

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No.581 of 2020

Dr. S. James, aged about 61 years, S/o Late S. Manikchan, resident of Riha Village, P.O. and P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

... Applicant.

-Versus -

1. The Chairman & Managing Director, Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, Dew Delhi-110001.
2. The General Manager(Pers.& Estt.), Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.
3. The Executive Director(NE), Food Corporation of India, Zonal Office (NE), NE Zone, G.S. Road, Ullubari, Guwahati-781007.
4. The Deputy General Manager(Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal-795001.

--- Respondent Nos.2 and 3 are impleaded vide order dated 19-04-2021 in WP(C) No.581 of 2020.

... Respondents.

WP(C) No. 465 OF 2021

Dr. S. James, aged about 61 years, S/o Late S. Manikchan, resident of Riha Village, P.O. and P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

... Petitioner.

-Versus -

1. The Food Corporation of India, represented by the Chairman and Managing Director, Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.
2. The Executive Director(NE), Food Corporation of India, Zonal Office, NE Zone, G.S.Road, Ullubari, Guwahati-781007.
3. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal-795001.

... Respondents.

M.C. (WP(C)) No. 134 OF 2021

Ref:- W.P. (C) No. 581 of 2020

Dr. S. James, aged about 61 years, S/o Late S. Manikchan, resident of Riha Village, P.O. and P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

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-Versus -

1. The Food Corporation of India, represented by the Chairman & Managing Director, Food Corporation of

India, Headquarters, 16-20, Barakhamba Lane, New Delhi-110001.

2. The Executive Director(NE), Food Corporation of India, Zonal Office, NE Zone, G.S.Road, Ullubari, Guwahati-781007.
3. The Deputy General Manager(Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal-795001.

..... Respondents Nos.1 and 2 are impleaded vide order dated 19-04-2021 in (WP(C)) No.581 of 2020.

... Respondents.

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners	::	Dr. S. James-in-person
For the Respondents	::	Mr. D. Julius Riamei, Advocate
Date of Hearing and reserving Judgment & Order	::	24.11.2022
Date of Judgment & Order	::	10.01.2023

JUDGMENT AND ORDER
(CAV)

W.P.(C) No.581 of 2020 has been filed by the petitioner to quash the order dated 29.9.2020 issued by the first respondent and to direct the respondents to pay the gratuity amount of Rs.20 lakh to the petitioner and also pay full salary of September, 2020, including the retirement benefits.

2. W.P.(C) No.465 of 2021 has been filed by the petitioner to set aside the order dated 24.06.2021 passed by the first respondent and to direct the respondents to pay arrears of salary, retirement and pension benefits etc. as admissible consequent to the period from 10.2.2020 to 30.9.2020 together with interest.

3. As the grounds raised and the points for determination are similar, both the writ petitions were heard together and are being disposed of by this common order.

4. W.P.(C) No.581 of 2020:

The case of the petitioner is that he is a retired Deputy General Manager (General) from the service of Food Corporation of India with effect from 30.9.2020. When he retired from service on superannuation, the Chairman and Managing Director, FCI Headquarters, New Delhi had issued the impugned order dated 29.9.2020 under Regulation 60(60-A) of FCI (Staff) Regulations, 1971 regarding withholding the payment of gratuity as admissible under the Payment of Gratuity Act, 1972. By the same order, it has been stated that a sum of Rs.20 lakh to be kept on withheld from the gratuity account of the petitioner.

4.1. According to the petitioner, during his service period in the FCI, he never committed any act of misconduct for which the penalty was imposed. If there were any fault on his part regarding drawing of his monthly pay and allowances, the concerned authorities should have informed him in time to rectify the mistakes committed, if any. That was not done by the concerned authorities. Therefore, the concerned authorities are not permitted to take advantage of their own mistakes by issuing the memorandum of charge-sheet on the day of superannuation of the petitioner and the salary of the petitioner, including all service retirement benefits after his superannuation, have not been paid by the authorities of the FCI.

