

Before Sudhir Mittal, J.

LAXMAN SINGH—Petitioner

versus

FCI AND OTHERS—Respondents

CWP No. 27732 of 2013

May 14, 2018

Constitution of India 1950—Food Corporation of India—charges framed against the petitioner and another employee were identical— The Food Corporation of India contended that the loss caused to them by the petitioner was 10% and that by the other employee was 4%—The other employee got less penalty and his appeal was also allowed and penalty modified—However the petitioner was dismissed from service and his retirement benefits were also forfeited—Held—Other employee had been given preferential treatment in matter of imposition of penalty. The employees must be treated in similar fashion—matter remitted back to disciplinary authority for passing fresh orders.

Held, that learned counsel for the respondents supports the impugned order on the ground that the loss caused by the petitioner was 10% of the total loss sustained by the Food Corporation of India whereas loss caused by S.S. Rana was only to the extent of four percent.

(Para 8)

Held, that the argument of the learned counsel for the respondent-Food Corporation of India, is not acceptable for the reason that it is not disputed that the charges framed against the petitioner as well as S.S. Rana were identical. It is also not disputed that S.S. Rana was restrained from accepting the rice stock w.e.f. 30.12.1997, whereas, the petitioner continued accepting the stock till 20.02.1998. Thereafter also the loss was only on account of the Assistant Manager, Quality Control. In fact, S.S. Rana was restrained because there were complaints of acceptance of sub-standard

(Para 9)

Held, that the matter is remitted back to the Disciplinary Authority, for passing orders afresh after giving opportunity of hearing to the petitioner and by keeping in view the order passed by this Court. In case, lesser punishment is imposed the petitioner shall be entitled to

reinstatement and continuity of service with all consequential benefits, in accordance with law. The monetary benefits shall be paid along with interest @ 6% per annum.

(Para 10)

Kamal Gupta, Advocate, for Sparsh Gupta, Advocate, *for the petitioner.*

Manav Bajaj, Advocate, for Sumeet Goel, Advocate, for the respondent.

SUDHIR MITTAL, J. (ORAL)

(1) The petitioner was appointed as Technical Assistant Grade-III with the Food Corporation of India in the year 1985. He was promoted as Technical Assistant Grade-II in the year 1992. In the year 1998 he was posted at Narnaul Centre of the Food Corporation of India. The last date fixed by the Food Corporation of India for acceptance of levy rice stock was fixed as 31.03.1998 and was extended upto 30.04.1998 and communication regarding the extended date was received on 24.04.1999. Hence, between the period 25.04.1998 to 28.04.1998, the miller dumped 71 consignments. These consignments were inspected by the Technical Assistant Grade-I, including the petitioner and the same were rejected vide rejection note dated 29.04.1998. However, one O.P. Girdhar who was also posted as Technical Assistant, under the guidance of Assistant Manager Quality Control, accepted all the 71 consignments on 01.05.1998 back dating them to 30.04.1998. This resulted in a complaint and the police raided the godown. O.P. Girdhar and other related persons were arrested and the godowns were sealed on 04.05.1998.

(2) It is also relevant to note that the petitioner accepted stocks in Shed No. 8 upto 20.02.1998. Thereafter, only O.P. Girdhar was authorized to accept the stock in all the Sheds of the Narnaul Centre.

(3) In October, 1998 samples of the stock at Narnaul Centre were taken and were found to be below standard. Thus, the petitioner and other Technical Assistants posted at Narnaul Centre were charge sheeted. One such employee was S.S. Rana. Vide order dated 22.05.2005 the petitioner was ordered to be dismissed from service and his retiral benefits were also forfeited. However, in the case of S.S. Rana only reversion to the post of TA Grade-II was ordered and the salary was fixed at the lowest of the scale payable to Technical

Assistant Grade-II.

