

17.04.2025
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Ct.No.7
sdas

WPA 24968 of 2018

Sri Nikhilesh Das
Vs.
Food Corporation of India & Ors.

Ms. Papiya Chattopadhyay
...for the petitioner

Mr. Aniruddha Bagchi
... for the FCI

Let affidavit-in-reply, as filed on behalf of the petitioner be taken on record.

The present writ petition has been filed challenging the order dated 9th February, 2010 passed by the Disciplinary Authority, as well as the order dated 21st August, 2017 passed by the Appellate Authority. The petitioner further seeks a direction to the respondents to treat the period of suspension from 20th December, 2001 to 21st February, 2003 as 'spent on duty', and to release the differential amount between the actual salary and the subsistence allowance paid during that period.

Briefly stated, the relevant facts leading to the filing of the present writ petition are that the petitioner commenced his service career as a Typist in the Department of Food and Supplies, Government of West Bengal. Thereafter, in the year 1966, he joined the establishment of the Food Corporation of India (hereinafter referred to as 'FCI') on deputation, and was

subsequently absorbed in the post of Assistant Grade-III with effect from 1st July, 1984

However, by an order dated 20th September, 2001, the petitioner was placed under suspension with immediate effect, in contemplation of a departmental proceeding. Notably, the charge-sheet was issued only after a delay of over fifteen months. The allegation against the petitioner was that, in connivance with another employee of the establishment, he had deliberately misplaced a sensitive and important file pertaining to Money Suit No. 21 of 1988, which had been instituted by the FCI against a storing agent for the recovery of a sum exceeding seventeen lakhs of rupees. It was also alleged that this act was done for the petitioner's personal gain, thereby prejudicing the interests of the FCI in the court of law.

The petitioner submitted his written reply to the charge-sheet. However, the concerned authority was not satisfied with the explanation offered by the petitioner and accordingly decided to proceed with the departmental enquiry. The petitioner participated in the enquiry proceedings, during which the Enquiry Officer examined the evidence on record and thereafter submitted his findings. The concluding portion of the said findings is as follows:

“I conclude that the prosecution has been partially successful in bringing home the portion of the element of charge to the extent that:

a. He had failed in his duty of monitoring the whereabouts of the important and sensitive file;

- b. Remained silent about the movement of such important case file for a few months;*
- c. Failed to track down the movement of the file for a few months.”*

The disciplinary authority agreed with the findings of the Enquiry Officer and held the charges levelled against him were established. Thereafter, in exercise of power conferred upon him as the disciplinary authority under Regulation 56 of the FCI(Staff) Regulations, 1971 (as amended) imposed the following punishment:

“ a penalty of reduction of pay by one stage below in the time scale of pay applicable to the present post of Shri Nikhilesh Das, the said C.O. for the remaining period of his service.

The period spent under suspension till revocation of the suspension order shall be treated as ‘non-duty’ for all purposes, with the further direction that Shri Nikhileshi Das, AG, II(M), will not be entitled further to draw any amount in excess of the amount paid to him as subsistence allowance during the period of his suspension.”

The petitioner filed a statutory appeal but the appeal failed. These events compelled the petitioner to file a writ petition before the Hon’ble Court being W.P. 15166(W) of 2004.

Record reveals that by an order dated 18th August, 2009, a co-ordinate Bench of this Court disposed of the writ petition. The operative part of the order dated 18th August, 2009 is as follows:

“Considering the submissions and considering the fact that the writ petitioner continued on suspension for a period of fifteen months before the charge sheet was actually issued, I am inclined to remit the matter to the disciplinary authority to reconsider the matter in so far as the punishment restricted to the period of suspension is concerned.”

Pursuant thereto, the Disciplinary Authority took up the matter for reconsideration, afforded the petitioner an opportunity of hearing, and subsequently modified the punishment, by passing the following order:

*“**NOW THEREFORE**, the undersigned being the Disciplinary Authority, in terms of the order dated 18.08.09 passed by Hon’ble High Court Calcutta hereby orders to increase the subsistence grant beyond the period of three months from 20.09.01 till revocation of suspension (i.e. w.e.f 20.12.01 to 21.02.03) not exceeding 50% of such grant already received by Sri Nikhilesh Das, Ex. AG-II(M), modifying the portion of the further direction of the penalty order no. 23(112)/89-A/Vig./Pt.I dated 24.3.03 that ‘Sri Nikhilesh Das, AG-II(M) will not be entitled further to draw any amount in excess of the amount paid to him as subsistence allowance during the period of his suspension’. The other terms of the penalty order dated 24.3.03 will remain same.”*

The petitioner preferred an appeal against the modified order of punishment. However, the said appeal was dismissed, prompting the petitioner to once again approach this Hon’ble Court with the present writ petition.