4.2. Resisting the writ petition, the respondents filed affidavit-in-opposition stating that the impugned memorandum dated 29.9.2020 was issued to the petitioner by FCI headquarters for violation of conduct rules on non-declaration of immovable property in his service book although they were recorded in some of the annual property returns filed by the petitioner himself. It is stated that the petitioner was placed under suspension with effect from 21.10.2019 to 30.9.2020 and the same was revoked and the period of suspension was treated as period spent on duty vide order dated 29.9.2020 and

order dated 20.11.2020. Besides the suspension, the petitioner was also imposed a penalty of reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020. The reduction of pay will have effect on his pension and terminal benefits vide order dated 13.2.2020.

4.3. It is stated that even though the suspension period was regularized, the petitioner's salaries could not be released earlier without pay fixation and giving effect to the penalty order. Pay fixation was done by the controlling office on 22.1.2021 and challenging the penalty order dated 13.2.2020, the petitioner has filed appeal petition. The petitioner also filed W.P.(C) No.371 of 2020 and his appeal was restored in the year 2021. Challenging the pay fixation order dated 22.1.2020, the petitioner has filed W.P.(C) No.106 of 2021. Despite informing the petitioner to submit the prescribed pension claim form under DCPS, he has not submitted the same till date.

4.4. It is also stated that arrears of salary for suspension period amounting to Rs.11,19,033/- after giving effect to the penalty order and pay fixation was released on 29.1.2021 and the gratuity and leave encashment payments as

per the revised pay fixation order have been paid to the petitioner on 16.2.2021.

5. W.P.(C) No.465 of 2021:

The case of the petitioner is that while the petitioner was in service, disciplinary proceedings was initiated against him and after inquiry and based on the inquiry report, the Managing Director of FCI imposed a punishment – *reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020 and the reduction to time scale of pay will have effect on his pension and terminal benefits* – vide order dated 10/13.2.2020. Aggrieved by the said order, the petitioner has preferred appeals dated 20.3.2020 and 19.1.2021 to the appellate authority and, by the order dated 24.6.2021, the appellant authority rejected the appeal petitions without considering the order dated 19.4.2021 passed in W.P.(C) Nos.106 of 2021 and 371 of 2020. Challenging the order dated 24.6.2021, the writ petition has been filed.

5.1. Resisting the writ petition, the respondents filed counter stating that the effect of reduction to lower time scale of pay by three stages with cumulative effect would be for indefinite period, hence, pay fixation to this effect was done by

the Zonal Officer, Guwahati vide office order dated 22.1.2021. The reduction in the basic pay of the petitioner was effective from 10.2.2020 as specified in the penalty order dated 13.2.2020 and it will have cumulative effect which means the reduction shall not be restored at any point of time in future unless modified by the appellate authority. By the order dated 22.1.2021, the basic pay of the petitioner was reduced from 1,09,090/- to Rs.99,820/- in the time scale of Rs.80,000 – 2,20,000/-.

5.2. It is stated that pursuant to the order passed in W.P.(C) No.371 of 2020 and 106 of 2021, the appeals preferred by the petitioner were rejected by the Chairman, FCI after affording reasonable opportunity to the petitioner. Unless the petitioner submits all requisite documents/certificates, the monthly pension could not be completed. Since the appeals of the petitioner have been disposed of, the petitioner may submit necessary papers as per the pay fixation order dated 22.1.2021.

6. Assailing the impugned order in W.P.(C) No.465 of 2021, Dr. S. James, the petitioner appearing in person submitted that the impugned order has been passed without considering the two appeals filed against the order dated

10/13.2.2020 imposing the penalty on the petitioner. He would submit that the impugned rejection order has been passed by the Chairman, FCI hurriedly without giving any meaningful and reasonable consideration, which is in complete disobedience and disregard of the order passed by this Court in W.P.(C) Nos.371 of 2020 and 106 of 2021.

7. The main argument of the petitioner is that the disciplinary authority (Managing Director of FCI) and appellate authority (Chairman of FCI) both were administered by the same person, namely Shri D.V.Prasad at the time of personal hearing of the petitioner through virtual hearing held on 3.5.2021 for the appeal dated 20.3.2020 and 19.1.2021 of the petitioner. He further submitted that the same officer issued charge sheet and also presided over in the departmental proceedings/hearing/appeal proving as personal bias and departmental bias against the petitioner, which is also nullifying the principles of natural justice.

