

Before Kuldip Singh, J.

T.S. BHATTI — *Petitioner*

versus

STATE OF HARYANA— *Respondent*

CWP No. 7667 of 2008

May 12, 2017

Constitution of India, 1950 — Art. 226 — Petitioner, who was working as DFSC was served a memo in September, 1989 seeking explanation with regard to damaged/shortage of wheat gunny bags — Petitioner filed reply in October, 1989 — Nothing happened for 6 years, then in October, 1995, petitioner informed of proposed action against him under Rule 7 of the Haryana Civil Service (Punishment & Appeal) Rules, 1987, on the basis of two charge-sheets — Allegations of not sending inspection reports and lack of supervisory control — Petitioner's reply to charge-sheets found unsatisfactory, inquiry officer appointed — Inquiry Officer reported that charges not proved — The competent authority recorded dissent note, and passed orders for recovery and withholding of gratuity — Noticing that another Officer was responsible for the loss caused to the department, and there was no lack of supervisory control on the part of the petitioner, the High Court allowed the petition and quashed the orders of recovery and ordered payment of gratuity and pension with interest — Writ Petition allowed.

Held, that I am of the view that once it is held by the Inquiry Officer that there is no lack of supervision, therefore, merely on the basis of some rules that the supervisory officer is also responsible, the petitioner cannot be straightway held guilty, unless it is found that there was lack of supervision on the part of the petitioner. The department remained silent for nearly six years after getting the explanation of the petitioner to issue him charge-sheets. The inquiries were completed in the year 2002 and the dissent notes were recorded five years later in the year 2007 and the punishment orders were passed in the year 2008. If there is shortage and loss, there is no reason why the matter was kept pending for six years before issuing the charge-sheets.

(Para 19)

Further held, that moreover, in the inquiry reports, it has been found that there is no lack of supervision on the part of the petitioner. The mischief was done by Sh. B.D. Goel, the then Inspector, P.R. Centre, Tohana, and that there was bonafide on the part of the

petitioner. It was the duty of the Accounts Branch to check the bills and after verification, put up the same before the petitioner, who signed it. There is loss caused to the department by one B.D. Goel and other employees of P.R. Centre, Tohana. The petitioner cannot be made vicariously liable merely on the ground that he was posted as District Food and Supplies Controller, Hisar and the P.R. Centre Tohan fell in the said District.

(Para 20)

Petitioner in person with
S.K. Sud, Advocate.

Apoorv Garg, Deputy Advocate General, Haryana.

KULDIP SINGH J.

(1) Petitioner, who is retired District Food and Supply Controller, Hissar, has invoked the writ jurisdiction under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 17.10.1995 (Annexure P-3), charge-sheet dated 11.12.1996 (Annexure P-4), show cause notices dated 09.03.2007 and 09.03.2007 (Annexures P-11 and P-12) and recovery orders dated 07.02.2008 and 05/29.03.2008 (Annexures P-15 and P-16). A writ in the nature of mandamus has also been sought for directing the respondents to release the gratuity and commuted pension along with interest @ 12% per annum.

(2) The petitioner, who was previously working as District Food and Supply Controller, Hissar and was then posted at Bhiwani, was served with a memo dated 19/21.09.1989 (Annexure P-1), seeking the explanation regarding damage to the gunny bags of wheat and regarding the loss on account of shortage and on account of verification of PR Centre Tohana, which was under his control when the petitioner was posted as District Food and Supply Controller, Hissar. It was stated that the petitioner did not inspect the PR Centre, Tohana and did not send any inspection report. The petitioner submitted the reply dated 25.10.1989 (Annexure P-2) to the memo explaining his position. Thereafter, nothing happened for next six years, when on 17.10.1995, the petitioner was informed that an action against him under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules 1987 was sought to be taken on the basis of enclosed charge-sheet (Annexure P-3). The charge-sheet was enclosed with the said letter. Thereafter, another charge-sheet dated 11.12.1996 (Annexure P-4) was issued. The petitioner submitted the reply to the

said charge-sheets, which was found to be unsatisfactory and accordingly, Sh. Naresh Gulati, IAS, Commissioner for Industries I, was appointed as Inquiry Officer. After the regular departmental inquiry, the Inquiry Officer submitted the inquiry reports to both the charge-sheets dated 07.11.2002 and 06.12.20012 (Annexures P-7 and P-8 respectively).