Ms. Chattopadhyay, learned Advocate appearing on behalf of the petitioner, submits that the Disciplinary Authority failed to consider the matter in accordance with the

directions contained in the order passed by this Hon'ble Court in W.P. 15166(W) of 2004. She contends that although the initial charge against the petitioner was that he had, in connivance with another employee, deliberately concealed an important and sensitive file, the Management failed to substantiate this allegation during the enquiry. Nevertheless, the petitioner was ultimately punished on different grounds—namely, that he had failed in his duties to monitor the file, did not properly track its movement, and remained silent regarding its movement for several months.

She further submits that the petitioner was kept under suspension for an inordinately long period of fifteen months prior to the issuance of the charge-sheet. It is her contention that the punishment, even though restricted to the period of suspension, is disproportionate to the gravity of the alleged misconduct. She asserts that these issues were specifically raised before both the Disciplinary Authority and the Appellate Authority. However, both authorities failed to properly consider or address the same. Accordingly, she argues that the impugned orders suffer from legal infirmities and are liable to be set aside.

Mr. Bagchi, learned Advocate appearing on behalf of the FCI, submits that the punishment imposed upon the petitioner cannot be said to be disproportionate. He contends that the punishment, being restricted to the period of suspension, is commensurate with the gravity of the misconduct committed by the petitioner. He argues that it has been duly established that the petitioner was negligent in monitoring the

whereabouts of an important and sensitive file, and that the Disciplinary Authority has rightly reconsidered the matter in accordance with the directions contained in the judgment passed in W.P. 15166(W) of 2004. He further submits that the petitioner has failed to make out any case warranting interference by this Hon'ble Court with the orders passed by the Disciplinary Authority and the Appellate Authority.

Heard the learned advocates representing the respective parties and perused the materials on record.

It is undisputed that the petitioner was initially charged with the allegation that he had, in connivance with another employee of the establishment, deliberately misplaced a sensitive and important file. However, the petitioner was ultimately found guilty by the Disciplinary Authority on different grounds that he failed to discharge his duties by not monitoring the whereabouts of the file, by remaining silent regarding its movement, and by failing to keep track of its status. Consequently, a penalty of reduction of pay by one stage in the time scale of pay was imposed upon him. In addition, it was directed that the period spent under suspension until the revocation of the suspension order shall be treated as 'non-duty' for all purposes, and that the petitioner shall not be entitled to receive any amount over and above the subsistence allowance already paid to him during the said period.

A Coordinate Bench of this Hon'ble Court had earlier remitted the matter to the Disciplinary Authority for reconsideration, specifically with regard to the punishment

that had been restricted to the period of suspension. It is well settled principle that the authority to impose punishment upon its employees, following the conclusion of a disciplinary proceeding, lies within the exclusive domain of the employer and it is equally well-settled that the scope of judicial interference in such matters is limited. However, the Court is empowered to intervene where the punishment imposed is found to be shockingly disproportionate to the gravity of the misconduct.

While remitting the matter back to the Disciplinary Authority, the Bench noted that it was contended on behalf of the petitioner that punishment in so far as the same directed that the period spent under the suspension will not be treated as on duty is rather harsh and is disproportionate. Considering this submission and taking note of the fact that the petitioner continued on suspension for a period of fifteen months the charge sheet was actually issued, the matter was remitted back to the authority.

However, both the Disciplinary Authority and the Appellate Authority failed to consider whether the punishment - specifically, the direction that the period spent under suspension shall not be treated as 'on duty'—was unduly harsh and disproportionate to the nature of the alleged misconduct. In a catena of judgments, the Hon'ble Supreme Court has clarified that the term 'misconduct' must be understood in a specific context, and that mere negligence, unless accompanied by an element of ill-motive or mala fide intent, ordinarily does not constitute misconduct. In the

present case, the allegation that the petitioner had deliberately concealed the file in connivance with another employee could not be substantiated. Ultimately, the petitioner was held guilty only of negligence. In such circumstances, both authorities ought to have carefully examined whether the punishment relating to the period of suspension was excessive and disproportionate to the proven charge.

In light of the above, I find merit in the submission made by Mrs. Chattopadhyay that the aforesaid issues were not adequately considered either by the Disciplinary Authority or by the Appellate Authority. Accordingly, both the orders passed by the Disciplinary Authority and the Appellate Authority are hereby set aside. The matter is remanded to the Disciplinary Authority with a direction to revisit the relevant issues and to reconsider the punishment restricted to the period of suspension, strictly in accordance with the directions contained in the order passed in W.P. 15166(W) of 2004 and also in the light of observations made in this order. It is further clarified that, prior to taking any decision, the Disciplinary Authority shall afford the petitioner an opportunity of hearing.

Entire exercise shall be carried out within a period of eight weeks from the date of receipt of copy of this order.

With these observations and order the writ petition is, thus, disposed of.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)