(4) The petitioner challenged the penalty imposed upon him by way of appeal, inter alia, on the ground that he was identically situated as S.S. Rana and the same charges were levelled against him but in the matter of penalty a much lessor penalty was imposed on him. The appeal of the petitioner was rejected. However, in the case of S.S. Rana, the appeal was allowed and the penalty was further modified. The order of reversion was set aside and it was directed that he shall draw the minimum of the pay scale payable to Technical Assistant Grade-III for 3 years without cumulative effect. The petitioner preferred review as per the service rules and the observations of the reviewing authority are quoted herein below:-

“The undersigned has carefully gone through the Review Petition and other relevant records of the case and find that in the major penalty proceedings initiated against the petitioner, the allegations of acceptance of BRL rice at BG Narwana during 1998, non maintenance of records and absenting from duty have been leveled against him. The Inquiry Officer has substantiated the allegation of not accepting the stock on day to day basis by the petitioner, partially proved the allegation of bad name and financial loss to the Corporation. The allegation of not maintaining the relevant records and absconding from duty during joint sampling have not been proved. Similarly, the charge of non cooperation was also not proved. As is evident from the report of Inquiry Officer, the major quantity of rice was procured by Shri O.P. Girdhar, TA.I and the Inquiry Officer in the report has remarked that “major share to prove the charge of Article-I against the CO rests with Shri O.P. Girdhar and the CO as minor players”.

The undersigned also find that there does not appear to be any parity in the imposition of penalties as in the case of Co-accused Shri S.S. Rana, TA.I, all the charges have been proved, but the Disciplinary Authority has imposed a penalty of “Reversion from the post of TA.I to TA.II”. As far as the present Review Petition is concerned, out of 5 Article of charges, majority of the allegations have not been proved in the inquiry and in the charge memo the loss sustained by the Corporation has not been quantified, but

termed as huge losses on assumption.

Taking into account the totality of the circumstances of the case, I propose to set-aside the penalty of “Dismissal with further directions that though the entire losses can not be recovered from the CO, the gratuity of the CO is ordered to be forfeited under the provisions of section 4, sub-section 6(a) of the Payment of Gratuity Act, 1972 alongwith forfeiture of leave encashment and the employer's contribution towards CPF and interest thereon is also ordered to be forfeited, if permissible as per FCI's instructions /law and other stipulations” imposed by the Disciplinary Authority and upheld by the Appellate Authority and remit the case back to the Disciplinary Authority with the directions to consider the case afresh, taking into account the penalties imposed upon other Co-accused, Such disparities, perhaps, are bad in the eyes of law”.

(5) Consequently, the matter was remitted to the disciplinary authority who vide order dated 30.05.2009 retained the original penalty with the modification of non forfeiture of provident fund. The appeal and review application of the petitioner have also been rejected.

(6) Written statement has been filed on behalf of the respondents and the factual aspects are not disputed.

(7) Learned counsel for the petitioner submits that the petitioner was entitled to parity of treatment with S.S. Rana as the offence allegedly committed by him was of the same gravity. S.S. Rana has been given preferential treatment which is not permissible in law. Moreover, the appellate authority, in the second round of litigation, has misread the order of the reviewing authority and thus the appellate order as well as order of the reviewing authority suffer from non-application of mind.

(8) Learned counsel for the respondents supports the impugned order on the ground that the loss caused by the petitioner was 10% of the total loss sustained by the Food Corporation of India whereas loss caused by S.S. Rana was only to the extent of four percent.

(9) The argument of the learned counsel for the respondent-Food Corporation of India, is not acceptable for the reason that it is not disputed that the charges framed against the petitioner as well as S.S. Rana were identical. It is also not disputed that S.S. Rana was

restrained from accepting the rice stock w.e.f. 30.12.1997, whereas, the petitioner continued accepting the stock till 20.02.1998. Thereafter also the loss was only on account of the Assistant Manager, Quality Control. In fact, S.S. Rana was restrained because there were complaints of acceptance of sub-standard quality rice. Under the circumstances, it is obvious that S.S. Rana has been given preferential treatment, but no reason is forthcoming for the same. In the matter of imposition of penalty, the employees have to be treated in a similar fashion.

(10) Consequently, the petition is allowed and the impugned orders dated 30.05.2009/2.6.2009, (Annexure P-10) 18.11.2011 (Annexure P-12) and 21.5.2013 (Annexure P-14) passed by the Appellate Court, Disciplinary Authority and Reviewing Authority, respectively, are quashed. The matter is remitted back to the Disciplinary Authority, for passing orders afresh after giving opportunity of hearing to the petitioner and by keeping in view the order passed by this Court. In case, lessor punishment is imposed the petitioner shall be entitled to reinstatement and continuity of service with all consequential benefits, in accordance with law. The monetary benefits shall be paid along with interest @ 6% per annum.

(11) The needful will be done within a period of six months from the date of receipt of certified copy of this order.

Dr. Payel Mehta