(3) In the inquiry report dated 07.11.2002 (Annexure P-7) to the first charge-sheet, it was reported that the charges against the petitioner are not proved due to missing links in the evidence/material on record. In the inquiry report dated 06.12.2002 (Annexure P-8) to the second charge-sheet, it was reported that the charges against the employee could not be proved due to lack of evidence.

(4) The competent authority did not agree with the inquiry report and recorded separate dissent notes in the year 2007, wherein the competent authority disagreed with the inquiry report and issued a show cause notice to the petitioner. After obtaining the reply, the impugned orders of punishment dated 07.02.2008 (Annexure P-15) and dated 29.03.2008 (Annexure P-16) were passed vide which the punishment of recovery of Rs.1,69,739.32/- and Rs.2,27,537.35, respectively, was imposed. The petitioner seeks quashing of the said orders on the various grounds, stating that he was not responsible and despite being exonerated by the Inquiry Officer, he has been wrongly held guilty.

(5) In the written statement, respondent No.1 took the plea that Food and Supply Department, Haryana is one of the procurement agencies of wheat/paddy for the Central Pool, till despatch of the stock to the central agency i.e. Food Corporation of India. The Food and Supply Department, Haryana is also responsible for ensuring that no loss or damage is caused to the stocks either due to pilferage or because of carelessness. It was stated that in the year 1989-90 being the sole incharge of wheat purchase, total 3751 wheat bags were purchased from M/s Subhash Chand Prem Chand, Tohana, out of which 1240 bags of wheat were purchased through Billing- cum-Payment Agent and 2511 bags of wheat were purchased directly from the said firm, out of which 2440 bags of wheat were not delivered by the party and false entries were made in registers PR-6, PR-9 and PR-86 by Sh. B.D. Goel, the then Inspector Incharge, PR Centre, Tohana in connivance with the petitioner and payments of all the bags were made to the party without ensuring that the said bags are received. This was done by Sh. B.D. Goel, the then Incharge, PR Centre, Tohana in connivance with

the petitioner, which resulted into loss of Rs.5,27,535.30/- besides loss of interest to the respondent-department. The petitioner wrongly signed the purchase bill No.1141/22, dated 03.05.1989 and 1141/23, dated 12.05.1989 for payment without getting it verified from the Section Officer, who is financial custodian/Advisor in the Circle Office.

(6) It was also stated that the petitioner was exonerated by the Inquiry Officer vide report dated 07.11.2002 (Annexure P-7) on the grounds of missing links in the evidence/material on record. The competent authority disagreed with the said findings/conclusion of the Inquiry Officer and held that the charges stood proved and imposed a penalty of recovery of Rs.1,69,739.32/- upon the petitioner.

(7) In the second case, complaints were received by the C.M. Flying Squad in the year 1989 regarding misappropriation in the stocks. Accordingly, on 28.03.1989, the C.M. Flying Squad inspected the godowns at PR Cente, Tohana but the inspectorate staff were found absent and hence record and godowns were not inspected. The State Government directed the Food & Supplies Department to inspect the PR Centre, Tohana. The Food & Supplies Department, Haryana directed the District Food Supplies Controller, Hissar to inspect the godowns and records of PR Centre, Tohana. A team headed by Sh. B.M. Vohra, the then DFSO, Hissar conducted a special physical verification with effect from 12.07.1989 to 26.07.1989 of PR Centre, Tohana and many lapses on the the part of the inspectorate staff of PR Centre were found. Accordingly, the Headquarter sent a special team on 01.09.1989 headed by the Deputy Director (P) and the Deputy Controller Food Accounts to conduct the physical verification of the stocks and report on the same. The report was submitted by the team that there is total loss of Rs.45,92,142.52/- suffered due to negligence of the staff of the Centre as well as DFSC and DFSO, Hissar being supervisory incharge of the centre. Accordingly, the inspectorate staff of the centre was placed under suspension on 23.09.1989 and the departmental proceedings were initiated against them including Sh. B.D. Goel, IFS, the then incharge of the centre, who was ultimately dismissed from service, vide order dated 10/11.03.2003. The petitioner was the sole incharge of the District regarding wheat stocks/stock articles. At the P.R. Centre, Tohana, 7254 old stock bags were less in weight than the standard wheat. The staff was also failed to provide the registers PR 9, 6, 39 etc.

