IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14145 of 2018

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Jinis Lal Rajak, Son of Late Dayali Rajak, Resident of Bimla Niwas, Magadh Colony, Kurji, P.O.- Sadakat Ashram, P.S.- Digha, District- Patna.

... ... Petitioner/s

Versus

1. The Bihar State Warehousing Corporation through its Managing Director, B-2, First Floor, Maurya Lok Complex, Patna, P.S.- Kotwali, District- Patna.
2. The Managing Director, Bihar State Warehousing Corporation, B-2, First Floor, Maurya Lok Complex, Patna, P.S.- Kotwali, District- Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nawnit Kumar Tiwary, Advocate

For the Respondent/s : Mr. Mithilesh Kumar Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 21-12-2022

Heard Mr. Nawnit Kumar Tiwary, learned counsel for the petitioner and Mr. Mithilesh Kumar Rai, learned counsel for the respondent Bihar State Warehousing Corporation (hereinafter referred to as 'the Warehousing Corporation').

2. By invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 04.04.2018, as contained in Annexure-8 to the writ petition, whereby an order has been passed for recovery of Rs.3,18,380/- from the unutilized leave encashment as also from difference of salary after pay fixation in the 6th revised pay scale. Further prayer has been made to command the respondent authorities directing him to pay all the admissible dues of the petitioner for which he is entitled from the date of his retirement along with the interest thereupon.

3. The short facts, which led to the filing of the present writ application is that the petitioner joined his services in the Warehousing Corporation in 1969, which is a body corporate owned by the State and indulged in the business of proper and scientific storage of Agricultural Produce and other articles/goods belonging to different agencies on payment of charges by the owner/agency of the goods concerned.

4. It is the case of the petitioner that on being appointed in the Corporation, he continuously served to the satisfaction of his superior authorities and got promotions time to time and in course of his service, he was granted his next promotion to the post of Divisional Manager in 1992, while he was posted at Bihar Sharif Centre of the respondent Corporation as its Centre Superintendent.

5. It is submitted that in the light of the Headquarter Order No. 126 dated 15.03.1990, the petitioner took charge as Superintendent of Bihar Sharif Centre on 22.03.1990 from Shri T. Nath, who was posted as Superintendent therein. It is the further case of the petitioner that Shri T. Nath handed over the charge of sweated/sweeping/damaged sugar bags without taking weight and in the form of "As it is where it is". The aforesaid stocks of said sweated/sweeping/damaged sugar bags were stored on 10.07.1989 by Food Corporation of India (hereinafter referred to as 'the FCI')

in the aforesaid damaged condition, which was entered in the stock register by Godown no.1, by Shri T. Nath and was duly communicated to respondent no.2 as well as the authority of FCI. Further on 11.04.1990, the petitioner received the charge of 1009 bags of sweated and damaged sugar kept in godown no.3 and 2748 sugar bags in godown no.2 of the said centre. From the chart prepared giving details of handing over and taking over of charge of godown nos. 1, 2 and 3, it appears that the bags of sugar taken over in charge by the petitioner had lost their weight, as the sugar was sweated, as per book balance itself, which was duly communicated to the authorities and respondent no.2 at the headquarter vide Annexure-1 series to the writ petition. The aforesaid fact has also been communicated to the FCI, however, even knowing well about perpetual sweated and damaged sugar, they did not take any action.

6. In the year 1992, while the petitioner was posted as Centre Superintendent, Bihar Sharif, 28 wagons of sugar containing 15344 bags were sent through Railways, out of which 1249 bags were found lesser weight and were hand stitched. The petitioner repeatedly informed the authorities of FCI, Bihar Sharif as well as respondent no.2 vide his letter no. 233 dated 06.07.1992. On the aforesaid information, the Divisional Manager, Patna (East) made spot verification at Bihar Sharif and vide his

report as contained in Annexure-3 informed the respondent no.2 that the loss of weight of sugar bags was due to negligence and inaction on the part of the authorities of the FCI and not the petitioner.

7. The petitioner was subsequently transferred to Patna Division and, as such, he made over charge to the incumbent Superintendent at Bihar Sharif, namely, Jarman Prasad on 09.10.1994. While the petitioner was posted as Divisional Manager, Patna (West)/ Gaya Division, he received letter no. 1856 dated 02.11.2001 issued under the signature of respondent no.2 intimating him that FCI has deducted Rs. 11,03,878/- for the loss in its stock till the year 2000 and, as such, the petitioner was asked to file a reply to show-cause for the loss attributed on account of his negligence to the tune of 312.85 quintals of sugar.

