

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20991 of 2014

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Mukul Kumar Son of Late Jamna Prasad Singh Resident of 148-Shakti Nagar
Colony, P.O. - Anishabad, P.S. - Phulwarisharif, District - Patna

... .. Petitioner/s

Versus

1. The Food Corporation Of India through its Chairman, 16-B Barakhamba Lane, New Delhi
2. The Managing Director, Food Corporation of India, 16-B Barakhamba Lane, New Delhi
3. The Executive Director, DIG, Food Corporation of India, 16-B Barakhamba Lane, New Delhi
4. The Executive Director Zone, FCI Zonal Office East, 10-Wellington Row, Kolkata
5. The Chief General Manager F and A/Pers, FCI, Arunachal Building Bihar, Patna
6. The General Manager Region, FCI, Regional Office, Patna, Arunachal Building, Bihar, Patna
7. The Area Manager, Food Corporation of India, District Office, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Md. Anis Akhtar, Advocate
For the F.C.I.	:	Mr. P. K. Verma, Sr. Advocate
	:	Mr. Saroj Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-02-2024

Heard Md. Anis Akhtar, learned counsel for the petitioner and Mr. P. K. Verma, learned senior counsel appearing on behalf of the Food Corporation of India assisted by Mr. Saroj Kumar Sharma.

2. The present writ petition has been filed for the following reliefs;

[A] For issuance of an appropriate writ



order or direction quashing the order of punishment passed by the Executive Director (East) contained in Letter No-4159 dated 24-07-2012 (Annexure-9) by which the disciplinary authority in exercise of powers under Regulation 56 of Regulation 1971 imposed punishment of "dismissal from service and forfeiture of terminal benefits including gratuity, to meet the ends of the Justice" has been inflicted upon the petitioner along with others on the grounds that the Enquiry Officer concluded in his report that the defense side could not produce any favorable documentary or oral evidence to disapprove the charges framed against the petitioner.

[B] For issuance of an appropriate writ order or direction quashing the order contained in Letter No-708 dated 09-05-2013(Annexure-10) passed by MD. FCI who in exercise of powers conferred under regulation 72 of FCI (Staff) Regulation 1971(hereinafter referred to as Regulation 1971) modified the penalty of "dismissal from service and forfeiture of terminal benefits including gratuity, to meet the ends of the Justice".

[C] For issuance of an appropriate writ order or direction quashing the order dated 18-10-2014 (Annexure-13) passed by the Chairman, Food Corporation of India (FCI) whereby he has rejected the



review application as well as representation filed by the present petitioner and confirmed the appellate order dated 09-05-2013.

[D] For issuance of an appropriate writ order or direction commanding the respondents to reinstate the petition on the post of Managing (Depot) with all consequential benefits.

[E] For any other relief or reliefs for which petitioner is entitled in the opinion of this Hon'ble High Court.

3. Learned counsel for the petitioner submits that when the petitioner was posted as Assistant Grade I (Depot) at district Office, FCI, Patna, the Area Manager issued office order on 25.12.2009 through which Quarterly Physical Verification (QPV) team in which petitioner was one of the member along with Manoj Kumar (AG-1 Depot) was headed by Shri Devendra Prasad Singh (Manager Depot) was assigned to conduct QPV on 31.12.2009 Closing Balance (CB) and submit its report. The petitioner was included in the aforesaid team as one of the member to conduct QPV on 31.12.2009 at Food Storage Depot (FSD), Buxar and also to conduct QPV at Chausa/Itarahi/Vishwnath Ji Mill. Subsequently Area Manager telephonically instructed the petitioner to conduct Quarterly Physical Verification (QPV) on 31-12-2009 at PPC, Dumraon.



