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F.C.I. AND ORS.

v

SONE LAL

NOVEMBER 14, 2005

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[RUMA PAL, DR. AR. LAKSHMANAN AND DALVEER BHANDARI, JJ.]

Service Law:

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Food Corporation of India (Staff) Regulations 1971; Regulations 54, 56, 57, 58 and 59:

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Disciplinary proceedings against an employee—Imposing of major penalty of compulsory retirement by Senior/Regional Manager—Challenged on the ground of incompetency of the authority—Allowed by Single Judge and affirmed by Division Bench of the High Court—On appeal, Held: Issuance of promotion order by the Zonal Manager could not lead to the inference that he was the appointing authority—The final authority making the promotion of the employee is not the Zonal Manager but Senior Regional Manager/Regional Manager, and thus they are competent authority to impose any penalty, major or minor—High Court erred in setting aside the order of compulsory retirement of the employee on the ground of incompetency of the authority—Neither show cause notice was issued nor enquiry report was furnished to the employee before imposing on him major penalty of compulsory retirement, the issue was not examined by the High Court—Hence matter remitted to High Court for consideration as to whether such act of omission on the part of the employer amounting to violation of principle of natural justice—Directions issued—Administrative Law.

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Appellant-employer initiated disciplinary proceedings against the respondent-employee and penalty of compulsory retirement was imposed on him in terms of Regulation 56 of the Food Corporation of India (Staff) Regulations, 1971. The respondent challenged the order of compulsory retirement on the ground that it was issued by an authority lower in rank than the appointing authority. Single Judge of the High Court allowed the writ petition by setting aside the order on the ground of incompetency of the issuing authority. Appeal filed by the employer was dismissed by the Division Bench of the High Court. Hence the present appeals.

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Appellant contended that the respondent had been promoted as Technical Assistant Grade-I by an authority equal in rank of Deputy Zonal Manager and that mere mention of the designation of Zonal Manager (North) in the order of promotion could not and cannot lead to an inference that the respondent had been promoted by that officer; that promotion order had been issued on the recommendations of the Committee headed by Deputy Zonal Manager without obtaining of any approval from appellant No.2 (Zonal Manager); and that since appellant No.3 is competent to make appointment/promotion to the post of Technical Assistant Grade-I, he had jurisdiction to impose the penalty of compulsory retirement on the respondent.

Respondent submitted that the Division Bench of the High Court reached its conclusion to the effect that the appointment of the respondent was made by the Zonal Manager after going through the relevant files and, therefore, the conclusion is in accordance with the letters/notings contained in the file and, therefore, no interference with the judgment of the Division Bench is called for; that the explanation to Regulation 56 clearly provide that in a case where the authority which appointed the employee is an authority higher than the authority empowered to make appointments to the grade/post under the Regulation, the power under Regulation 54 to impose penalty as specified in Clauses (v) to (ix) of the Regulations will be exercised by such higher authority; that the action taken by appellant No.3 was vitiated due to violation of rules of natural justice inasmuch as the respondent had not been supplied copy of the enquiry report and no notice was given to him to show cause against the proposed punishment; and that the Senior Regional Manager, though an authority empowered to make an appointment, could not have passed the order imposing penalty of compulsory retirement in the present case inasmuch as the order of appointment/promotion was made by the Zonal Manager.

Disposing of the appeals, the Court

HELD: 1.1. The Division Bench of the High court totally overlooked and failed to consider the case of the appellant that the file of the respondent-employee had been put up before the Zonal Manager only for the purpose of retention of Technical Assistant Grade-I selectees within the State of Punjab, in promoted capacity due to non-existing vacancies in the region and not for approval of promotion of any other officials. This ground has been specifically and pointedly taken in the special leave petition. The inference drawn by the Division Bench of the High Court is, therefore, not correct and untenable.

[245-D-E]

A 1.2. The mere mention of the designation of the Zonal Manager (North) in the office order of promotion could not lead to the inference that the respondent had been promoted by that officer. Both the Single Judge and the Division Bench of the High Court erred in not appreciating that the promotion order had been issued on the recommendations of the Zonal Promotion Committee headed by Deputy Zonal Manager without obtaining and without any necessity of obtaining approval from appellant No.2. The Zonal Promotion Committee is the final authority for making promotions within category III and Zonal Manager has nothing to do with regard to the promotions made by the Committee. [246-D, E, F]