(8) In the physical verification as well as handing over the charge to Sh. Sushil Kumar, IFS, it was found that Sh. B.D. Goel, IFS

was instrumental in causing damages as well as shortage of wheat stocks and stock articles relating to the year 1988-90. It was also stated that only inspectorate staff was responsible. The supervisory lapses on the part of the petitioner were ignored. Reference was made to the instructions dated 09.12.1985 (Annexure R-1), vide which it was held that the role of the supervisory officers like District food and Supplies Officer/District Food and Supplies Controllers in protection of the stocks cannot be overlooked. The laxity in control on their staff leads to negligence. It was pressed in the letter that the supervisory officers should check the stocks/stock articles under their control periodically and send the report to the headquarters. It was further laid down that the State Government has decided to hold supervisory officers directly responsible alongwith the other inspectorate staff for the losses of stock/stock articles in their respective circles. Reference was also made to PR Manual Part-I, para 1.15 and para 1.18, which are reproduced as under:

“Para 1.15

“DFSC must adopt means to satisfy himself that in all grain and other stock articles purchased and funds placed at this disposal are correctly accounted for and that there is no avoidable loss to Government. The DFSC is responsible to see that stocks are properly received stored and issued.”

Para 1.18

'DFSC should exercise the same vigilance in respect of expenditure incurred from Govt. funds and grains and other stock articles received store, issued and sold from Govt. stock as a person of ordinary prudence would exercise in respect of the expenditure of his own money and the receipt, storage, issue and sale of his own grain and other stock articles.'

(9) The competent authority found that the proposed penalty of recovery of Rs.2,27,537.35/- is 5% of the total loss of Rs.45,50,747.22/-. Accordingly, the said punishment of recoveries was awarded to the petitioner. It was denied that Sh. B.D. Goel, IFS, the then incharge of PR Centre, Tohana was posted under the political influence.

(10) I have heard learned counsel for the parties and have also carefully gone through the case file.

(11) A perusal of the charge-sheets and inquiry reports shows that qua the first inquiry, there were allegations that the petitioner made the payment of 2440 bags of wheat without checking the stock in godown physically at PR Centre, Tohana.

(12) In the dissent note, reference has been laid down on para 1.15 of PR Manual, Part I, II and III to hold the petitioner liable for the loss.

(13) Similarly in the second inquiry, same rule was relied upon to hold the petitioner guilty and disagreed with the inquiry report.

(14) A perusal of the facts and circumstances shows that initially a show cause notice was issued to the petitioner in September 1989. The petitioner submitted the reply to the said show cause notice within one month. Thereafter, the respondent-department went into silent mode for six years. Then suddenly in the year 1995 i.e. on 17.10.1995, a charge-sheet was served upon him and on 11.12.1996, another charge-sheet was served upon to him. In both the charge-sheets, the charges were of lack of supervision at PR Centre, Tohana, where Sh. B.D. Goel, was the Supervisory Officer and as per the written statement, he was charge-sheeted and dismissed from service.

(15) Now, the question would arise as to whether the petitioner could be held liable for the supervisory lapses?

(16) It is not denying fact that on coming to know about the shortage of stock, the petitioner even lodged an FIR against Sh. B.D. Goel, who was ultimately, acquitted by the Court. The inquiry report dated 07.11.2002 (Annexure P-15) to the first charge-sheet shows that the inquiry was conducted by an IAS Officer and while dealing with the each charge, he found that the Accounts Branch put up purchase bill before DFSC after complete scrutiny/verification. The petitioner was not expert in accounts matter and he had to rely upon his subordinate staff. It was further observed that it was the duty of the Inspector to purchase and sell wheat. The Accounts Branch was duty bound to scrutinize the relevant documents after receipt from the Inspector concerned and only then the Accounts Branch put up the purchase bills before the DFSC. The inquiry officer further found that there was nothing on record and in the evidence of the witnesses to show that there was ulterior motive on the part of the petitioner. No evidence was led by the department that any benefit was procured by the petitioner. The inquiry officer also held that the concerned officials of the Accounts Branch misled the petitioner and got the payments

released regarding purchase bill No.1141/22, dated 03.05.1989.