During Quarterly Physical Verification (QPV) the member of the inspecting team were required to verify/tally the stored unit of the depot/godown/PPC as declared by the I/C concerned from the Stock Leger of the PPC of the depot and they were further required to certify the entries in the relevant ledger/register/counting sheet etc. In terms of the instruction contained in Office order dated 25-12-2009 verified the stored unit of PCC, Dumraon as declared by I/C Shri U.K. Dubey (AG-1 Depot) and certify the entries in the Ledger Master Ledger and Gunny Register counter Signed by I/C Shri U.K. Dubey. Next annual PV of PPC, Dumraon was conducted by another PV Team on 31-03-2010 which did not find any infirmity with regard to Quarterly Physical Verification (QPV) conducted by petitioner and others on 31.12.2009. Thereafter QPC of PPC, Dumraon was conducted by yet another team on 30.06.2010 and even they did not report any difference in number of bags. On 11-10-2010, Shri U.K. Dubey I/C PPC, Dumraon informed the Area Manger, Patna that the stocks stored at 10 different places/godowns have been found nil during the month of September, 2010 as the godown owners and Millers have issued the stored FCI stocks to private parties on sale basis. The godown owners and milers have stated that they will deliver the



stock to the FCI during the coming season of rice/wheat. On 16-11-2010, 19-04-2010 Area 11. Manager, FCI, Patna lodged FIR against Shri U.K. Dubey I/C, PPC, Dumraon bearing Dumraon P.S. Case No-243/2010 dated 16-11-2010 for loss of Rs. 8.81 crore to the FCI. With a direction to the senior authority of the FCI, a team was constituted with a direction to inspect PPC, Dumraon and seize all the documents and relevant records and to submit its report. The aforesaid committee submitted its report and Shri Shri U.K. Dubey AG-1 (Depot), I/C, PPC Dumraon was held responsible to put the FCI in financial loss. The Regional Committee also held responsible Shri Ayodhya Thakur the then Area Manager, FCI, Patna as well as officials of District Office, Patna who conducted QPV is suspicious. The regional Committee submitted its report dated 26-11-2010 to the General Manager (R) FCI, Regional Office, Patna. Another committee was constituted known as Head Quarter Committee which conducted inspection of PPC, Dumraon and Submitted its report dated 08-03-2011 holding primarily Shri U.K Dubey AG-I (Depot) I/C, PPC Dumraon responsible for loss. The said committee also held responsible Shri Ayodhya Thakur for not serving order of suspension on Shri Dubey. Thereafter the Executive Director(East Zone) issued a memorandum dated



12.07.2011 by which a departmental proceeding was initiated against the petitioner, and Manoj Kumar AG-1 (Depot) for following Charge;

Shri D.P Singh Manager (Depot), Mukul Kumar AG-I and Manoj Kumar AG-1 (Depot), conducted, QPV on 31-12-2009 of PPC, Dumraon and in departure from the laid down procedure, willfully and in connivance with 1/c PPC, Dumraon Shri U.K Dubey AG-1 (D) carried out PV only on paper instead of verifying physical availability of stock in the godown as result Shri Dubey succeed to misappropriate the stock worth Rs. 8,80,44,029.00/-. On similar charge by separate memorandum departmental proceeding was initiated against Shri D.P. Singh.

on 02-08-2011, the petitioner submitted a detailed written statement in defence to charge explaining and incorporating entire aspect of the matter with complete denial of the charges leveled against the petitioner. Shri R.K Verma, Manager (General) was appointed as presenting officer and Shri Swaroop Kumar Mandal, AGM (General) was appointed as Enquiry Officer to conduct common enquiry against Shri D. P. Singh, Mukul Kumar (Petitioner) and Manoj Kumar. On 04-07-2012 petitioner submitted his written argument stating therein that the



copies of stock wise ledger/register, Gunny Register, Master Ledger, M form, from PPC, Dumraon were not supplied to the petitioner in the light of order dated 15.12.2011 not the originals thereof was produced before the enquiry officer and the prosecution miserably failed to establish the charge against the petitioner and the present departmental proceeding was conducted against the established norms and rules and in violation of Principles of Natural Justice. Shri S.K Mandal Enquiry Officer was one of the members of the Regional Committee who has reported against the petitioner and two others. The Enquiry Officer submitted enquiry report dated 11.07.2012 concluded that the defence side could not produce any favorable Documentary or oral evidence to disapprove the charges framed against the charged officers, as such charges framed against Shri D.P Singh, Shri Mukul Kumar (petitioner) and Shri Manoj Kumar are fully proved beyond any doubt.