C 1.3. The Senior Regional Manager/Regional Manager/Zonal Manager are each competent to impose any of the penalties i.e. minor as well as major penalties. The Senior Regional Manager is not only the appointing authority for the post held by the respondent but also he is competent to act as disciplinary authority for the purpose of Regulations 56, 57, 58 and 59 of the Regulations and impose major penalties. As per Regulation 56 and Appendix 2 of the Regulations the appointing authority of category (III) post is Senior Regional Manager/Regional Manager and that Zonal Manager is not the appointing authority. This apart the Respondent was not promoted by the Zonal Manager (North) but by Zonal Promotion Committee though promotion orders were issued from the Zonal office only because seniority of Group/category III is maintained on Zonal basis in respect of all the regions under North Zone and Deputy Zonal Manager posts the promotees with the zone and that Senior Regional Manager who is equal in rank to the Deputy Zonal Manager had jurisdiction to initiate the proceedings and impose penalty.

[245-G, H; 246-A, B]

F 2. No contention in regard to the violation of principles of natural justice was raised or argued before the Single Judge of the High Court. However, before the Division Bench, two contentions were raised - one with regard to the jurisdiction of appellant No.3 to initiate disciplinary proceedings and to impose punishment of compulsory retirement and another that the action taken by appellant No.3 was vitiated due to violation of principles of natural justice.

G Though two contentions were raised, the Division Bench of the High Court has allowed the writ petition on another ground without going into the question of principles of natural justice and the finding in regard to the competence of the Senior Regional Manager in initiating departmental proceedings and imposing punishment is confirmed. The matter is, therefore, remitted to the

H Division Bench of the High Court for consideration of the second issue of

violation of principles of natural justice. [247-D, E, F; 248-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6808 of 2005.

From the Judgment and Order dated 19.12.2003 of the Punjab and Haryana High Court in L.P.A. No. 938 of 2002.

WITH

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C.A. No. 6809 of 2005.

A. Sharan and Additional Solicitor General Ms. Indra Sawhney for the Appellants.

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Raju Ramachandran, S. Goel, C.M. Chopra, R.K. Joshi, P.N. Puri, S.P. Sharma, A. Bhardwaj, K.P. Sharma, A. Atrey, S. Singh, D.K. Thakur, S. Prem Chander, N. Thakur, R.K. Singh and Debasis Misra for the Respondents.

The Judgment of the Court was delivered by

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DR. AR. LAKSHMANAN, J. Leave granted.

Civil Appeal No. 6808 /2005 @ S.L.P. (Civil) No. 10452/2004 is directed against the judgment in L.P.A. No. 938/2002 dated 19.12.2003 passed by the Division Bench of the Punjab & Haryana Court confirming the judgment passed by learned single Judge of the said Court in writ petition No. 2603 of 1988 and Civil Appeal No. 6809/2005 @ S.L.P. (Civil) No. 18505/2004 is directed against the final judgment dated 06.05.2004 passed by the High Court of Punjab & Haryana in Civil writ petition No. 18432 of 2002 whereby the Division Bench disposed of the writ petition in terms of writ petition No. 2603 of 1998 as confirmed by the Division Bench judgment dated 19.12.2003 in L.P.A. No. 938 of 2002.

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Certain disciplinary proceedings were initiated against Sone Lal, the respondent in S.L.P. (Civil) No. 10452/2004 and punishment of compulsory retirement was imposed by the Sr. Regional Manager. The respondent - Sone Lal had challenged the order of compulsory retirement passed by the Sr. Regional Manager of the Food Corporation of India whereby the penalty of compulsory retirement from service had been imposed under Regulation 56 of the Food Corporation of India (Staff) Regulations, 1971 (hereinafter referred to as "the Regulations"), while the respondent was working as Technical Assistant Grade-I. The respondent challenged the said order on the ground

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A that the order of compulsory retirement had been passed by an authority lower in rank than the appointing authority i.e. by the Senior Regional Manager whereas the order could only be passed by the Zonal Manager as he claimed that he had been promoted as Technical Assistant Grade-I by the Zonal Manager.

B The learned single Judge, by judgment dated 12.04.2002, allowed the writ petition and set aside the order of compulsory retirement by holding that appellant No.3 was not competent to impose the penalty of compulsory retirement on the respondent.

C Appeal by the Corporation before a Division Bench of the High Court was also dismissed by holding that the respondent had been promoted as Technical Assistant Grade-I by appellant No.2 (Zonal Manager) and appellant No.3 (Senior Regional Manager) was lower in rank than appellant No.2 and was not competent to impose major penalty of compulsory retirement on the respondent. Aggrieved by the impugned judgment passed by the Division

D Bench, the appellant filed the above appeal by way of Special Leave Petition in this Court.

