

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Writ Petition No.8122 of 2020 (O&M)  
Date of Order:18.06.2020

Jaswinder Singh

..Petitioner

Versus

The Punjab State Warehousing Corporation and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Tahaf Bains, Advocate,  
for the petitioner.

Mr. Athar Ahmed, Advocate,  
for the respondents.

ANIL KSHETARPAL, J.

Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

With the consent of learned counsels for the parties, the writ petition has been taken up on Board for final disposal.

The writ petitioner, who is an employee of Punjab State Warehousing Corporation has filed the present writ petition under Article 226/227 of the Constitution of India, with the following substantive prayers:-

- ii) *any suitable writ order or direction especially in the nature of certiorari for quashing the order dated 09.01.2019 (Annexure P/13) passed by the respondent no.2 in the review petition to the extent whereby the authority has remanded the case back to the punishing authority for a fresh enquiry and upheld the stoppage of one annual grade increment with cumulative effect as at the same time has set aside recovery of Rs13,77,743.55*

*subjecting the petitioner to double jeopardy as the punishment of stoppage of one annual grade increment with cumulative effect has been upheld and a fresh enquiry has been ordered to be conducted in which another punishment may be awarded to the petitioner which would be violative of his rights as enshrined under Articles 14 and 16 of the Constitution of India as the finding recorded is wholly perverse to the record of the case as the same authority vide order dated 13.2.2018 (Annex.P/12) has already exonerated the petitioner as well as the co-employee vide statement dated 16.9.2004 (Annex. P/3) has admitted his responsibility the impugned orders based on mis-appreciation of evidence are hence violative of the procedure provided for by the statute.*

- iii) a writ in the nature of mandamus directing the respondent Department to decide the representation dated 12.3.2020 (Annex.P/16) for refund an amount of Rs478118 pursuant to orders dated 912019 (Annex. P/13) and direct the respondent Department to refund the amount to the petitioner forthwith along with interest @ 18% p.a.”*

In brief, the facts are that the writ petitioner was appointed in the service of the Corporation on 19.03.1990. He was deputed as an officiating Warehouse Manager in the year 2011, whereas regularly promoted as Warehouse Manager on 28.07.2015. The writ petitioner remained posted as Warehouse Manager at State Warehouse, Makhu from 21.05.2003 to 07.09.2003 only.

A disciplinary proceedings were initiated against the petitioner on two following charges:-

- “1. That he misappropriated 2181.70 qtls. wheat crop 1999-2K for his personal ends causing financial loss of*

*Rs.13,77,743.55 including 50% incidental charges to the Corporation. He is, thus responsible for making good the said loss.*

*2. That he failed to hand over the record of auction of damaged wheat of State Warehouse, Makhu to Sh. Gurpal Singh, Junior Assistant and thus, defied the orders of his superiors.”*

The Enquiry Officer appointed to enquire into the charges submitted a report against the petitioner on both counts. The Disciplinary Authority vide order dated 23.11.2005, saddled him with punishment of stoppage of one increment with cumulative effect along with recovery of loss of Rs.13,77,743.55 from the salary of the writ petitioner. An appeal against order of the punishing authority was dismissed by the appellate authority on 13.02.2018. Thereafter, a review petition was filed before the appellate authority which was disposed of by the following order:-

*“10. In view of my findings given hereinbefore, I Partially accept the Review Petition, and amend my order dated 13.02.2018 to the extent that order of punishing authority regarding stoppage of one annual grade increment with cumulative effect is upheld and of recovery of Rs.13,77,743.55 is set aside. The case is remanded back to the punishing authority who should conduct fresh enquiry into defalcation of 1812.70 quintals of damaged wheat and pass a fresh speaking order after following due procedure. Order was reserved on 20.11.2018 and is being issued today. Order is conveyed to all concerned.”*

Learned counsel representing the petitioner has submitted that the punishing authority as well as the appellate authority while awarding punishment to the petitioner did not make any distinction with respect to the

punishment on both the charges. In order words, it was contended that the punishing authority in the order dated 23.11.2005 after agreeing with the enquiry officer passed a consolidated order of punishment i.e. stoppage of one increment with cumulative effect apart from recovery of loss of Rs.13,77,743.55 from the salary of the petitioner. While deciding review petition, learned appellate authority committed an error while upholding the order of the punishing authority with stoppage of one annual grade increment with cumulative effect while setting aside order of recovery of Rs.13,77,743.75 and remanding the case back to the punishing authority for fresh enquiry. It may be noted here that pursuant to the order passed by the appellate authority, appointing authority has now again appointed an enquiry officer to enquire into the charges served on the petitioner vide statement of charges dated 14.06.2004.

On the other hand, learned counsel appearing for the respondent-corporation has defended the order and submitted that with respect to failure of the petitioner to hand over the record of auction of the damaged wheat of State Warehouse, Makhu, the order of punishment i.e. stoppage of one annual grade increment with cumulative effect has been upheld whereas with respect to the order of recovery of loss, the matter has been remitted back for fresh enquiry.

This Court confronted learned counsel for the respondent as to how while hearing the review petition, the appellate authority has made the distinction with regard to punishment awarded to the petitioner with regard to charge no.1 and charge no.2 to which he failed to give any satisfactory reply.

On consideration of the entire matter, this court is of the view that the appellate authority while passing the impugned order dated 09.01.2019 has fell into an error. Once, the punishing authority while passing a consolidated order of punishment did not distinguish between charge No.1 and 2 and the same was upheld by the appellate authority, it was not appropriate for the appellate authority to make a distinction while hearing the review. Once, the appellate authority considered it appropriate to direct the punishing authority to conduct fresh enquiry into the charges, it would have been more appropriate to remand the case back completely. If the order under challenge as it stands is upheld, the writ petitioner is likely to suffer prejudice. On the one hand, the order of punishment i.e. stoppage of one annual grade increment with cumulative effect has been upheld whereas on the other hand fresh enquiry has been ordered.

Keeping in view the aforesaid facts, the order passed by appellate authority, while exercising powers of review, dated 09.01.2019 is set aside with regard to upholding the order of punishing authority regarding stoppage of one annual grade increment. Since fresh enquiry officer has already been appointed vide order dated 18.05.2020, therefore, the enquiry officer would enquire into all the charges afresh.

With respect to second prayer, it may be noted that the petitioner claims that an amount of Rs.4,78,118/- has already been recovered from the petitioner pursuant to the order of punishing authority dated 23.11.2010. In this regard, it is noticed that the petitioner has submitted a representation dated 12.03.2020 to the Managing Director of the Corporation, who is directed to decide the representation in accordance with law within a period of 3 months.

With the aforesaid modification, the present writ petition is partly allowed.

18<sup>th</sup> June, 2020  
nt

(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No