8. In response to the aforesaid show-cause notice, the petitioner filed a detailed explanation giving the details of sweated/sweeping/damaged sugar bags received by him during his posting at Bihar Sharif since 10.04.1990 to 09.10.1994 showing his bonafide actions and inactions of the authorities of FCI. However, no action has been taken thereon and in the meantime, on 31.07.2008, the petitioner superannuated from his service and was paid all his post retiral benefits, excluding the amount of his earned leave, which remained due till date.

9. Learned counsel for the petitioner submits that all of a sudden after about 10 years of his superannuation from service, the petitioner received office order, as contained in Memo No. 162, dated 04.04.2018, issued under the signature of respondent no.2 whereby an order has been passed for recovery of Rs. 3,18,380/- from the difference of salary after making pay fixation in the revised 6th pay scale as also from unutilized earned leave amount. In the impugned order, apart from the recovery of loss, the dues amount of Rs.2399/- against Motorcycle advance, Rs.5534/- against travelling advance, Rs. 4125/- against Misc. advance and Rs.6878 against rejection were also deducted from the outstanding dues because the same were not paid or got adjusted during his service period.

10. Mr. Nawnit Kumar Tiwary, learned counsel for the petitioner vehemently submitted that the impugned order of recovery passed by respondent no.2 is illegal, arbitrary and unjust for the simple reason that the petitioner was superannuated from his service way back in the year 2008 itself and further the alleged loss caused in sugar stock was due to inaction of the authority of the FCI and for that the petitioner cannot be said to be at fault and responsible for the alleged loss. He further submits that before passing of the impugned order, as contained in Annexure-8 to the writ petition, the petitioner has never been noticed or heard by the

respondent and any recovery from the retiral benefits of the petitioner is wholly without jurisdiction, as neither any Rules or Regulations governing the service condition of the petitioner allows for the same nor there had ever been any judicial enquiry or proceeding, which culminated into finding of negligence on the part of the petitioner. While concluding his submission, Mr. Tiwary further submits that during the service period, the petitioner had already paid total amount of motorcycle advance, traveling advance and Misc. advance and no amount of any advance as alleged was due with the petitioner.

11. On the other hand, Mr. Mithilesh Kumar Rai, learned counsel for the Corporation submits that the prayer of the petitioner for quashing of the order dated 04.04.2018 is not at all tenable, as the sugar stock of FCI stored at Bihar Sharif godown of Warehousing Corporation has been misappropriated/embezzled during the tenure of the petitioner at Bihar Sharif Centre from 1990 to 1995 putting the Warehousing Corporation in an exorbitant loss and also there were existing dues against the petitioner in relation to Motorcycle/Travelling/Miscellaneous advance. He further submits that due to the gross negligence of the petitioner in his service period at Bihar Sharif, a shortage of 312.85 quintals of sugar was found and for this loss, the FCI deducted an amount of Rs.2,99,444/- from the rent bill of

Warehousing Corporation, while the petitioner was entrusted to look after the stock as per the guideline of the FCI, but he completely failed in his duty, hence the petitioner was asked to submit reply to the show-cause vide letter no. 1856 dated 20.11.2001 intimating therein that why not the amount against the storage loss as 312.85 quintals of sugar deducted by the FCI from the storage charge of Warehousing Corporation shall be recovered from him. He further submits that the explanation of the petitioner was examined and it was found that the petitioner was accountable for the loss and, accordingly, the impugned order of recovery has been passed.

12. In order to justify the action, learned counsel for the respondents submits that vide letter no. 1593 dated 13.11.2006 of the Warehousing Corporation it was directed to all the Superintendent/Centre incharge of godowns of Warehousing Corporation that in case of any recovery made or payment withheld by the storage agency, the same shall be recovered from the Superintendent/ Centre incharge of concerned godown.

