

**OFFICE OF THE COMMISSIONER/ APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT. OF NCT OF DELHI
ROOM No. 101, 1st FLOOR, K-BLOCK, VIKAS BHAWAN, I.P. ESTATE,
NEW DELHI-110002 Ph.No. 011-23379252**

No. PS/Comm/AA/FPS Appeal/F&S/2021/ 244-247

Dated: 13/08/2021

Appeal No. 04/2021

Review Appeal No. 13/2021

In the matter of:

M/s. Sunny Store,
FPS No. 9004, Circle-35 (Najafgarh)
Delhi.
Shri Sunny Kadian

Appellant

Versus

The Assistant Commissioner (South-West)
Deptt. Of Food Supplies & Consumer Affairs
Delhi

Respondent

Date of Hearing: 04.08.2021

ORDER

The Order shall dispose of the Review Appeal dated 12.07.2021 filed by Shri Sunny Kadian, Prop. M/s. Sunny Store, FPS No. 9004, Circle -35 (Najafgarh) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against the Acceptance of Resignation Order dated 16.12.2014 passed by Assistant Commissioner (South-West) and Cancellation Order No. PS/COMM/AA/FPS Appeal/F&S/2021/129-132 dated 17.06.2021 passed by the Commissioner /Appellate Authority.

Shri Sunny Kadian, appellant alongwith Counsel Shri Yogesh Kumar, Advocate were present.

Shri Dinesh Kumar Meena, FSO (C-35) (Najafgarh) on behalf of Assistant Commissioner (South - West), Respondent was present.

The Case was called and heard at length.

The Counsel of Appellant submitted that the present appeal has been filed to withdraw resignation tendered by the Appellant due to not maintaining good health and adverse familial circumstances. The resignation was accepted by Assistant Commissioner (South West) vide order dated 16.12.2014 and all the cards attached with the FPS were linked to other nearby FPSs. He pleaded that the FPS holder is now fit (medical certificate was submitted) and her condition is

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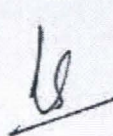
stable to run the FPS as per the norms of department and wants to withdraw resignation tendered by her. It has been informed that on 11.11.2014, the daughter of the appellant died at Race Course Metro Station and the Police registered death as case of suicide at PS Qutub Minar (Metro), New Delhi vide DD No. 19 dated 11.11.2014 U/s 174 Crpc.

The Counsel stated that after unfortunate demise of his daughter on 11.11.2014, the appellant isolated himself from the society for a long time as the appellant went into depression after losing his daughter who was college student of merely 20 years of age. His health condition deteriorated further. Appellant submitted that he is about 55 year old and the FPS is only source of income for him.

The Counsel added that two FIR cases registered against the appellant as mentioned in the impugned order dated 16.12.2014 have already been quashed by the Hon'ble High Court of Delhi vide order dated 13.07.2015 in Crl. M.C.1248/2015 and Crl. M.C.1263/2015 (Copy of the order dated 13.07.2015 of Hon'ble High Court was submitted alongwith appeal).

The Counsel pleaded that opportunity of being heard was not offered to Appellant before accepting the resignation.

He stated that the petitioner has availed legal advice and has come to know that in case of adverse medical conditions, FPS holder can be granted medical leave by the Department but at the relevant time, no provision of medical leave was communicated to her by the Department and the petitioner was misguided by the concerned officials that there is no provision for medical leave for FPS holders, the petitioner would have applied for medical leave instead of tendering resignation. The fact about medical leave available to the FPS holder was not within the knowledge of FPS holder.

 The Counsel quoted the Order No.PA/JA(South)/Appeal-14/F&S/2009/1222-1225 dated 23.09.2009 and cited the case of Shankar Lal Banarasi Dass V/s The Addl. Commissioner, F&S, Govt. of NCT of Delhi W.P. (C) 8512/2009 Order dated 27.04.2009 to bolster his claim that his case should be heard on merits rather than dismissed on ground of delay. He further requested for condonation of delay.

It is submitted by the Counsel that due to lack of knowledge, the petitioner could not brought into the knowledge of this Hon'ble Court regarding orders passed by the predecessors of Appellate Authority, allowing number of appeals in similar cases. He quoted some examples in this regard.

He further stated that there is sufficient card position in the notified area where FPS of the petitioner was functioning. He submitted that the submission regarding card position could not be raised by the petitioner at the time of previous hearing. The petitioner raised objection regarding rationalisation of cards and stated that 1200 and more cards were attached to some FPSs in the area.

