

Before Permod Kohli, J.

S. P. DUBEY,—Petitioner

versus

**FOOD CORPORATION OF INDIA
AND OTHERS,—Respondents**

CWP. No. 11829 of 2010

8th July, 2010

Constitution of India, 1950—Art. 226—F.C.I. Staff Regulations, 1971—Regs. 54, 58 and 60-A—Disciplinary proceedings against Assistant General Manager of FCI on charges of misconduct and misbehaviour—Retirement of AGM during pendency of disciplinary proceedings—Whether disciplinary proceedings can be continued after retirement—Held, yes—Reg. 60-A permits continuation of disciplinary proceedings beyond retirement if proceedings were initiated when an employee was in service or even during his re-employment—Petition dismissed.

Held, that initiation or continuation of disciplinary proceedings after the retirement is impermissible unless the rule permits. Admittedly, there is a specific provision contained in Regulation 60-A which *inter alia* permits continuation of the disciplinary proceedings even beyond retirement, if, proceedings were initiated when the employee was in service or even during his re-employment. The contention of the petitioner that Regulation 60-A only permits the departmental proceedings for minor penalty is totally based upon the misconception and misinterpretation of the Regulation 60-A. Regulation 60 no doubt prescribes the procedure for minor penalty, however, Regulation 60-A is totally distinct and independent provision dealing with all disciplinary proceedings; be it for major penalty or minor penalty. Clause (i) of Regulation 60-A starts with the expression “any disciplinary proceeding” only signifies the applicability of provision to all disciplinary proceedings without any distinction whatsoever.

(Para 7)

Ravi Gupta, Advocate with B.R. Bupta, Advocate, *for the petitioner.*

PERMOD KOHLI, J. (ORAL)

(1) The petitioner retired from the service of the Food Corporation of India as Assistant General Manager on 28th February, 2010 on attaining the age of superannuation. He is aggrieved of the pendency of disciplinary proceedings against him as were initiated *vide* memo of charge sheet dated 10th February, 2010 (Annexure P-4) and the consequential proceedings after his retirement.

(2) It is necessary to briefly notice the facts leading to the filing of this writ petition.

(3) Petitioner joined the service of respondent-Corporation on 30th May, 1970 as Technical Assistant Grade-III. He earned promotions to the posts of Technical Assistant Grade-II, Grade-I and Manager (Q.C.) in the year 2008. Later the petitioner came to be promoted as Assistant General Manager (Q.C.) *vide* order dated 29th July, 2008 and posted to Haryana Regional Office, Panchkula. Thereafter, he was transferred to District Office, Karnal *vide* office order dated 8th September, 2008. Petitioner was placed under suspension by respondent no. 2 *vide* order dated 22nd September, 2009 on the basis of certain allegations of lack of supervisory control for accepting rice below the prescribed quality. A charge sheet dated 10th February, 2010, was served upon the petitioner along with the statement of articles of charge and imputation of misconduct and misbehavior etc. Petitioner submitted his reply dated 22nd February, 2010 (Annexure P-5) and in the meantime petitioner retired from service on 28th February, 2010. Respondent No. 2 appointed respondent No. 5 as the Inquiry Officer to inquire into the charges against the petitioner *vide* his order dated 11th March, 2010 (Annexure P-7) Petitioner has been served with a memo of major penalty.

(4) Petitioner has challenged the disciplinary proceedings against him after his retirement only on the ground that no disciplinary proceedings could be continued after the retirement.

(5) Services of the petitioner are governed by F.C.I. (Staff) Regulations, 1971. Regulation 54 deals with the penalties both minor and major. Regulation 58 deals with the procedure for imposing major penalties, whereas Regulation 60 deals with the procedure for imposing minor penalties. *Vide* notification no. 97, dated 15th May, 2007 an amendment was

incorporated in the regulations introducing Regulation 60 (A) dealing with the procedure for disciplinary proceedings after retirement. This regulation is reproduced hereunder :

“60-A-Procedure for disciplinary proceedings after retirement :

- (i) Any disciplinary proceeding, if instituted by issue of charge-sheet while the employee was in service, whether before his retirement or during his re-employment, shall, after the retirement of the employee, be continued and concluded by the authority by which it was commenced, in the same manner, as if the employee had continued in service.
- (ii) Such proceeding after retirement should be completed expeditiously and within twelve months from the date of delivery of charge sheet to the charged official, subject to court orders, if any.
- (iii) During the pendency of the disciplinary proceedings, the disciplinary authority may withhold payment of gratuity for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence or misconduct as mentioned in the relevant sections of the Payment of the Gratuity Act, 1972 (39 of 1972) or to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-employment after retirement, provided that the provisions of relevant Sections of the Payment of Gratuity Act, 1972 shall be kept in view in the event of delayed payment in case the employee is fully exonerated.

Added vide Notification No. 97, dated 15th May, 2007 (1st Amendment, 2007).”

(6) It is contended on behalf of the petitioner that though this provision was introduced by way of amendment prior to his retirement, however, Regulation 60-A being immediately after Regulation 60, it has relevance only to the imposing of the minor penalties and thus continuance

of the disciplinary proceedings against the petitioner for major penalty is impermissible in law. To support his contention that the disciplinary proceedings cannot be continued after the retirement, the petitioner has relied upon the following judgements :—

1. **Jaswant Singh Gill versus M/s Bharat Coking Coal Ltd. And others (1)**
2. **Chandra Singh versus State of Rajasthan and another (2)**
3. **Bhagirathi Jena versus Board of Directors, O.S.F.C. (3)**
4. **Kanwaljit Singh, General Manager (Retd.) versus State of Punjab and others (4)**

(7) There is absolutely no dispute with the proposition of law enunciated in the aforementioned judgements. Initiation or continuation of disciplinary proceedings after the retirement is impermissible unless the rule permits. However, the petitioner is not entitled to claim the benefit of the aforesaid judgements as in the present case, admittedly, there is a specific provision contained in Regulation 60-A which *inter alia* permits continuation of the disciplinary proceedings even beyond retirement, if, proceedings were initiated when the employee was in service or even during his re-employment. The contention of the petitioner that Regulation 60-A only permits the departmental proceedings for minor penalty is totally based upon the misconception and misinterpretation of the Regulation 60-A. Regulation 60 no doubt prescribes the procedure for minor penalty, however, Regulation 60-A is totally distinct and independent provision dealing with all disciplinary proceedings; be it for major penalty or minor penalty. Clause (i) of Regulation 60-A starts with the expression "any disciplinary proceeding" only signifies the applicability of provision to all disciplinary proceedings without any distinction whatsoever.

(8) In view of the unambiguous language of the provision in the regulations, the contention of the petitioner is not sustainable. This petition has no merit and is hereby dismissed, however, in the facts and circumstances of the case without any order as to costs.

R.N.R.

- (1) 2007 (1) S.C.T. 236
- (2) 2003 (3) S.C.T. 694
- (3) 1999 (2) S.C.T. 651
- (4) Vol. CL-VIII (2010-2) 190