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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.18477 of 2008
and M.P.No.1 of 2008

P.Kothandapani

...Petitioner

Vs.

1. The Chairman
Food Corporation of India
Head Quarters, 16-20
Barakamba Lane
New Delhi-110 001

2.The Managing Director
Food Corporation of India
Head Quarters, 16-20
Barakamba Lane
New Delhi-110 001

3.The Zonal Manager (South)
Food Corporation of India
Zonal Office
No.3, Haddows Road
Chennai-600 006

4.Senior Regional Manager
Food Corporation of India
Regional Office
5/54, Greams Road
Chennai-600 006

...Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 3rd respondent in No.VIG.4(42)/2002-TN dated 07.02.2003, impugned proceedings of the 2nd respondent in No.A & R/5(69), 2003/1478 dated 26.12.2003 and impugned proceedings of the 1st respondent in No.A&R 10(165) 2004/36 dated 12.07.2006 and quash the above said impugned proceedings against the petitioner as null and void and consequently direct the respondents herein to refund the recovery of Rs.50,000/- and to set aside the above said punishment.



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For Petitioner : Mr.G.Thangavel

For Respondents: Mr.S.Vijayakumar

O R D E R

Challenge in the writ petition is the punishment order confirmed by the Appellate authority and rejected by the Review authority.

2. The petitioner was working as depot in charge under the respondents. The charge memo issued to him for the lapse of not utilizing vacant space for storing 18,000 metric tonne of food grains. The petitioner submitted his explanation stating that he was only an incharge acting on the instruction of the Deputy manager whereas it is co-ordinated by 16 other Assistant managers who are also responsible for that. He would further defend himself with the statement that he was not responsible for the storage, but he was responsible only with respect to security, liason with railway, labour/staff welfare and other grievances. He was manhandled by the workers when the labour dispute and he attended to duty sincerely under intimation to the Deputy Manager. Being not satisfied with the explanation an enquiry officer was appointed to conducted an enquiry. During enquiry reports were called for from experts. After conclusion of enquiry, the enquiry officer has held the charges proved and the Disciplinary authority after holding the petitioner is also responsible for the lapses imposed a punishment of censure and ordered a recovery of Rs.1,00,000/- out of Rs.5,33,684/- as a token recovery. The petitioner made an appeal to the Appellate authority raising the grounds of unfair conduct of enquiry, non furnishing of documents, collection of materials after the conclusion of enquiry and refusal of opportunity to place material facts and cross examine witnesses. Even though so many objections were raised to the enquiry officer report the Disciplinary Authority has observed as under:

"

AND WHEREAS, I, the undersigned, being the Disciplinary Authority, have gone through, the charge memo, reply to the charge memo, inquiry proceedings, all relevant materials of this case, including the evidence produced during inquiry, arguments of bot sides, reply dated 30.092002 of Sri.P. Kothandapani, Assistant Manager (Movt) on the inquiry report and on application of mind, observe that enquiry has been conducted as per procedure. Adequate opportunity was given to the charged officer for his defence. Yet neither any



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defence document was filed nor any defence witness produced. The charged officer apparently did not furnish list of additional documents/witnesses needed by him at appropriate time. At no time did he question authenticity of public documents, copies of which were supplied to him."

And proceeded on the basis that petitioner is solely responsible for the loss of Rs.5,33,684/-. The petitioner preferred an appeal. The Appellate Authority after going through all the records has modified the punishment and given a finding as under:

".....

However, I find that the officers/staff directly responsible for the lapses have been allowed to escape as no responsibility has been fixed on them notwithstanding the fact that it would not be desirable to hold Depot-in-charge alone responsible for accrual of losses towards demurrage. The Appellant has also taken this plea in his Appeal petition that the Disciplinary Authority without deciding the proportion of responsibilities on other held him responsible alone for the lapses and imposed recovery of Rs.1 lakh. There is force in the plea of the appellant which has also been admitted by the Disciplinary Authority in its order dated 07.02.2003 itself as stated and I feel that the quantum of loss suffered by FCI should have been shared by all the delinquents which could not be done for want of fixation of responsibility on them. Since the token recovery of Rs.1 lakh has only been imposed on the Appellant, leaving all others, I hereby allow his plea and modify his penalty for recovery to the extent of Rs.50,000/- instead of Rs.1 lakh.

3. Against which the petitioner filed a review petition, wherein he raised the point that all the other persons were allowed to escape and without any proportionality the amount was ordered to be recovered at random. However, the Review Authority has confirmed the punishment of the Appellate Authority. Against which the present writ petition is filed.

4. Learned counsel for the petitioner would vehemently contend that the petitioner was made as a scape goat allowing all other officials to escape from the clutches of law. The Domestic enquiry conducted was not fair and proper and when there is an observation by the Enquiry officer that so many



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others were involved, the respondents have not taken steps to conduct a common enquiry or enquire those in the enquiry. Apart from that the Enquiry officer has obtained documents behind the petitioner and relied on those documents to arrive at a finding of holding the charges proved. In spite of raising the objections against the enquiry report, the Disciplinary Authority has not applied its mind and discussed the objections raised by him and mechanically passed the order. The Appellate Authority after accepting the contention of the petitioner has modified the recovery amount at random without fixing specific responsibility on the other officials. Therefore, he would pray that the impugned order is liable to be set aside as the petitioner is retired from service and therefore the impugned order should be set aside.

