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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2859/2003**

GULSHAN KUMAR SACHDEVA Petitioner

Through: Mr. Pradeep Gupta, Mr. Parinav
Gupta, Ms. Mansi Gupta and
Mr. Moazzam, Advs.

versus

THE FOOD CORPN.OF INDIA & ORS. Respondents

Through: Mr. Mohan Lal Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

01.07.2019

1. This is a peculiar case in which, despite holding, in effect, that the charge, against the petitioner, was not proved, the Appellate Authority in the Food Corporation of India (FCI) has chosen, nevertheless, to impose, on the petitioner, a penalty of reduction in rank, from the rank of Technical Assistant-II (TA-II) to TA-III, with the further direction that the petitioner's pay be fixed, in the scale of TA-III at the stage he would have drawn had he not been promoted.

2. Though, on the face of it, such an order cannot sustain, it is appropriate that a brief overview of the facts is provided.

3. The proceedings commenced from Memorandum, dated 19th August, 2000 (hereinafter referred to as the "chargesheet"), issued to

the petitioner, proposing to initiate disciplinary action, against him, under Regulation 58 of the FCI (Staff) Regulations, 1971 (hereinafter referred to as the “Regulations”). The petitioner, was at the time, holding the post of TA-II in the FCI. The charge, against the petitioner, was that he had accepted and dispatched BRL (Below Rejection Limit) rice, to Jodhpur, on 16th August, 1995. It was alleged that the rice contained more than the permissible percentage of broken, discoloured and de-husk grains, along with heavy infestation and bran shedding and that it was dull in appearance. As a result, it was alleged, the consignee had revised the amount payable to the FCI, against dispatch of the said rice, resulting in a reduction of the amount payable by ₹ 53,99,620.33, ₹ 4,11,067/- and ₹ 94,009.07, which consequently, enured as a loss to the FCI.

4. This, it was alleged, amounted to failure, on the part of the petitioner, to maintain absolute integrity and due devotion to duty, and indicated that the petitioner was instrumental in deliberate acceptance/dispatch of BRL rice, thereby contravening Regulations 31, 32 and 32(A) of the Regulations.

5. Inquiry proceedings commenced, on the aforesaid charge sheet. The petitioner alleged that he had never accepted the disputed rice stocks, or issued priority list for dispatch thereof, and had only participated in the loading of the rice. He relied, for this purpose, on the deposition of PW-5 Sh N.S. Bedi, Assistant Manager (Quality Control), FST, Raikot District, Ludhiana, who had deposed that (i) the AM (QC) was the competent authority to issue the priority list, (ii)

there was no documentary evidence indicating that the petitioner had accepted BRL stock of rice, (iii) it was not possible, as per the extant instructions, to dispatch BRL rice, (iv) there was no document to indicate that the stocks, in the condition they were prior to dispatch, were of BRL grade and (v) there was no mention of BRL stocks in the Material Inward Registers (MIRs). The Inquiry Officer (hereinafter referred to as “the IO”), however, rejected these submissions. He held that the AM(QC) had himself testified that the stock was accepted by the petitioner and the petitioner was unable to indicate any reason why the AM(QC) would depose falsely, or bore any enmity towards him. Insofar as the instructions Exhibit D-11 was concerned, the IO held that the allegations against the petitioner was, precisely that he had dispatched BRL rice in violation of Exhibit D-11. It was further found that, as the petitioner had admitted that he had assisted in loading the rice, he ought to have resisted the loading of BRL stock. Qua the MIRs, and the entries contained therein, the IO held that the MIRs had been prepared by the AM(QC) who was also charged in the transaction along with the petitioner, so that, obviously, the AM(QC) would not reflect BRL stocks in the MIRs. He also relied on the evidence of PW-3 Sh. G.R. Bishnoi, AM(QC), FCI, Pokaran, who deposed that the stock, on sampling and analysis was found to be of BRL quality. There was nothing to indicate that PW-3 bore any enmity against the petitioner. For these reasons, the IO opined that the charge against the petitioner stood proved.