4. Learned counsel for the petitioner further submits that on 21-07-2012 petitioner submitted his representation on the finding of the Enquiry Officer stating therein that I.O. has not discussed evidence on behalf of the prosecution properly nor has examined /discussed evidence produced by the defence and without verifying physical



availability of stock in the godowns from the Stock wise Ledger/Register, Master Ledger etc. has conducted that charge held proved while the charge itself was leveled on the basis of suspicion. The documents called for by the by the petitioner, inspite of order of I.O. copies whereof were not supplied to the petitioner nor were the same produced before the Enquiry Officer as such the charge could not have been held proved against the petitioner. It is the duty of Presenting Officer to establish the charge with the help of Prosecution Document/Witness instead the Enquiry Officer concluded that the charge held proved since the petitioner failed to disapprove the charge. The disciplinary authority vide impugned order contained in Memo No. 4159 dated 24.07.2012 inflicted punishment of dismissal from service and forfeiture of terminal benefits including gratuity upon all the members of QPV who conducted inspection on 31.12.2009 including the petitioner. Being aggrieved by the order dated 24.07.2012, the petitioner preferred memo of appeal on 28.08.2012 before the Managing Director, FCI and the appellate authority Managing Director, FCI, without considering the grounds of memo of appeal vide impugned order contained in Letter No- 705 dated 09.05.2013 modified the order of punishment from "dismissal" to "removal"



from service and forfeiture of terminal benefits to meet the ends of justice. Thereafter, the petitioner have preferred a review application on 29.06.2013 before the Chairman, FCI, New Delhi. When no decision was taken on the review application then during pendency of review application petitioner filed C.W.J.C. No.741 of 2014 before this Hon'ble Court and vide order dated 18-04-2014, a Co-ordinate Bench of this Hon'ble Court was pleased to disposed of the writ application with a liberty to the petitioner to file additional points before the competent authority and direction was issued to the reviewing authority to dispose of the review application within six months from the date of receipt/production of a copy of the order. Pursuant to the order dated 18.04.2014 passed in C.W.J.C. No-741 of 2014 petitioner on 14-05-2014 had filed a detailed representation annexing, copy of review petition, reminder of copy of review petition as well as copy of order dated 18.04.2014 passed in C.W.J.C. No-741 of 2011 and incorporating entire aspect of the matter with prayer to consider all the points raised by the petitioner while disposing of the review petition and exonerate the petitioner from all alleged charges. But, the Chairman, Food Corporation of India (FCI) by his order dated 18.10.2014 rejected the review application as



well as representation filed by the petitioner without considering the points raised in review petition. Petitioner has been dismissed/removed from the service without gratuity, whereas other officers who conducted APV on 31.03.2010 and QPV on 30.06.2010 along with petitioner were inflicted with punishment of stoppage of two increment and reversion to lower post. The date of birth of the petitioner is 30.03.1955 and shall retire on 31.03.2015 after completing the age of 60 years. Other similiary situated person, namely, Shri Jayant Kumar who was inflicted punishment of dismissal from the service and forfeiture of terminal benefits including gratuity and against the same he filed C.W.J.C. No-2945 of 2014 before this Hon'ble Court. The said writ application was finally taken up and after hearing the parties the Hon'ble Court by his order date 05.08.2014 was pleased to quash the impugned orders and further directed the respondents to reinstate the petitioner forthwith with all consequential benefits. Case of the petitioner is on similar footing.

5. Shri P.K. Verma, learned senior counsel appearing on behalf of the Food Corporation of India submits that after due consideration of all the aspects, after due process in the departmental proceeding, after following the principles of



