

(2008) 07 DEL CK 0212

Delhi High Court

Case No: Writ Petition (C) No. 18192 of 2004

Shri Tej Singh

APPELLANT

Vs

FCI

RESPONDENT

Date of Decision: July 1, 2008

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 16
- Constitution of India, 1950 - Article 226
- Food Corporation of India Staff Regulations, 1971 - Regulation 54, 56, 58, 60, 68

Citation: (2008) 152 DLT 243

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Manoranjan Mishra, for the Appellant; Sukumar Pattjoshi, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.

By way of the present writ petition, the petitioner seeks to challenge the order dated 18.1.2003 passed by the respondent No. 3 imposing penalty of censure and recovery of Rs. 64,756/- and the order dated 10.8.2004 passed by the Appellate Authority i.e., respondent No. 2 therein.

2. The petitioner who at the relevant time was posted in his capacity as AG II(Depot) at one of the depots of FCI known as Kasganj was held responsible for his failure to maintain absolute integrity and devotion in carrying out his duties while posted as the custodian and in-charge of the said depot in his capacity as A.G.II(D), Kasganj. During his said posting it was found that there was a storage loss of 4.56% to 4.86% during storage period of 56 to 83 months. It was also found that the petitioner had accepted higher percentage of moisture in connivance with depot staff and also recorded incorrect moisture at the time of issue/dispatch of stocks due to which the FCI suffered abnormal storage loss valuing Rs.6,67,054.75/-. Memorandum dated

9.1.2002 proposing initiation of action under Rule 16 of CCS (CCA) Rules, 1965/Regulation 60 of Food Corporation of India (Staff Regulation) Act, 1971 was issued to the petitioner. The petitioner was given an opportunity to make representation if he so wished to make against the said enquiry action. Vide representation dated 28.1.2002, the petitioner refuted the charges as framed against him by the FCI. Feeling not satisfied with the plea raised by the petitioner in his said representation, disciplinary proceedings were initiated by the Disciplinary Authority against the petitioner and vide order dated 18.1.2003, the Disciplinary Authority in exercise of power conferred under Regulation 56 of FCI (Staff Regulation) Act 1971 imposed the penalty of censure and recovery of Rs.64,756/- upon the petitioner. Feeling aggrieved with the said order of the Disciplinary Authority the petitioner preferred an appeal as provided under Regulation 69 against the said order of the Disciplinary authority and vide order dated 10.8.2004, the Appellate Authority rejected the appeal of the petitioner being devoid of any force.

3. In the present writ petition, the petitioner has impugned both the said orders i.e., order passed by the Disciplinary Authority dated 18.1.2003, imposing the said penalty as well as order passed by the Appellate Authority dated 10.8.2004.

4. Opposing the present petition, the respondent has taken preliminary objection to the very maintainability of the writ petition on the ground that the petitioner has not exhausted the remedy of seeking a review against the order of the Appellate Authority. Besides this, the respondent has also challenged petition on its merits.

5. In support of his contention, with regard to the non maintainability of the writ petition due to the availability of an alternative remedy, counsel for the respondent invited attention of this Court to Regulation 74 of FCI (Staff) Regulation 1971 which is referred as under:

74. Review:

(1) ******(Notwithstanding anything contained in these regulations, the Board may, at any time either on its own motion or otherwise, call for the records of any inquiry and review any order made under these regulations), and

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit;

*Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Regulation 54 or to enhance the penalty imposed by the order sought to be viewed to any of the penalties specified in those clauses; no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation 58

(2) No proceeding for review shall be commenced until after:

i) the expiry of the period of limitation for an appeal, or

ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal

(4) under these regulations 69

** Substituted vide notification No. 1-5/73-EP dated 17.8.73 Effective from 10.7.1997 (10th Amendment).

*Amended vide notification No. 9-4/78-EP dated 26.10.79. Effective from 10.9.79(67th Amendment).

(4) Powers similar to those specified in Clause (1) above may be exercised by the (Chairman)**, Managing Director, Zonal Manager and Regional Manager(Additional/Joint Manager) in respect of orders passed by authorities subordinate to them.