The FSO (C-35) appeared on behalf of Assistant Commissioner (South-West) stated that the resignation was tendered by the FPS holder on her own will and was accepted with the free consent of FPS holder as such she was not interested to run the FPS due to self illness (Dust Allergy). After taking facts into consideration the then Assistant Commissioner (SW)/licensing authority accepted resignation and all the cards attached with the said FPS were linked to other nearby FPSs. He stated that no complaint from any beneficiary received about getting SFAs from linked FPSs. He added that at the time of resignation 323 Cards were attached with the shop and one new FPS No. 9199 was already allotted in the area.

After hearing contentions of both the parties, examining their written submissions and perusing other relevant records placed before me, it is noted that the FPS holder, on her own will, filed an application for acceptance of resignation in the month of November, 2014 which was accepted by the Assistant Commissioner (South West)/ licensing authority and all the cards attached with the said FPS were linked to other nearby FPSs vide order dated 24.11.2014. She filed the instant Appeal on 10.11.2020 almost a gap of Six years which is already time barred as per provisions contained in the Department's order dated 12.01.1981.

The Counsel stated that opportunity of being heard was not offered to petitioner before accepting the resignation by the Assistant Commissioner is not acceptable as the resignation was tendered by the FPS holder on her own will and was accepted with the free consent of FPS holder as such she was not interested to run the FPS due to not maintaining good health. The Department had not forced her in anyway to resign and moreover, as per control order 1981, three months notice in writing is required which was also relaxed by accepting resignation without giving notice by her due to illness and her will.

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The version of Counsel regarding ignorance about medical leave is untenable as it is expected from the FPS holder that he will act as per terms and conditions laid down in the Act and various orders issued by the Department from time to time. In this regard, the matter was already governed by guidelines issued by the Department vide Order No.1105 dated 15.07.1999 and amended Order No. 932-944 dated 23.09.2019 on the matter.

The Order No.WP(C) 8512/2009 titled Shankar Lal Banarasi Dass V/s The Addl. Commissioner, F&S, Govt. of NCT of Delhi cited by the Counsel has no relevance as the matter relates to certain irregularities and contravention of control order, 1981 by FPS holder wherein the petitioner contends to not receiving the order and becoming aware of it much later, whereas, in this case the FPS holder on her own will tendered the resignation and the same was accepted with free consent of FPS holder.

As regards, order passed by the predecessors is concerned, it is always circumstantial and depends upon the merits and reasons of different cases. All cases cannot be viewed at same glance.

Further, as stated by the FSO (C-35) all the cards attached with the said FPS were already linked to other nearby FPSs and no complaint from any beneficiary received about getting their

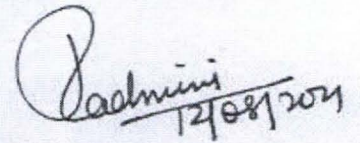
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entitled SFAs from linked FPSs. Moreover, with e-Pos and One Nation One Card implementation in Delhi, the beneficiaries can get the entitled ration from any FPS.

During the gap of six years the PDS system has undergone numerous changes including the introduction of technology in the form of e-Pos based transactions requiring the FPS holder to be I.T. friendly. In his application, he referred the reason of resignation self illness and as such is not in a condition to run the Fair Price Shop. There is therefore no certainty that such a situation will not arise again at a later date. Since no complaint from any beneficiary received about getting their entitled SFAs from linked FPSs therefore, considering the above facts, I do not find any merit in the review appeal hence, the Order dated 16.12.2014 of Assistant Commissioner (South-West) and Order dated 17.06.2021 are upheld and the review appeal is accordingly dismissed.

The appeal is disposed of.

Parties be informed accordingly.


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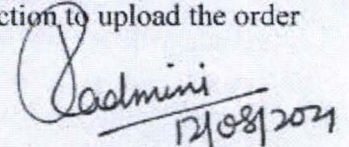
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No.PS/COMM./AA/FPS Appeal/F&S/2021/ 244-247

Dated: 13/08/2021

Copy to :-

1. The Assistant Commissioner (South -West), F&S Deptt. GNCT of Delhi.
2. Shri Sunny Kadian, Prop. M/s. Sunny Store (FPS No. - 9004), C-35 through Assistant Commissioner (South -West).
3. Shri Sunny Kadian, Prop. M/s. Sunny Store (FPS No. - 9004), R/o House No. 104 A, B-Block, Prem Nagar, Najafgarh, New Delhi - 110043.
4. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.


12/08/2021

(PADMINI SINGLA)

COMMISSIONER (F&S)/APPELLATE AUTHORITY