

Before Surya Kant, J.

VIR BHAN SINGH,—Petitioner

versus

**FOOD CORPORATION OF INDIA
AND ANOTHER,—Respondent**

C.W.P. No. 8728 of 2009

7th July, 2010

Constitution of India, 1950—Art.226—Food Corporation of India (Staff) Regulations, 1971-Reg. 66—Claim for subsistence allowance—Disciplinary authority ordering dismissal of services of petitioner—Reviewing authority modifying penalty of dismissal to compulsory retirement—High Court quashing order of dismissal while granting liberty to proceed afresh—Respondents after following due procedure again imposing punishment of compulsory retirement—Reg.66(4) provides that employee shall be deemed to have been placed under suspension from date of original order of dismissal etc. and shall continue to remain under suspension until further orders—Whether petitioner entitled to payment of subsistence allowance from date of his dismissal till passing of order of compulsory retirement—Held, yes—Petition allowed, respondents directed to treat petitioner under suspension and pay him subsistence allowance in accordance with Reg. 66(6).

Held, that the order of dismissal of the petitioner passed by the Senior Regional Manager was quashed by this Court *vide* judgment dated 23rd July, 2007 with liberty to the 'Competent Authority' to proceed *afresh* into the matter if it is otherwise allowable under the Regulations... The competent authority did proceed against the petitioner and communicated its reasons for disagreeing with the enquiry officer to him. The petitioner submitted his reply thereto and upon consideration thereof, the Competent Authority decided afresh to impose the penalty of compulsory retirement with effect from 31st December, 2006.

(Paras 10 & 11)

Further held, that the events fully satisfy all the ingredients of Sub-Regulation (4) of Regulation 66 and resultantly, the petitioner shall be deemed to have remained under suspension with effect from 26th September, 1996 i.e. the date of his dismissal from service till the passing of order of compulsory retirement with effect from 31st December, 2006. Issuance of a show cause notice; communication of reasons for disagreement of consideration of reply submitted by a delinquent employee are the integral part of an "enquiry" contemplated by the 1971 Regulations. The petitioner who is deemed to have remained under suspension for the afore-stated period, is obviously entitled to payment of Subsistence Allowance as per and at the rate prescribed under Sub-regulation (6) of Regulation 66 *ibid*.

(Para 12)

J.S. Wasu, Advocate *for the petitioner*.

Rajesh Garg, Advocate *for respondents*.

SURYA KANT, J. (ORAL)

(1) The petitioner seeks a mandamus to direct respondent No. 2 to pay him the Subsistence Allowance under Regulation 66(6) read with Regulation 66(4) of the Food Corporation of India (Staff) Regulations, 1971 for the period with effect from 26th September, 1996 to 31st December, 2006 during which period the petitioner was stately deemed to have remained under suspension.

(2) The facts may be noticed briefly. The petitioner was working as Assistant Grade-II (Depot) with the Food Corporation of India and was served with a charge-sheet, dated 1st March, 1995 under Regulation 58 of FCI (Staff) Regulations, 1971 (in short, 'the 1971 Regulations') for major penalty. There were 4 distinct charges levelled against the petitioner pertaining to his failure to maintain absolute integrity, lack of devotion of duty and causing resultant financial losses to the Corporation. A regular enquiry was held in which charges No. 1, 3 and 4 were proved whereas Charge No. 2 was held to be not proved against the petitioner. However, the Disciplinary Authority disagreed with the Enquiry report *qua* Charge No. 2 and held the petitioner guilty of Charge No. 2 also and *vide* its order dated 26th September, 1996 dismissed him from service. The petitioner preferred an appeal which was also turned down by the Appellate Authority.

(3) The petitioner thereafter filed a statutory review petition before the Managing Director of the Corporation who though held the petitioner guilty of all the charges but having felt that the penalty of dismissal was too harsh modified the same *vide* his order dated 24th November, 1998 from dismissal to that of compulsory retirement from service.

(4) The petitioner being still dissatisfied approached this Court by way of CWP No. 14602 of 1999, *inter alia*, contending that since the order of punishment was founded upon charge No. 2 in which he was exonerated by the enquiry officer, it was imperative upon the disciplinary authority to convey the reasons of its disagreement with the inquiry report and hear the petitioner in respect thereof.