6. Based on the said regulation, counsel for the respondent contended that in view of the existence of the said efficacious remedy, the present writ petition filed by the petitioner cannot be maintained.

7. On the other hand, counsel for the petitioner contended that the petitioner has every right to invoke the writ jurisdiction of this Court even without exhausting the remedy of "review" which remedy may not afford effective and equitable relief as can be granted by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

8. Counsel for the petitioner has also placed reliance on the judgment of the Apex Court in [V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another](#), .

9. It is a settled legal position that existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution of India, but at the same time the person invoking the writ jurisdiction under Article 226 of the Constitution of India without exhausting the alternative remedy has to make out a strong case to disclose as to why available alternative remedy has not

been exhausted.

10. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.*, the Hon'ble Supreme Court has observed that existence of alternative remedy shall not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights; or where there has been a violation of the principle of natural justice; or where the order or proceedings are wholly without jurisdiction; or the virus of an Act is challenged. Relevant para of the said judgment is referred as under: 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the virus of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

11. In the facts of the present case, the petitioner has suppressed this fact in the writ petition that remedy to seek a review of the order of the Appellate Authority was available to the petitioner under Regulation 74 of the FCI (Staff) Regulation, 1971 and when the said preliminary objection was taken by the respondent in the counter affidavit, the petitioner in his rejoinder has not advanced any justifiable or cogent reason for not availing the said remedy of seeking review except stating that non filing of a review petition is not a bar to approach this Court. I, Therefore, do not find that the case of the petitioner not exhausting the alternative remedy of seeking review falls under any of the exceptional grounds as enumerated above to entertain the present writ petition.

12. The petitioner had filed an appeal against the order of the Disciplinary Authority invoking Regulation 68 of the FCI (Staff) Regulation 1971, but the appellant has failed to advance any reason for not seeking review of the said order although a specific remedy was available under Regulation 74 of the FCI (Staff) Regulation, 1971.

13. Perusal of the said Regulation 74 would also show that the reviewing authority is vested with all the powers to confirm, modify or set aside the order passed by the Appellate Authority and the same has also to be dealt with in the same manner as it was an appeal under the said Regulation. Nowhere in the petition or in the rejoinder, the petitioner has complained that the said remedy of seeking review is not an adequate or efficacious alternative remedy. The petitioner thus preferred the

present writ petition under Article 226 of the Constitution of India clearly bypassing the remedy of review as provided u/s 74 of the FCI (Staff) Regulation, 1971. The petitioner has also not made out any case invoking the exercise of the writ jurisdiction complaining violation of fundamental rights or violation of principles of natural justice on the part of the respondents or complaining lack of jurisdiction in the concerned authority or inadequacy or inefficacy of the alternative remedy. The judgment of V.Vellaswamy (Supra) cited by the petitioner will be of no help to the petitioner as there is no dispute on the legal proposition that the availability of alternative efficacious remedy is not an absolute bar to entertain a writ petition under Article 226 of the Constitution of India. The existence of an adequate alternative remedy whether statutory or administrative is not an absolute bar to the grant of relief under Article 226 of the Constitution of India but for invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has to disclose strong grounds for not exhausting alternative remedy be it statutory or administrative. The petitioner has failed to advance any reason much less the plausible reason for not seeking the remedy of review as provided under Regulation 74 of FCI (Staff) Regulation, 1971.

14. In the light of the above discussion, I do not find that the present writ petition filed by the petitioner can be held to be maintainable, and the same is hereby dismissed on this short ground alone.

15. The petitioner is, however, set at liberty to seek his remedy as available under Regulation 74 of the FCI (Staff) Regulation, 1971 so as to seek review of the order of the Appellate Authority and if ultimately the petitioner feel aggrieved with the outcome of the order of the reviewing authority, he shall have the legal remedies available. It is also made clear that the reviewing authority shall not pass a mechanical order and shall deal with all the pleas and contentions to be raised by the petitioner in his review petition. The respondent shall also not enforce the impugned orders before the decision is taken by the reviewing authority on the review petition moved by the petitioner. In case no review is filed by the petitioner within a period of 30 days from the date of this order, the respondent shall have every right to implement the impugned orders.

16. With these directions, writ petition stands dismissed.