As already stated Civil Appeal No.6809/2005 @ S.L.P. (c) No. 18505 / 2004 was filed by the Food Corporation of India against writ petition No. 18432/2002 which was also disposed of by the Division Bench following the judgment passed by another Division Bench in L.P.A. No. 938/2002. Similar contentions as in the other case were also taken in this civil appeal.

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We heard Mr. A. Sharan, learned Addl. Solicitor General and Ms. Indra Sawhney learned counsel for the appellants and Mr. Raju Ramachandran, learned senior counsel, Mr.S.P. Sharma and Mr. D.K. Thakur and other counsel

F for the respective respondents.

Learned Addl. Solicitor General - Mr. Sharan submitted that the respondent Sone Lal had been promoted as Technical Assistant Grade-I by an authority equal in rank i.e. Deputy Zonal Manager and that mere mention of the designation of Zonal Manager (North) in the order of promotion could not and cannot lead to an inference that the respondent had been promoted by that officer. The order dated 28/29.11.1979 had been issued on the recommendations of the Committee headed by Deputy Zonal Manager without obtaining of any approval from appellant No.2. As per Regulation 56 Appendix 2 of the Regulations, the appellant No.3 is competent to make appointment/

G promotion to the post of Technical Assistant Grade-I (which is a class-III

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post) and, therefore, appellant No.3 had jurisdiction to impose the penalty of compulsory retirement on the respondent. He would further submit that the Division Bench while accepting that the Senior Regional Manager, appellant No.3 was appointing authority for the post of Technical Assistant Grade-I which was a group/category III post and could impose any penalty including major penalty erred in holding that in the present case the appointing authority which as per explanation appearing below proviso to Regulation 56 is the authority competent to appoint or a higher authority which actually appointed the official concerned was the Zonal Manager (Higher authority) and hence the major penalty of compulsory retirement could not have been imposed by the Senior Regional Manager. It is further submitted that as per Regulation 56 and Appendix 2 of the Regulations, the appointing authority of category - III post is Senior Regional Manager/Regional Manager and the Zonal Manager is not the appointing authority. Therefore, the proceedings of the promotion committee were not required to be approved nor were approved by the Zonal Manager. There is no regulation which provides that the proceedings/promotions made by the Zonal Promotion Committee ought to be approved by any higher authority.

Per contra, Mr. Raju Ramachandran, learned senior counsel appearing for the respondent submitted that the learned Division Bench reached its conclusion to the effect that the appointment of the respondent was made by the Zonal Manager (North) appellant No.2 after going through the relevant files which were produced by the appellant before the High Court and, therefore, the conclusion as reached by the learned Division Bench after going through the files is in accordance with the letters/notings contained in the file and, therefore, no interference with the judgment of the Division Bench is called for. It was pointed out that the explanation to Regulation 56 clearly brings out the authority who may exercise power of imposing penalty under the provisions of Regulation 56 and it clearly provide that in a case where the authority which appointed the employee is an authority higher than the authority empowered to make appointments to the grade/post under the Regulation than the power under Regulation 54 to impose penalty as specified in Clauses (v) to (ix) the Regulations will be exercised by such higher authority.

Mr. Raju Ramachandran also invited our attention to the judgments of both the Courts, annexures and other relevant documents.

Lerned counsel appearing for the respondent - Mr. Bhopal Singh in special leave petition No. 18505/2004 after reiterating the contentions raised

A earlier adopted the arguments advanced by learned senior counsel - Mr. Raju Ramachandran. Mr. Ramachandran at the time of hearing has also raised the contention that the action taken by appellant No.3 was vitiated due to violation of rules of natural justice inasmuch as the respondent had not been supplied copy of the enquiry report and no notice was given to him to show cause against the proposed punishment.

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In the above factual background, the following questions of law need to be decided by this Court:-

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- (a) Whether the Senior Regional Manager, Food Corporation of India, Regional Office, Punjab, was/is competent to impose the penalty of compulsory retirement on the respondent under Regulation 56 of the Food Corporation of India (Staff) Regulations, 1971?
- (b) Whether the action taken by appellant No.3 was vitiated due to violation of the principles of natural justice?

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Question No.1

We shall now advert to the first submission in regard to the competence of the Senior Regional Manager to impose the penalty of compulsory retirement on the respondent under Regulation 56 of the FCI (Staff) Regulations, 1971. Regulation 56 of the Regulations reads as under:

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“The Board or the authority specified in Appendix-2 in this behalf or any other authority (higher than the authority specified in Appendix-2) empowered in this behalf by a general or special order of the Board, may impose any of the penalties specified in Regulation 54 on any employee.