(5) The afore-mentioned contention found favour with a Coordinate Bench of this Court who *vide* order dated 23rd July, 2007 allowed the writ petition in the following terms :—

“In the light of the foregoing discussion, Civil Misc. application No. 21519 of 2006 shall stand allowed. As a compulsive consequence thereof, the writ petition shall also stand allowed. The impugned order passed by the Senior Regional Manager of the Food Corporation of India shall stand quashed. However, the Competent Authority would be entitled to proceed afresh into the matter if it is otherwise allowable under the regulations governing the employees of the Food Corporation of India.

(Sd.),

23rd July, 2007

S. D. Anand,
Judge”

(6) The respondents accepted the above-stated decision and after following the due procedure, have passed afresh order dated 8th January, 2008 again imposing the punishment of compulsory retirement from service of the Corporation along with forfeiture of the Gratuity on the petitioner “w.e.f. 31st December, 2006”, the operative part whereof reads as follows :—

“Now, therefore, the undersigned in exercise of powers conferred under regulation 56 of FCI (Staff), Regulations 1971 hereby

imposes the penalty of compulsory retirement from the services of the Corporation along with forfeiture of his gratuity benefits under Section 4, Sub Section (6) (a) of payment of Gratuity Act, 1972 upon Shri Vir Bhan Singh, Ex. AGII (D) with effect from 31st December, 2006.

The undersigned further orders that the period of suspension and the period from dismissal upto 31st December, 2006 would be treated as "period not spent on duty."

(7) The resultant effect is that the petitioner now stands compulsorily retired with effect from 31st December, 2006 and as per the later punishment order dated 8th January, 2008, his period of suspension as well as the period from the date of passing of the dismissal order i.e. 26th September, 1996 till he has been compulsorily retired with effect from 31st December, 2006, has been ordered to be treated as "period not spent on duty".

(8) The service conditions of the employees of the FCI are governed by the 1971 Regulations. Regulation 66(4) & (6) being relevant to resolve the present controversy are reproduced below :—

66(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

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66(6) *An employee under suspension or deemed to have been under suspension shall be entitled to subsistence grant at one half of the pay drawn by the employee concerned immediately on the date preceding the date of his suspension. He is entitled to draw other compensatory allowances i.e. compensatory (city) allowance, house rent allowance, other than conveyance allowance admissible from time to time, on the basis of pay of which he was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances. If the headquarters of an employee under suspension are changed in the public interest by order of a competent authority, he shall be entitled to the allowances as admissible at the new station provided he furnishes the requisite certificates, if any, with reference to such station.*

Provided that no payment under this regulation shall be made unless the employee furnishes a certificate that he is not engaged in any other employment, business, profession or vocation."

(9) It may be seen that in terms of sub-Regulation (4) of Regulation 66, when a penalty of dismissal/removal/compulsory retirement from service is set aside by a Court of law and the competent authority decides to hold a further enquiry against the delinquent employee on the allegations on which the said penalty was originally imposed, "the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal etc. and shall continue to remain under suspension until further orders."

(10) In the instant case, the order of dismissal of the petitioner passed by the Senior Regional Manager was quashed by this Court *vide* judgement dated 23rd July, 2007 with liberty to the 'Competent Authority' to proceed *afresh into the matter if it is otherwise allowable under the Regulations*.

(11) The competent authority did proceed against the petitioner and communicated its reasons for disagreeing with the enquiry officer to him. The petitioner submitted his reply thereto and upon consideration thereof, the Competent Authority decided *afresh* to impose the penalty of compulsory retirement with effect from 31st December, 2006.

(12) In my considered view, the above noticed events fully satisfy all the ingredients of sub-Regulation (4) of Regulation 66 and resultantly, the petitioner shall be deemed to have remained under suspension with effect from 26th September, 1996 i.e. the date of his dismissal from service till the passing of order of compulsory retirement with effect from 31st December, 2006. I say so for the reason that issuance of a show cause notice; communication of reasons for dis-agreement of consideration of reply submitted by a delinquent employee are the integral part of an "enquiry" contemplated by the 1971 Regulations. The petitioner who is deemed to have remained under suspension for the afore-stated period, is obviously entitled to payment of Subsistence Allowance as per and at the rate prescribed under sub-Regulation (6) of Regulation 66 *ibid*.

(13) For the reasons afore-stated, the writ petition is allowed and the respondents are directed to treat the petitioner under suspension with effect from 26th September, 1996 to 31st December, 2006 and pay him the Subsistence Allowance in accordance with Regulation 66(6) within a period of *three months* from the date of receipt of a certified copy of this order.

(14) Ordered accordingly.

(15) **Dasti.**