6. The petitioner was given an opportunity to represent against the findings of the IO. Thereafter, the disciplinary authority, i.e. the

Regional Manager, FCI, *vide* order dated 7th September, 2001 imposed, on the petitioner, the penalty of dismissal from service, alongwith the direction to recover, from his terminal benefits, ₹ 2 lakhs towards the loss suffered by the FCI.

7. The petitioner appealed, against the said order dated 7th September, 2001, to the Zonal Manager, (North) FCI, being the Appellate Authority. The findings of the Zonal Manager, in his capacity as Appellate Authority, merit reproduction thus :

“I have gone through the charge-sheet, inq. Report, penalty order contents of the appeal and other related record of the case in a careful manner. I have also afforded the personal hearing to the appellant on 22-11-2001 which was attended by him in my chamber and his recorded statement is placed in the file. The appellant was mainly charge-sheeted for acceptance and despatch of BRI, rice raw superfine beyond rejection limit in a special ex. Jagraon to BGKT Jodhpur loaded on 16-8-95 which invited the LAS amounting to ₹ 53,99,620.37 ps., ₹ 4,11,067.00 and ₹ 94,009.07 ps. I find the name of the appellant has been shown for acceptance of rice stocks but *the prosecution has not brought on record any such documents which could least infer if any of the rice consignments, despatched in the instant special had been accepted by the appellant.* The appellant has also asked for the additional documents, the stack-wise, registers and acceptance registers wherein each and every rice consignment showing the stack no., is recorded duly signed by the concerned TA, in token of acceptance of rice stocks, were not produced by the prosecution in inq. Proceedings. *These documents are vital to establish the charge of acceptance. The above fact has been confirmed by the PW. 5, during his deposition. Non-production of the said rice acceptance registers is the lapse on the part of custodian of record.* As per

instructions, the joint inspection order were required to be issued within 21 days and it must be completed within 45 days of receipt of stocks. In the instant case, the facts are on record that the joint inspection orders had been received by the appellant after 120 days of the receipt of stocks at the destination. Hence, the allegation for not visiting the destination, deserves not to be attracted. It is also borne out of record that the quality complaint has been lodged by the AG.I.(D)/AM(D) whereas it should have been lodged by the AM (QC). As per photocopies of the RRs taken on record as Exhibit D-21, Wagons No. 748860 shown in Exb.P.6, Wagon No. 56397, No. 28403, No. 26560, No. 56405 detailed in Exhibit P.2/A, were not loaded with the stocks of Jagraon Centre but the consignee had lodged the quality complaint in respect of above wagons also. Sh. G.R. Bishnoi, AM (QC) PW who has submitted assessment report in question, had committed during the cross examination that the analysis of stocks under complaint was made on visual basis, not as per proper analysis procedure. The appellant has been held accountable for the revised LAS, amounting to ₹ 53,99,620.37, ₹ 4,11,067.00 and ₹ 94,009.07 ps. On examination of the facts of the case, it has come to notice that while preparing the said LAS Exhibited P.14, the consignee has taken into consideration 150% of issue price of the stocks is to be taken while calculation the quality cuts as Hqrs. Instructions exhibited D-25. It has been clearly mentioned in the Hqrs. Letter dated 15-2-99 that on liquidation of stocks by tender, the differential cost may be intimated in form of final LAS. If, we calculate the LAS, as per Hqrs. instructions the final LAS will come to ₹12,23,053.14 ps. As shown in exhibit p.13. Hence the LAS prepared by the consignee is not according to the standing instruction and is inflated. Despite of the above shortcomings, it can not be said that every thing is fair on the part of appellant and the appellant cannot fully absolve from the responsibility, as the FCI has suffered a loss. In view of the above, I am of the considered opinion that the penalty imposed by the disciplinary authority is a bit harsh. I feel a penalty of

reduction in rank from TA.II to TA.III would meet the ends of justice.

Now, therefore, I Kush Verma, Zonal Manager (North) as appellate authority in exercise of the powers conferred under Regulation 72 of FCI (Staff) Regulations, 1971 hereby reduce the penalty to the extent of “Reduction in rank from TA.II to TA.III” with the direction that the period of absence from duty shall be regularized by granting any kind of leave due and the pay will be fixed in the pay scale of TA.III at the stage, he would have drawn, had he not been promoted in respect of Sh.Gulshan Kumar, Ex.TA.II.”