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Provided that the penalties of reduction in rank, compulsory retirement, removal from service or dismissal from service specified in clauses (v) to (ix) of Regulation 54 shall not be imposed on any employee by an authority lower than the appointing authority.

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Explanation: Appointing Authority in relation to an employee for the purpose of this Regulation shall be read as under:

- (i) The authority empowered to make appointments to the post/grade which the employee for the time being holds; or
- (ii) The authority which appointed the employee to such post/grade

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as the case may be whichever authority is the higher authority; A

- (iii) The existing provisions in Appendix-2 of the Regulations shall be substituted by the statement as per Annexure hereto."

It was argued by learned counsel for the respondent that the order of compulsory retirement was passed on 27.11.1987 and, therefore, the appointing authority for the purpose of Regulation 56 is to be determined in accordance with the explanation and in view of the aforesaid explanation the Senior Regional Manager though an authority empowered to make an appointment could not have passed the order imposing penalty of compulsory retirement in the present case inasmuch as the order of appointment/promotion was made by the Zonal Manager. It was further argued that the findings of the learned single Judge and of the Division Bench are based on perusal of the records and that there is little scope for interference with the concurrent findings rendered by the learned single Judge and of the Division Bench. B C

We have carefully perused the records and the FCI Regulations. In our opinion, the Division Bench totally overlooked and failed to consider the case of the appellant herein that the file had been put up before the Zonal Manager only for the purpose of retention of Technical Assistant Grade-I selectees within Punjab, in promoted capacity due to non-existing vacancies in the Region and not for approval of promotion of any other officials. This ground has been specifically and pointedly taken in the special leave petition. We are of the opinion that the inference drawn by the Division Bench is, therefore, not correct and untenable. D E

The Division Bench of the High Court while accepting that Senior Regional Manager (appellant No.3) was the appointing authority for the post of 'Technical Assistant Grade-I' (a group/category III post) and could impose any penalty (including major penalty), erred in holding that in the present case the "appointing authority" which as per explanation appearing below proviso to Regulation 56 was the authority competent to appoint or a higher authority which (actually) appointed the official concerned was the Zonal Manager (higher authority) and hence the major penalty of compulsory retirement could not have been imposed by the Senior Regional Manager. The Senior Regional Manager/Regional Manager/Zonal Manager are each competent to impose any of the penalties i.e. minor as well as major penalties. It is evident that the Senior Regional Manager is not only the appointing authority for the post held by the respondent but also he is competent to act as disciplinary authority for the purpose of Regulations 56,57,58 and 59 of the H

A Regulations and impose major penalties. As per Regulation 56 and Appendix 2 of the Regulations the appointing authority of category (III) post is Senior Regional Manager/Regional Manager and that Zonal Manager is not the appointing authority. This apart the Respondent was not promoted by the Zonal Manager (North) but by Zonal Promotion Committee though promotion orders are issued from the Zonal office only because seniority of Group/

B category III is maintained on Zonal basis in respect of all the regions under North Zone and Deputy Zonal Manager posts the promotees with the zone and that Senior Regional Manager who is equal in rank to the Deputy Zonal Manager had jurisdiction to initiate the proceedings and impose penalty. It is submitted that the proceedings of the Zonal Promotion Committee were not

C required to be approved nor were approved by the Zonal Manager. Moreover there is no regulation that provides that the proceedings/promotions made by Zonal promotion Committee are to be approved by any higher authority. In fact the file was never put up to the Zonal Manager for approval of the promotion made by Zonal Promotion Committee.

D In our view, the mere mention of the designation of the Zonal Manager (North) in the office order of promotion could not lead to the inference that the respondent had been promoted by that officer. Both the learned single Judge and the Division Bench have also erred in not appreciating that the order dated 28/29.11.1979 had been issued on the recommendations of the

E Zonal Promotion Committee headed by Deputy Zonal Manager without obtaining and without any necessity of obtaining approval from appellant No.2. In our view, the Zonal Promotion Committee is the final authority for making promotions within category III and Zonal Manager has nothing to do with regard to the promotions made by the Committee.

F In fact, the respondents in both the appeals and 34 other officials were promoted by the Zonal Promotion Committee and such vacancies for sanctioned posts were not available in Punjab Region. It is stated in the rejoinder affidavit that their services were required to be retained in Punjab Region due to heavy rush of work and it is this matter alone of retention of excess number that was put up before the Zonal Manager and not the matter of approval of promotion

G of any of the selectees. In our opinion, the appellants have made out strong grounds for interference with the judgments passed by the learned single Judge and of the Division Bench.