13. This Court heard the learned counsel for the parties and carefully considered the materials available on record. There are certain undisputed facts, which have not been denied by the respondents by filing counter affidavit, as the petitioner took charge as Superintendent of Bihar Sharif Centre of Warehousing

Corporation on 22.03.1990 from Shri T. Nath, who handed over the charge of sweated/sweeping/damaged sugar bags without taking weight in the form “as it is where it is” and the stock of said sweated/damaged sugar were stored on 10.07.1989 by the FCI, the condition of which was duly entered in the stock register of godown and communicated to the then authorities as well as authorities of the FCI. During his working as Centre Superintendent, he also received sugar containing 15344 bags belonging to FCI, out of which 1249 bags were found of lesser weight and the petitioner informed the authorities of FCI as well as respondent no.2, upon which the matter was enquired by the Divisional Manager, Patna (East) of Warehousing Corporation and from the report as contained in Annexure-3 to the writ petition it appears that the Divisional Manager found the shortage / damaged / loss on account of negligence and inaction on the part of the authorities of the FCI and nothing has been found against the petitioner.

14. From the materials available on record, it is also evident that the petitioner also informed the authorities of FCI and the respondent Warehousing Corporation regarding lesser weight of sugar bags than its standard weight and also made acquainted with the details of the facts and circumstances causing weight loss of the sugar bags vide his letter no. 380 dated 01.12.1993.

15. Admittedly the petitioner was transferred way back in the year 1994 itself and first time he has received show-cause notice in the year 2001 vide letter no. 1856 dated 02.11.2001, as contained in Annexure-6, which has been duly replied by the petitioner vide Annexure-7 giving a detailed explanation of the facts causing shortage of the sugar, but the respondent Warehousing Corporation has not taken any decision after receipt of the show-cause reply nor taken any action against the petitioner and he was allowed to superannuate after attaining the age of superannuation on 31.07.2008.

16. It is needless to say that at no point of time any enquiry was conducted nor any proceeding has been initiated against the petitioner before issuance of the impugned order and firstly after 8 years of his transfer, the petitioner was asked to submit his show-cause and surprisingly after 10 years of the receipt of the show-cause reply, the impugned order of recovery has been passed, which in no stretch of imagination said to be in accordance with law. It would be relevant to observe that it is trite law when a delinquent employee submits his show-cause reply and no action has been taken for a pretty long time, it shall be deemed that the respondent authority has accepted his explanation and in the present case the petitioner has been allowed to superannuate unconditionally almost about 6 years of his

explanation. Furthermore, neither any paper nor any notice seeking explanation for any outstanding dues against the petitioner under any head of travelling/vehicle and miscellaneous advance has been brought on record.

17. On a query made by this Court to the learned counsel for the respondent Warehousing Corporation, the respondent shown their inability to show any service condition/rules/ regulations which empowers the Warehousing Corporation to recover any amount from its employee in case of any damage/loss caused to the Corporation on account of dereliction of duty on the part of its employee. Needless to say that any punitive action must have sanction of law.

18. So far the letter dated 12.09.2006 issued by the Warehousing Corporation is concerned, the same is admittedly issued much later on after the alleged period, in question, and hence in the opinion of this Court it cannot apply retrospectively causing prejudice to the right and entitlement of the petitioner that too much after the superannuation of an employee.

19. It is well settled that any order causing civil consequence has to be passed consistently with the Rule of natural justice after giving a proper opportunity of hearing.

20. Before coming to the final conclusion, it would be apt and proper to observe that it is true that the distinction between

Judicial Act and Administrative Act has withered away and the principles of natural justice are now applied even to administrative orders which involve the civil consequences, as held by the Hon'ble Supreme Court in the case of **State of Orissa vs Dr. (Miss) Binapani Dei & Ors**, since reported in **1967 SCR (2) 625**. What is a civil consequence has been answered by the Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr Vs. The Chief Election Commissioner, New Delhi & Ors**., reported in **(1978) 3 SCR 272** wherein Krishna Iyer, J. speaking for the Constitution Bench observed:

> *"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."*

21. The question is whether the principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an

administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. Reliance may be taken of the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & Ors vs E.G. Nambudiri**, reported in **AIR 1991 SC 1216**.

22. In view of the discussions made hereinabove, the petitioner has made out a case of interference and, accordingly, this Court set aside the impugned order dated 04.04.2018, as contained in Annexure-8, and directed the respondents to ensure payment of the deducted amount along with statutory interest preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

23. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2023
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