond a certain period no matter howsoever diligently it is stored and in this case the very storage itself was faulty.

17. Having perused the inquiry report, I am of the view that no finding of being guilty of negligence has been recorded against the petitioner. Rather shows on the other hand, the petitioner has been writing various letters dated 17.06.2003 and 03.07.2003 to the District Manager (Annexure P-3) requesting him to take timely action for providing serviceable covers for all the stacks where the wheat stocks was stored in open. The Inquiry Officer also recommended that since respondent-Corporation had already lodged its claims for loss of wheat stocks due to delay in lifting the stocks by the FCI, the outcome of the claimed amount from FCI and therefore be awaited before taking any departmental action. The punishing/disciplinary authority vide impugned order dated 23.08.2011 (Annexure P-5) awarded a punishment of recovery of an amount of Rs.25,32,817/- from the petitioner without recording any finding of guilty and the reasons of disagreeing with the findings of the Inquiry Officer.

18. The punishment order is completely non-speaking on the aspect

of the acts of the negligence attributable to the petitioner. No explanation has been rendered as to why no action was taken for providing serviceable covers during the initial period of storage of stocks and as to why no timely decision was taken by Corporation to dispose of the stocks by auction in open market on the failure of FCI to lift the stocks on time. It is also intriguing as to how the amount of Rs.25,32,817/- has been arrived at to be recovered from the petitioner as the Corporation while lodging its claim with FCI on account of loss of wheat stock decided to claim only an amount of Rs.2,76,416/-. The claim lodged with the FCI on account of loss of wheat stock was paid by the Corporation by the FCI. There is no reason shown or any plausible explanation given for not lodging the claim for the remaining amount with the FCI and instead claiming the same from the petitioner. What has been held against the petitioner is only that he made a statement before the Inquiry Officer that he will recoup the loss if the FCI does not reimburse. But the said situation would have arisen had the respondent-Corporation lodged its entire claim including the amount of Rs.25,32,817/- with the FCI and the same had been declined by the FCI on the ground that the same could not be reimbursed owing to the negligence of the employees of the Corporation for causing the loss of wheat stock.

19. As already stated hereinabove, it has been established on record that stocks were kept in open plinths as per the decision taken by the petitioner's superiors in the respondent-Corporation and in violation of its own Guidelines, no serviceable covers were provided even after expiry of initial 6 months leading to the damage to/ perishing of the wheat stock lying in open.

20. Even otherwise, a perusal of the inquiry report does not

anywhere reflect that petitioner specifically gave any undertaking before the Inquiry Officer that he would make good loss on account of damage of the wheat stock. The said aspect have been left untouched both by the punishing authority as well as the appellate authority. Speaking of the appellate order, the same has been passed without taking into consideration the detailed grounds of appeal as reflected from the contents of appeal dated 16.08.2012 (Annexure P-8). The punishment order was upheld in appeal without any independent application of mind on the part of the appellate authority. Another aspect of the matter is that even as per the conceded factual position on the part of the respondent-Corporation, the petitioner was charge-sheeted on 22.06.2007 for his failure to maintain the wheat stock for the crop year 2003-2004. Knowingly well that wheat stock lying in open is safe only for a period of 6 months at the most 8 to 9 months depending upon the weather conditions, the Corporation was well aware that the stock needs to be disposed of before it is damaged or perishes but this was not done timely. After doing the same belatedly, a charge sheet was issued after a gap of 3 to 4 years. In similar circumstances, while deciding CWP No.4405 of 2004, I have already expressed my opinion as below:-

> *"Having heard arguments of respective learned counsels on both sides and after perusal of rival pleadings, I am of the view that lackadaisical approach in issuing the charge-sheet(s), after a lapse of 4-6 years of having come to know of the loss/damage of food-grains, though may not ex-facie be a ground to exonerate a delinquent employee, but benefit of delay on the part of employer must ensue to an employee. It unfairly puts an employee in a situation where he*

is unable to adduce proper evidence, which in normal course would have been otherwise available at the relevant time. Particularly, in a case where the charges are with respect to loss/ damage to the wheat stocks/ perishable goods, which by its nature do not have a shelf life beyond a certain period. Reliance may be placed on judgment of Hon'ble the Supreme Court rendered in ***'State of Punjab vs. Chaman Lal Goyal'*** *reported as* ***1995 (2) SCC 570****, wherein it has been held:-*

