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

CWP-15776-2023

Date of Decision:25.07.2023

BHARAT

..... Petitioner

*Versus***FOOD CORPORATION OF INDIA AND ANR. Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Rajesh K. Moudgil, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of Charge-sheet No.1454/2023 dated 01.05.2023 (Annexure P-3) which has been issued by General Manager (Region) under Regulation 58/60A of Food Corporation Staff Regulations, 1971.

2. The petitioner is working with respondent Corporation- FCI under category II post. The petitioner has been served charge-sheet No.1454/2023 dated 01.05.2023 (Annexure P-3) by General Manager (Region) alleging dereliction in duty.

3. Learned counsel for the petitioner *inter alia* contends that charge-sheet has been issued by an authority which is incompetent because petitioner could be served charge-sheet by Executive Director (Zone) whereas charge-sheet has been served by General Manager (Region) who can institute disciplinary proceedings *qua* minor penalty whereas petitioner has been served charge-sheet *qua* major penalty.

4. Learned counsel for the respondents who on advance notice is present in Court submits that General Manager (Region) is not competent authority to impose major penalty, however, he can serve charge-sheet.

5. Both the counsel are relying upon Regulations 57 of Food Corporation Staff Regulations, 1971. The case is confined to interpretation of Regulations 57 of the aforesaid Regulations, thus, for the ready reference Regulations 57 is reproduced as below:

“57. Authority to institute proceedings:

(1) The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix 2) empowered in this behalf by general or special order of the Board may:

(a) Institute disciplinary proceedings against any employee of the Corporation;

(b) direct a disciplinary authority to institute disciplinary proceedings against any employee of the Corporation on whom that disciplinary authority is competent to impose under these Regulations any of the penalties specified in Regulation 54.

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of Regulation 54 may institute disciplinary proceedings against any employee of the Corporation for the imposition of any of the penalties specified in clauses (v) to (ix) of Regulation 54 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties.”

6. From the perusal of Sub Regulation (1) of Regulations 57, it is evident that Board or authority specified in Appendix 2 or any other authority empowered by general or special order of the Board may institute disciplinary proceedings against any employee of the Corporation. The said authority may also direct the disciplinary authority to institute disciplinary

proceedings against any employee of the Corporation on whom that disciplinary authority is competent to impose any of the penalties specified in Regulations 54. The authority which can be empowered by general or special order of the Board should be higher than the authorities specified in Appendix 2. It means following authorities may institute disciplinary proceedings against any employee or direct a disciplinary authority to institute disciplinary proceedings:

- (i) Board.
- (ii) Authorities specified in the Appendix 2.
- (iii) Any authority which is higher than authority specified in Appendix 2 and is empowered by general or special order of the Board.

Clause (a) has empowered authorities to institute and Clause (b) has empowered the authorities to direct to disciplinary authority to institute proceedings.

7. As per Sub Regulation (2) of Regulations 57, the disciplinary authority which is competent to impose penalties specified in Clause (i) to (iv) of Regulation 54 may institute disciplinary proceedings against any employee of the Corporation for the imposition of any penalty specified in Clauses (v) to (ix) of the Regulation 54. The minor and major penalties are laid down in Regulation 54.

8. As per Appendix 2 *qua* category II employees, General Manager (Region) is disciplinary authority to impose minor penalty and he is not competent to impose major penalty. Executive Director (Zone) is competent to impose every kind of penalty i.e. minor as well as major.

9. In the case in hand, General Manager (Region) has issued charge-sheet who is competent to impose minor penalty. The case of the petitioner is that General Manager (Region) being competent to impose

minor penalty cannot institute proceedings unless and until he is directed by Board by general or special order. There is no general or special order in favour of General Manager (Region) to institute disciplinary proceedings against the petitioner, thus, he was incompetent to initiate disciplinary proceedings for imposing major penalty. The case of the respondent is that there is dichotomy between institution of disciplinary proceedings and imposition of penalty. An authority competent to impose minor penalty cannot impose major penalty, however, said authority can institute proceedings. In the present case, proceedings have been instituted by General Manager (Region), however, all the subsequent proceedings would be conducted by Executive Director (Zone) who is competent authority to impose major penalty.

10. From the conjoint reading of Sub Regulations (1) and (2) of Regulation 57, it is quite evident that three authorities mentioned in Sub Regulation (1) are competent to institute disciplinary proceedings as well as direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose penalty specified in Regulations 54. Sub Regulation (2) is a *non-obstante* clause and is endowing disciplinary authority to ***institute*** disciplinary proceedings *qua* major penalty, however, said authority is not competent to ***impose*** major penalty. The institution of disciplinary proceedings is certainly different from imposition of penalty. The disciplinary authority in the case in hand for imposing minor penalty is General Manager (Region) and he has instituted proceedings for imposing major penalty. Sub Regulation (2) is empowering disciplinary authority to institute disciplinary proceedings *qua* major penalty, though, he is not competent to impose major penalty.

11. In the case in hand, the disciplinary authority who is competent to impose minor penalty has issued charge-sheeted i.e. instituted disciplinary proceedings, however, penalty, if any, after following procedure prescribed under the Regulation, would be imposed by Executive Director (Zone), thus, there is no substance in the argument of learned counsel for the petitioner that disciplinary authority was not competent to issue charge-sheet for imposing major penalty. The disciplinary authority was not required to be empowered by general or special order of Board. The requirement of general or special order of the Board is necessary where authority issuing notice is not a disciplinary authority. In the case in hand, the disciplinary authority has issued charge-sheet, thus, case of petitioner falls under Clause (a) of Regulation 57 (1), therefore, there was no requirement of general or special order of the Board. The Disciplinary Authority was quite competent to institute disciplinary proceeding qua major penalty, though, penalty if any, shall be imposed by Executive Director (Zone).

12. In view of above facts and findings, the present petition being devoid of merit deserves to be dismissed and accordingly dismissed.

13. The petitioner is at liberty to raise all the issues before the competent authority. The dismissal of the present petition would not be considered as expression of opinion of this Court *qua* merits of the case.

(JAGMOHAN BANSAL)
JUDGE

25.07.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>