

2025:PHHC:016482



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

215

CWP-15869-2018
Date of Decision: 23.01.2025

CHANDRA PRAKASH SAHARAN

... Petitioner

VERSUS

FOOD CORPORATION OF INDIA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Manjeet Singh, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 15.01.2018 (Annexure P-33) whereby the claim of the petitioner for promotion to the post of Deputy General Manager with effect from 05.05.2010 was rejected and also to the order dated 06.11.2013 (Annexure P-28) passed by the Board of Directors, Food Corporation of India (hereinafter referred to as 'FCI'), whereby the review petition against the minor penalty imposed upon the petitioner was dismissed.

2. Briefly summarized, the facts of the present case are that the petitioner was appointed to the post of Deputy Manager (General) in FCI on

28.06.2001 after passing through a competitive examination. The petitioner, while posted as Area Manager, Bathinda District, Punjab Region was required to procure about 7.15 Lakh MT rice and thereafter to preserve the same. The petitioner was also In-charge of about 2 lakh MT wheat that had been already stored in Godowns/Open Plinths in District Bathinda. The sanctioned strength of the Managers (Quality Control) to be posted in District Bathinda was 81 whereas only 21 Managers (QC) were posted in District Bathinda under the petitioner. Out of these 21 Managers (QC), 7 Managers (QC) were either placed in doubtful integrity list or were not on duty. Besides, other 2 Managers (QC) were taken off procurement work by the petitioner when he detected irregularities in their work including BRL (Beyond Rejection Limit) detection during inspection.

3. Thereafter, the petitioner was served with a memorandum dated 04/11.11.2009 from the Managing Director, FCI regarding initiation of proceedings under Regulation 60 of the FCI (Staff) Regulations, 1971 for imposition of minor penalty. A statement of imputation of misconduct was also supplied to the petitioner who submitted in his response that it was not possible to implement the doubtful integrity list until equal number of Managers (QC)/D were provided. He also relied upon the postings of officers with doubtful integrity in other districts of Punjab and Haryana to argue that no action was taken by the competent authority against any other Area Manager on this count. He, however, placed primary emphasis on the fact that at the relevant point of time, he had only 1/4th of the required staff strength and had no option but to post the officers with doubtful integrity on sensitive seats. He went on to

explain that though such officers were given sensitive seats but they were subject to supervision by the Supervisory Officers and that the foodgrains were procured in the most efficient manner.

4. The Disciplinary Authority i.e. Managing Director, FCI vide order dated 15.07.2010 imposed a penalty of reduction in time scale of pay by two stages for a period of one year without cumulative effect upon the petitioner while observing that the petitioner allowed continuance of officers in the Doubtful Integrity list on sensitive posts with malafide intention.

5. Aggrieved thereof, the petitioner preferred an appeal before the Chairman, FCI i.e. the Appellate Authority. Vide order dated 05.03.2013, the Appellate Authority modified the penalty from “Reduction in time scale of pay by two stages for a period of one year without cumulative effect” to that of “Reduction in time scale of pay by one stage for a period of one year without cumulative effect.”

6. Further aggrieved with the order of Appellate Authority, the petitioner preferred a review petition before the Reviewing Authority i.e. the Board of Directors and simultaneously also filed CWP No.15779 of 2013 before this Court. Vide order dated 23.07.2013, this Court disposed of the writ petition by directing the respondents to decide the statutory appeal on or before 31.12.2013.

7. In compliance thereof, vide order dated 06.11.2013, the Reviewing Authority rejected the review petition and upheld the order passed by the Appellate Authority, while holding that the pleas of the petitioner had already been taken into consideration at the appellate stage and sufficient relief had

already been granted by the Appellate Authority. The relevant part of the order is extracted hereunder:

“On going through the Charge Sheet, petitioner’s representation and other connected records of the case, the Board of Directors (BOD) observed that the CO failed to explain in what way the procurement work would have been hampered without associating these 5 Officers. There were 21/22 Manager (QC) including above mentioned Officers posted in the District during the period and considering the Quantum of procurement in Bhatinda district i.e. 6.96 LMT, 15 Manager (QC) would have been sufficient. Further, the stocks supervised by Sh. Varun and Sh. Dharamveer Singh were found BRL by various squads.

The abovementioned facts clearly reveal that the services of Officers in Doubtful Integrity List were utilized in very sensitive procurement places and CO did not bother to post them at less significant position despite availability of sufficient Manager (QC). The available officers of Manager rank could be utilized for various sensitive works and deployment of Officers with Doubtful Integrity for sensitive work could be avoided by taking judicious decision by Area Manager. Further, on the merit of the case sufficient relief has already been given at the Appeal Stage. Other pleas of the petitioner have already been taken into consideration by the Appellate Authority.

Keeping in view the aforesaid facts, the Review Petition since devoid of merit and is liable to be rejected.”

7-A. Hence, the present petition has been filed.

8. Learned Counsel for the petitioner reiterated the submissions made by the petitioner before the Disciplinary Authority to contend that the petitioner did not have any option but to post officers with doubtful integrity on sensitive seats since he had only 1/4th of the required staff strength. Counsel also relied

on the judgment of Hon'ble Supreme Court in Civil Appeal No.1448 of 2010 titled as "***Jagat Narayan vs Food Corporation of India and others***" to state that neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery would come in the way of the employee for being considered for promotion or for being promoted. He prayed that the petition be allowed and the penalty of "Reduction in time scale of pay by one stage for a period of one year without cumulative effect" be set aside.