(17) In the second inquiry report dated 06.12.2002 (Annexure P-8) to the second charge-sheet, the Inquiry Officer after examining the record and witnesses, found that though as per physical verification, shortage was found during his tenure but it could not be said that that shortage occurred during his tenure or earlier period. The scrutiny of the record supplied by the department did not show lack of due care and caution on the part of the petitioner. He took immediate action as soon as he came to know about the same. It was also found by the Inquiry Officer that there was bonafide intention on the part of the petitioner as by complying with the instructions of the head office he constituting a team, directing it to complete the entire record and carry out the verification of articles stored at P.R. Centre, Tohana in the presence of Sh. B.D. Goel, Inspector, P.R. Centre, Tohana.

(18) The physical verification was done by the said team in the presence of Sh. B.D. Goel, DFSO at PR Centre, Tohana. It was also recorded that the petitioner on the direction of the Director, immediately lodged and FIR No.233, dated 16.08.1989. The Inquiry Officer on critical analysis of the matter, came to the conclusion that there was no lack of due care and caution on the part of the petitioner, discharging his supervisory duties. The sincere efforts were made by him. His bonafide intention is also shown. He was charge-sheeted after 6/7 years of coming into light of the shortage. Therefore, it was held that the charges could not be proved.

(19) I am of the view that once it is held by the Inquiry Officer that there is no lack of supervision, therefore, merely on the basis of some rules that the supervisory officer is also responsible, the petitioner cannot be straightway held guilty, unless it is found that there was lack of supervision on the part of the petitioner. The department remained silent for nearly six years after getting the explanation of the petitioner to issue him charge- sheets. The inquiries were completed in the year 2002 and the dissent notes were recorded five years later in the year 2007 and the punishment orders were passed in the year 2008. If there is shortage and loss, there is no reason why the matter was kept pending for six years before issuing the charge-sheets.

(20) Moreover, in the inquiry reports, it has been found that there is no lack of supervision on the part of the petitioner. The mischief was done by Sh. B.D. Goel, the then Inspector, P.R. Centre, Tohana, and that there was bonafide on the part of the petitioner. It was

the duty of the Accounts Branch to check the bills and after verification, put up the same before the petitioner, who signed it. There is loss caused to the department by one B.D. Goel and other employees of P.R. Centre, Tohana. The petitioner cannot be made vicariously liable merely on the ground that he was posted as District Food and Supplies Controller, Hisar and the P.R. Centre Tohan fell in the said District.

(21) In view of the categorical findings of the Inquiry Officer, I am of the view that the said punishment orders are not justified in the given circumstances and the department without any sufficient reasons held the petitioner guilty for causing loss to the department, which was caused by one B.D. Goel, the then Inspector-cum-Incharge, P.R. Centre, Tohana.

(22) The petitioner has retired from service on 30.09.1990 and in this way, the petitioner retired from service during the course of inquiries. The inquiry reports were submitted after the retirement of the petitioner. The department remained silent for five years after submission of the inquiry reports.

(23) In this way, I find that there was no legal and just ground to hold the petitioner guilty. The Inquiry Officer found him innocent and the dissent notes on the basis of memo, could not be justified in holding the petitioner guilty for lack in discharge of the supervisory duties. It being so, the impugned charge-sheet dated 17.10.1995 (Annexure P-3), charge-sheet dated 11.12.1996 (Annexure P-4), show cause notices dated 09.03.2007 and 09.03.2007 (Annexures P-11 and P-12) and recovery orders dated 07.02.2008 and 05/29.03.2008 (Annexures P-15 and P-16) are hereby quashed. The respondents are, accordingly, directed to release the gratuity, commuted pension and the amount recovered from the petitioner along with interest @ 9% per annum.

(24) As such, the present petition is allowed.

P.S. Bajwa