5. The learned counsel appearing for the respondents would vehemently deny the contentions of the petitioner. He would submit that fair opportunity was given to him and he has not made any specific statements in his defence statement, whereas he raised everything in the writ affidavit, which is an after thought. What is not taken as a ground and what documents which were not asked at the time of issuance of charge memo and the annexure to the connected documents, cannot be raised before the Appellate Authority. In normal circumstances, any delinquent would be permitted to peruse all the documents which were available or relied by the Disciplinary Authority in advance and he would be permitted to submit his explanation on the basis of those documents. Now that the petitioner makes wild allegations that those documents were not given to him which cannot be sustained. He has not raised any objection before the enquiry officer with regard to permission to cross examine or raise some mandatory question at that instance. Only at the time of filing appeal he raised all the grounds. Therefore, the grounds raised by the petitioner is an after thought only in order to justify his stand.

6. In so far as the allegations that so many other officials are concerned, at the preliminary stage a charge memo was given to other Assistant Manager viz., Chandrasekaran and after seeing his explanation, it was found that he was not responsible for the lapses and the charges were dropped. At that point of time the said Chandrasekaran was not holding charge of the covered depot, whereas the petitioner was incharge during the relevant time and therefore a charge memo was issued and due opportunity was given to him. After availing all the opportunities, now the petitioner cannot turn around and state that he was not responsible. In fact in his defence statement as well as during examination he has admitted that there was vacant space to store 10,500 metric tonnes of food grains and therefore having admitted he cannot turn around and state that the imposing of



punishment is illegal. On these grounds, learned counsel would contend that the writ petition is liable to be dismissed.

7. I have perused all the materials placed before this Court and also the rival submissions made by both the sides.

8. At the outset, it is noted that a defence was raised that there are several officials are involved in this. However, none of the officials were examined nor statement was made that all other officials were not responsible only the petitioner is the sole incharge of the storage depot. Apart from that, when specific objections were raised by the delinquent against the enquiry officer's report, it is incumbent upon the Appellate Authority to consider and discuss the objections raised and pass an reasonable order. Whereas, as extracted above, the Appellate Authority has simply stated that he has gone through the charge memo, reply to the charge memo, enquiry proceedings and all other relevant materials and proceeded on the footing that the delinquent is responsible for the lapses. He would also give a specific finding that it will not be appropriate to hold the depot incharge alone responsible for accrual of losses towards demurrage. It is incumbent on the Disciplinary Authority to identify the persons who are responsible and what is the proportion of responsibility should be passed on the delinquent. Without setting out all the reason, he simply imposed a so called recovery of Rs.1,00,000/- at random. Such kind of order is not sustainable and it is oppose to principles of natural justice. Even worse is the condition that the Appellate Authority having found that so many officials were responsible for the lapse modified the penalty of recovery from Rs.1,00,000/- to Rs.50,000/- without assiging any reasons as to the proportionality of the lapses.

9. It is well settled that when an incident had taken place all the persons who are responsible for that should be tried together. The enquiry officer should be appointed corresponding to the highest designated authority. All the delinquent should be given opportunity to cross examine all the witnesses. In this case, the charge memo was issued only to the petitioner who was depot incharge at that time. As admitted by the Disciplinary Authority as well as the Appellate Authority no charge memo is framed against the other officials. The contention that a charge memo was framed against one Chandrasekaran, Assistant Manager (Depot) was holding charge during 2001 is not sufficient. The respondents ought to have seen who are the other officials who were responsible during the relevant period of time i.e., during 1998-99. Only by dropping charges against the person who was posted during 2001 will not absorb the respondents from taking action against other connected officials. In that view of the matter, the contention of the petitioner was made a scape goat



has some force. I find that the enquiry proceedings as such against the petitioner is discriminatory and thereby violative of principles of natural justice and unfair. The procedure of the enquiry officer relying on documents after the conclusion of enquiry and non furnishing of documents is violative of principles of natural justice. It is noted that the incident had taken place 3 decades back, it is highly impossible to collect all the evidences and gather witnesses to depose against the petitioner and therefore, I find that there is no use in remanding the matter for a fresh enquiry. On the other hand, on the basis of the order passed by the Disciplinary Authority as well as the Appellate Authority that other officials were involved and petitioner alone is not responsible, I am inclined to set aside the penalty of recovery. It is relevant to point out that petitioner is allowed to retire from service. Therefore, there is no meaning in sustaining the order. While upholding the punishment of censure, I set aside the order of recovery and the writ petition is partly allowed. No costs. Connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VI)

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Sub-Assistant Registrar

To

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+1 CC to Mr.G. Thangavel, Advocate, Sr 28797.
+1 CC to Mr.S. Vijayakumar, Advocate, Sr 28750.

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LN(CO)
SP(22/07/2021)