9. Written statement by Kamini Kaushal, Asstt. General Manager (Administration), Food Corporation of India, Regional Office, Punjab, was filed on behalf of respondents No.1 to 5 on 16.07.2019. Learned Counsel for the respondents opposed the prayer made by the learned Counsel for the petitioner while placing reliance on the abovesaid written statement and averred that the orders passed by the Appellate Authority as well as the Reviewing Authority were well reasoned and required no interference. The relevant part of the written statement is extracted hereunder:

*"The plea of the petitioner that minor penalty cannot be a ground for denying promotion is misconceived. The instructions referred to by the petitioner as Annexures P-14 and 15 pertain to situations when the punishment is pertaining to recovery whereas in the case of petitioner, the punishment was not of recovery. The Judgment referred to by the petitioner Annexure P-16 is also distinguishable as it pertains to punishment where recovery is imposed. A copy of the instructions dated 27.12.2001 pertaining to promotion of Officers on whom penalty of Recovery of Losses is imposed is attached herewith as **Annexure R-5**.*

10. Learned counsel for the respondents also relied on the judgment of Hon'ble Supreme Court in the matter of "**Union of India Versus K.V.**"

Jankiraman” reported as **(1991) 4 SCC 109** to aver that denial of promotion to an employee on account of penalties imposed in the past is not a case of further penalty but a necessary consequence of conduct of the employee. The relevant part of the judgment is extracted hereunder:

“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of

promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.”

11. He thus prayed for dismissal of the writ petition.
12. No other argument has been made nor any judgment cited by the Learned Counsel for the parties.
13. I have heard learned Counsel for the parties and have gone through the documents appended along with the present petition.
14. The key issue which comes up for consideration is the extent to which this Court can interfere with the order passed by the departmental Authority(ies) under Article 226 of the Constitution of India. Hon'ble Supreme Court in the matter of ***Union of India v K G Soni, (2006) 6 SCC 794***, held as follows:

‘14. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision

*unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [**Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.**, (1948) 1 KB 223: (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.*

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.'

(Emphasis Supplied)

15. A specific query was put to the counsel for the petitioner as to whether the Head office had sent any specific letter not to post certain tainted officers for procurement, which he did not deny. He also did not deny that notwithstanding the direction, certain officers were still posted for procurement.

16. Another query was also put to the counsel for the petitioner as to whether there was any limit to the number of procurement centres, a Quality Controller could be assigned, to which he fairly responded that there was no cap against number of centres that could be assigned to a Quality Controller. He

also could not dispute that given the staff scenario, multiple centres would already be allocated to different officers.

17. The sole justification for posting of the officers despite order of the Higher Authority is a purported scarcity of officers. But whether such a shortage would be sufficient to defy a specific direction issued by the Higher Authorities? If such an explanation is to be accepted, it would erode the powers of the Authorities as a norm since most of the stations would be facing a managerial staff shortage. A mere hardship cannot be accepted as a compelling excuse to defy a specific command.

18. In the present case, the petitioner failed to satisfactorily explain why he posted 5 officers of Doubtful Integrity in sensitive locations instead of allocating the procurement work to the remaining 15 Managers (QC), who were available at the relevant point of time. For the abovesaid reasons, the Review Authority upheld the orders passed by the Appellate Authority.

19. It is further evident that a minor penalty has been imposed upon the petitioner. In exercise of power of judicial review in departmental proceedings, the scope of interference is not without judicial restraints. Power of 'judicial review' is not akin to a judicial control. The Court does not usurp the discretion of the public authority. It was held by the Hon'ble Supreme Court in the matter of *M. Nagraj Versus Union of India* reported as *(2006) 8 SCC 212* that if the decision of public authority is within the confines of reasonableness, the Court would not look further into any greater merit or higher reason. It is more of a concept which deals with legality of the decision than the merit thereof. It was held by the Hon'ble Supreme Court in the matter

of *Maharashtra State Board of Secondary and Higher Education Versus K.S. Gandhi* reported as (1991) 2 SCC 716 that if the conclusion is supported by evidence on record, an interference would not be called for even though Court may consider that another view may also be possible. Legal precedents in this regard are consistent and regular.

20. Undisputedly, the charge of not complying with the specific order stands well established from record and there is no denial thereof as well. An attempt made is only to justify the defiance as per prevailing circumstances but such compulsion is self-proclaimed and was not for reasons beyond control.

21. I am unable to find any patent infirmity or illegality with the order that has been passed by the Reviewing Authority.

22. The reliance placed by the Learned Counsel for the petitioner on the judgment of Hon'ble Supreme Court in the matter of *Jagat Narayan (supra)* is similarly misconceived since a penalty of recovery had been imposed on the petitioner therein, which is not applicable to the facts of the present case. The benefit of promotion could not be extended for the period during which the sting of penalty remained as per law. As per the applicable instructions, an employee can be considered for promotion during proceedings for minor penalty and on exoneration, the sealed cover will be opened and recommendation implemented, else it will be ignored and the employee is to be considered in next D.P.C. But in case of recovery, it can still be opened. In the present case, the claim is based on succeeding in challenge to the punishment, which order is being upheld. No rule or instruction to the contrary has been

cited or referred to by the counsel for the petitioner as well, hence, departmental stand remains unrefuted.

23. The present petition is accordingly dismissed. Resultantly, the order dated 06.11.2013 (Annexure P-28) passed by the Reviewing Authority, dismissing the review petition against the minor penalty imposed upon the petitioner as well as the order dated 15.01.2018 (Annexure P-33), rejecting the claim of the petitioner for promotion to the post of Deputy General Manager with effect from 05.05.2010 are hereby affirmed.

JANUARY 23, 2025.

rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No