H We, therefore, hold that the Senior Regional Manager, FCI is competent to impose the penalty of compulsory retirement on the respondent under

Regulation 56 of the Regulations.

Question No.2

According to Mr. Raju Ramachandran, the action taken by the appellant No.3 was vitiated due to violation of the rules of natural justice inasmuch as the respondent had not been supplied copy of the enquiry report and no notice was given to him to show cause against the proposed punishment. In this context, we perused the judgment passed by the learned single Judge and also of the Division Bench. A perusal of the learned single judge's judgment would show that the case set up by the respondent herein/writ petitioner was *mainly that* the impugned order of compulsory retirement had been passed by the authority which was not competent to do so and, therefore, the order dated 27.11.1987 annexure-P3 is illegal and without jurisdiction. After extracting the submissions, the learned single Judge considered the *sole point* for determination for disposal of the writ petition as to whether the impugned order dated 27.11.1987 has been passed by the authority which had the jurisdiction or not. No contention in regard to the violation of principles of natural justice was raised or argued before the learned single Judge.

We have also perused the judgment of the Division Bench. Before the Division Bench, two contentions were raised - one with regard to the jurisdiction of appellant No.3 to initiate disciplinary proceedings and impose punishment of compulsory retirement and - two that the action taken by the appellant No.3 was vitiated due to violation of principles of natural justice. Though two contentions were raised, the learned judges of the Division bench have considered only the jurisdiction of appellant No.3 to impose the penalty of compulsory retirement. Both the learned counsel appearing for the respective parties have also advanced arguments mainly on that contention.

At the time of hearing, copy of the writ petition filed before the High Court and the copy of the written statement filed on behalf of the FCI was placed before us. We have perused the same. It has been specifically mentioned in para 8 of the writ petition that the Senior Regional Manager has not even issued any show cause notice before inflicting such major penalty and moreover no enquiry report was supplied to the petitioner before awarding punishment thus violates principles of natural justice. In the written statement filed by FCI in para 8 it has been stated as follows:-

"No prejudice has been caused to the petitioner by non-issuance of show cause notice before inflicting the penalties. The order of

A punishment has been passed in accordance with the provisions of FCI Staff Service Regulations, 1971"

As rightly pointed out by Mr. Ramachandran, this question has not been examined by the Division Bench and the High Court has allowed the writ petition on another ground without going into the question of principles of natural justice. We have today confirmed the finding in regard to the competence of the Senior Regional Manger in initiating departmental proceedings and imposing punishment. We, therefore, remit the matter to the Division Bench for consideration of the second issue, namely, violation of principles of natural justice.

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C While disposing of the writ petition, the learned single judge directed the Corporation to comply with the directions within one week failing which the appellants herein were directed to be present in Court. Since the respondent filed contempt petition and no stay of the operation of the judgment passed by the learned single Judge was granted by the Division bench of the High Court in LPA, the respondent was reinstated in service as Technical Assistant on 23.08.2003. It was mentioned in the office order that this joining will be subject to the final outcome in LPA. On 26.08.2003, the High Court, after perusing the order of reinstatement, directed that all consequential benefits including the payment of arrears accruing to the respondent be paid on or before 28.08.2003 failing which the Regional Manger was ordered to be present on the next date of hearing. In pursuance to the directions issued by the learned single Judge on 29.08.2003, the appellant Corporation handed over two cheques Nos. 207692 and 207693 dated 27.08.2003 drawn on State Bank of India amounting to Rs.5,30,847/- along with calculations to the respondent. Thus, it is seen the compliance of the direction and payment of Rs.5,30,847

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F have been complied with in obedience to the directions of the Court order in contempt petition. However, it has been clearly stated that the joining and payment of salary etc. however will be subject to the final outcome in LPA No.938/2002.

G Since we remit this matter to the Division Bench for consideration of the second contention, the reinstatement ordered and the payments made and promotions, if any, given etc. will be subject to the final outcome of the orders that may be passed in LPA No. 938/2002 and Civil Writ petition No. 18432/2002. Both the LPA and the civil writ petitions are restored to its file and the Division Bench is requested to dispose of the only issue in regard to the violation of principles of natural justice as alleged by the respondents herein

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in both the matters.

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We, therefore, set aside the orders in LPA NO. 938/2002 dated 19.12.2003 and the order dated 06.05.2004 in Civil writ petition No. 18432/2002 and remit the matter to the Division Bench to consider the only question in regard to the violation of principles of natural justice as alleged by the respective respondents after affording opportunity to both parties.

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We request the High Court to dispose of the matter on or before 28.02.2006. Both the appeals are disposed of accordingly. No costs.

S.K.S.

Appeals disposed of.