(Emphasis Supplied)

8. A bare reading of the order of the appellate authority reveals that all findings, therein, are in favour of the petitioner. The appellate authority has held that there was no material, brought on record, by the FCI, by which an inference, regarding acceptance or dispatch of any of the allegedly ‘below rejection limit’ rice consignments, by the petitioner, could be established. He has further found that the stock-wise registers and acceptance registers, which represented each and every rice consignment, and was duly signed by the concerned TA in token of acceptance of the rice stocks, which were vital to establish the charge of acceptance were not produced by the prosecution in the inquiry proceedings, which fact had been confirmed by PW-5 during his deposition. This non-production, the appellate authority has held, was a clear lapse on the part of the custodian of the records. The appellate authority further holds that, though the instructions required joint inspection order to be issued within 21 days, and completion of joint inspection within 45 days of receipt of stocks, in the present case,

the joint inspection orders were received by the petitioner after 120 days of receipt of stocks at the destination. As such, he holds, the allegation of the petitioner not having visited the destination, could not sustain. He also faults the AM(QC), for having lodged the quality complaint, which was required to be lodged by the AGI(D)/AM(D). He also finds that the consignee lodged quality complaint even in respect of wagons which were not loaded with the stocks of the Jagraon where the petitioner was employed. The appellate authority has gone to the extent of expressing dissatisfaction with the analysis of the stocks, observing that PW-3 Sh. G.R. Bishnoi, AM(QC), who had submitted the assessment report in respect of the said stocks of rice, which was the basis of the charge against the petitioner, had himself admitted, during cross-examination, that the analysis of stocks was purely on visual basis. The appellate authority also finds that the LAS (Loss Assessment Statement) had inflated the loss to ₹ 53,99,620.33, ₹ 4,11,067/- and ₹ 94,009.07 whereas the actual loss worked out only to ₹ 12,23,053.14. Thus, after returning finding after finding in favour of the petitioner, the appellate authority chose, for reasons which can only be said to be best known to him, to hold that “it cannot be said that everything is fair on the part of appellant and the appellant cannot fully absolved from the responsibility as the FCI has suffered a loss”. Following on this rather quixotic finding, the appellate authority expresses the “considered opinion that the penalty imposed by the Disciplinary Authority is a bit harsh” and that a penalty of reduction in rank from TA-II to TA-III would meet the ends of justice.

9. On the face of it, such an order cannot sustain. The findings of the appellate authority result in complete absolution of the petitioner of the charge against him. These findings of the appellate authority, taken to their logical conclusion, ought to have resulted in complete exoneration, of the petitioner, of the charge against him. The decision, of the appellate authority, to penalise the petitioner by reducing him in rank cannot, therefore, sustain, either in law or in facts, and is patently arbitrary.

10. For the aforesaid reasons, the petitioner is entitled to succeed. The impugned order, dated 7th September, 2001, passed by the Disciplinary Authority, as well as the order dated 7th December, 2001, passed by the appellate authority (insofar as the latter chooses to penalise the petitioner with reduction in rank from TA-II to TA-III) are, therefore, quashed and set aside.

11. The petitioner stood retired from service even prior to passing of the impugned appellate order. As such, consequent to the setting aside of the impugned orders dated 7th September, 2001, passed by the Disciplinary Authority, as well as the order dated 7th December, 2001, passed by the appellate authority respectively, the petitioner would be entitled to arrears of pay, if any, during the period he continued in service as well as the re-fixation of his pension, treating as though the impugned orders had never been passed. More specifically, the petitioner would be entitled to all monetary benefits, which may have been withheld/reduced by reason of the impugned order of punishment and appellate order.

12. The respondent is directed to work out the amount due to the petitioner and disburse the said amount to the petitioner within a period of four weeks from the date of pronouncement of this judgment. Default, in doing so, would entail liability to compound interest @ 12% per annum.

13. The writ petition is allowed in the above terms with no orders as to costs.

JULY 01, 2019
HJ

C. HARI SHANKAR, J



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