> *"10. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."*

21. Apart from the above position, in the present case, the letters

written by the petitioner to the District Manager in June, 2003 pointing out that the wheat was lying on the open plinths on which old covers had been put which cannot save the stocks from rain and storms, have not been denied. The petitioner further requested that fumigation covers had to be obtained from PUNSUP on loan because FCI was addressing for proper preservation of stocks. But the same was not done. In the said letter, the petitioner stated that he could not be held responsible for not providing all the covers as it is very difficult for him to preserve the stocks in open. The petitioner also endorsed his letter dated 17.06.2003 (Annexure P-3) to T.O, PSWC at Fatehgarh Sahib requesting him that since the rainy season was about to start and the covers are old and torn out and, therefore, immediate action is required for providing new covers. Despite the persistent pursuit of the petitioner by writing follow up letter dated 03.07.2003, no action was taken by the superiors to provide covers for preserving the stocks lying in the open. In fact, PSWC vide its Circular dated 10.03.1997 by its Quality Control Branch issued certain guidelines regarding storage, which was relied upon by the petitioner in his reply to charge-sheet, which *inter alia* state as below:

> *"**The open storage was meant initially merely for 3-4 months** in order to accommodate the wheat stocks **for a short span** due to scarcity of space in the covered godowns till the movement of such stocks was arranged by the Government of India. Now the storage period in open is not under the control of the PSWC and is totally dependent on the movement of the stocks which is arranged by the FCI.*
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> v) *That in the above regard it may also be stated that while disposing of two writ petitions (No.7285 of 2002 and 7557/03 filed by the Employees Union of Punsup and Markfed Punjab*

and Haryana High Court in its order dated 02.03.2005 had directed the central Government and the FCI to frame a policy within a period of six months to ensure that procured wheat stocks are properly stored and disposed before they suffer damage on account of faulty storage other factors:

vi) That accordingly the policy guidelines for proper storage and timely disposal of wheat stocks procured in Punjab and Haryana stand framed by the FCI. A copy of the same is enclosed at Annexure 4;

vii) That attention is invited to Para 3.4 and 4.3 of these guidelines which read as under:-

> *3.4*
>
> *Cover and plinth (CAP) storage of the stocks shall be arranged only in extremely unavoidable circumstances. CAP storage shall be invariably on pucca elevated, dry and termite resistant plinths. CAP storage shall be erected in the shape of inverted 'U' letter of the English alphabet and in the matter of size, dunage, cover and lashing of the CAP the respective norms given in the Quality Control Manual and other guidelines of FCI shall be followed.*
>
> *4.3*
>
> *The regional offices of the FCI will chalk out a detailed programme to move out the stocks of wheat available in the respective states including those available with the State procuring agencies while duly adhering to FIFO principles,* ***within six months.*** *Where this is not possible priority shall be given to State Agencies stocks and stocks kept under CAP storage. It shall be ensured that the FCI take over the current years procured stocks from the State Agencies* ***not later than within a period of twelve months from the date of cessation of procurement."***

22. Another aspect of the matter is that the show cause notice

issued to petitioner containing reason of disagreement is also not in consonance with the Rules as per Rule-9 (2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. A separate dissenting note containing reason of disagreement is required to be supplied along with the show cause notice which was not done. In any case, the show cause notice Annexure P-4 does not contain any convincing reason and is merely a sham formality.

23. The action of respondent in keeping stocks in the open plinths for years together is violation of its own Guidelines dated 10.03.1997 issued by respondent No.1 which were proved before the Inquiry Officer.

24. In view of my discussion above and the reasons contained therein, the impugned punishment order dated 23.08.2011 (Annexure P-5) awarding the punishment of recovery from the petitioner as also the order dated 16.08.2012 (Annexure P-8) passed by the Appellate Authority upholding the same are quashed.

25. The writ petition is allowed.

26. It is directed that recovery, if any, made pursuant to the order dated 16.08.2012 (Annexure P-8) shall be refunded to the petitioner with interest @ 6 % per annum.

(ARUN MONGA)
JUDGE

31.07. 2019
vandana