natural justice and after giving due opportunity to the petitioner the impugned orders have been passed. It has been found in the departmental proceeding that the petitioner along with other persons have not conducted the enquiry as prescribed under the rule and petitioner along with others fully in connivance with the PPC I/c, Dumraon carried out QPV only on paper in accordance with declaration given by Shri Dubey instead of verifying the actual/physical availability of the stocks in godown in connivance with Shri U.K Dubey succeeded in misappropriation of the huge quantity of the stock of rice and wheat worth of Rs. 8,80,44,029/- (eight crore eighty lakh forty-five thousand twenty-nine). Full opportunity was given to the charge officers to submit their written statement and also to participate in the enquiry and cross examination the prosecution witnesses all 7 documents were exhibit, 8 prosecution witnesses have been examined and after due consideration of all the aspects the enquiry officer has submitted his report on 11.07.2012 finding the charge levelled against the petitioner and others as fully proved beyond any doubt. Thereafter, the Executive Director (E) directed for service of the copy of the enquiry report and sought representation from the charge officer which was served on 13.07.2012. Further, opportunity was



given to the COs to defend their case in person and personal hearing was afforded to them on 23.07.2012 by the Disciplinary Authority. The petitioner submitted his response to the notice on 23.07.2012 and also appeared and attended personal hearing and after due consideration of all the facts and considering the submission of the petitioner the disciplinary authority after careful examination of the entire proceeding, the evidences available on record and submission of the charge officer found them guilty of the charges and their misconduct were found to be detrimental to the interest of the corporation having acted in a manner unbecoming of a Corporation Employee. Accordingly, a penalty of "dismissal from service and forfeiture of terminal benefits including Gratuity "was imposed upon all the three charge officers vide order dated 24.07.2012. As per the provisions under the FCI (Staff) Regulations, 1971 an Appeal was filed by the petitioner before the Managing Director, FCI, New Delhi and the appellate authority after considering all the aspects and also given a personal hearing to the petitioner on 11.12.2012. After due consideration the appellate authority modified the order of penalty and reduced it to that of "removal from service and forfeiture of terminal benefits including gratuity, to meet the



ends of justice”. Under Regulation 74(3) of the FCI (Staff) Regulations, 1971 a provision for review is also available to the employees of the FCI against the order passed by the Managing Director which lies before the Chairman of the FCI, Hqrs., New Delhi. The petitioner filed a review application before the Chairman of the FCI. However, while the said review application was pending for consideration, the petitioner simultaneously moved before this Hon'ble Court in CWJC No. 741 of 2014 which was disposed of by order dated 18.04.2014 with the direction to the reviewing authority to consider the points raised in the review application by the petitioner. The reviewing authority passed a detailed order after carefully examining the entire records and found no reason to interfere with the order of the Appellate Authority and accordingly rejected the review petition by order dated 18.10.2014.

6. Having considered the facts and circumstances of the case and submissions made by the learned counsel for the parties, this Court is of the view that the other similarly situated person, namely, Shri Jaykant Kumar, who was inflicted punishment of dismissal from the service and forfeiture of terminal benefits including gratuity, the order of dismissal set aside by a co-ordinate Bench of this Hon'ble Court vide order



dated 05.08.2014 in C.W.J.C. No. 2945 of 2014 and directed the respondents to reinstate the petitioner (CWJC No. 2945 of 2014) forthwith with all consequential benefits, case of the petitioner is on similar footing. The other officers who conducted APV on 31.03.2010 & QPV on 30.06.2010 along with petitioner were inflicted with punishment of stoppage of two increments and reversion to lower post.

7. Apart from aforesaid, no oral evidence was taken nor any document was duly proved. The disciplinary authority, the appellate authority as well as the reviewing authority have passed orders mechanically without due application of mind and from the finding of the enquiry officer I find that no allegation touching integrity against the petitioner has been found to be proved and the charges levelled and finally sustained by the enquiry officer in my opinion do not constitute misconduct against the petitioner.

8. In view of the aforesaid, order of the disciplinary authority dated 24.07.2012 (*Annexure-9*), the order of the Appellate Authority dated 09.05.2013 (*Annexure-10*) as well as the order of Chairman, Food Corporation of India on petitioner's Review Petition dated 18.10.2014 (*Annexure-13*) are hereby set aside and petitioner is entitled for all the



consequential benefits. The respondents are directed to pay all the consequential benefits to the petitioner within a period of three months from the date of the production/receipt of the copy of the order and it is noted that during the pendency of the writ petition, the petitioner has retired long-back on 31.03.2015.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2024
Transmission Date	NA