8. The petitioner then submitted that the penalty did not clarify the particular period of completion of such penalty though the commencement or effect of the penalty mentioned with effect from 10.2.2020 as well as the order of pay fixation

dated 22.1.2021 issued by the Zonal Office (NE), Guwahati while fixing the new pay fixation of the petitioner, which is culpable lapses in exercise of powers conferred upon the Managing Director, FCI, Headquarters, New Delhi under Regulation 56 read with Regulation 54 of FCI (Staff) Regulations, 1971.

9. The petitioner urged that the penalty imposed upon the petitioner does not commensurate with the gravity of the misconduct committed by the petitioner and the same is disproportionate to the gravity of the charges levelled against the petitioner and, hence, the same is arbitrary and violation of Article 14 of the Constitution of India.

10. The petitioner further submitted that the imposition of penalty of reduction to a lower time scale of pay by three stages with cumulative effect from effect from 10.2.2020 and the reduction of time scale of pay will have effect on his pension and terminal benefits. As such, the payment of gratuity, encashment of EL, HPL has been paid at the reduced amount based on the reduced rate of basic pay at Rs.99,820/- with effect from 22.1.2021 in spite of paying the existing actual rate

of basic pay of Rs.1,09,090/- which the petitioner was drawing in the month of January, 2020.

11. The petitioner contended that the respondents have not paid the following retirement benefits till date:

- (i) Last location TA grant for retirement benefit from Imphal to petitioner's home town.
- (ii) FCI post-retirement medical scheme medical benefit @ Rs.18,000/- per year OPD for prolong diseases.
- (iii) IPD & OPD medical treatment benefits as per the FCI Hq. Circular.
- (iv) Rs.5000/- as memento on the day of the petitioner's retirement
- (v) FCI defined contribution pension scheme.
- (vi) Employees' Pension Scheme, 1995.

12. The petitioner contended that on the date of retirement, no disciplinary proceeding was pending against him. Further, he had already submitted the prescribed pension claim forms along with all enclosures well in advance in 12 months

prior to the date of retirement to the Deputy General Manager (Region), FCI, Imphal.

13. The petitioner added that the amounts already paid for EL and HPL including gratuity on 16.2.2021 were not fully paid to him, inasmuch as the wrongful calculations of such EL, HPL and gratuity was made on the basis of the penalty dated 13.2.2020 and also inappropriate order of pay fixation dated 22.1.2021. He urged that those already paid EL encashment, HPL and gratuity and other retiral benefits would be calculated through the existing basic pay of Rs.1,09,090/- of the petitioner as already drawn on 31.1.2020 in the scale of pay Rs.80,000-2,20,000. Thus, re-submission of the prescribed pension claim forms as stated by the respondents is not necessary, nor any pension has been paid to the petitioner till date.

14. Per contra, Mr. D. Julius Riamei, the learned counsel for the respondents submitted that the writ petition, being W.P.(C) No.465 of 2021, is not maintainable as the petitioner has approached this Court without exhausting the alternative remedy available under law and that the order dated 24.6.2021 in no uncertain terms stated that a statutory review

shall lie to the Board of Directors, FCI within 45 days from the date of delivery of the impugned order.

15. The learned counsel further submitted that the effect of reduction to lower time scale of pay by three stages with cumulative effect would be for indefinite period. Hence, pay fixation to this effect was done by the zonal office and reduction in basic pay was given effect from 10.2.2020 as specified in the penalty order dated 13.2.2020 and it will have cumulative effect which means the reduction shall not be restored at any point of time in future unless modified by the appellate authority.

16. The learned counsel next submitted that pursuant to the direction of this Court in W.P.(C) Nos.371 of 2020 and 106 of 2021 dated 19.4.2021, the appeals of the petitioner dated 20.3.2020 and 19.1.2021 were considered and rejected after affording reasonable opportunity to the petitioner through video conference by the Chairman, FCI, as the petitioner has failed to submit convincing facts.

17. The learned counsel then submitted that the gratuity was held up on the day of the retirement of the petitioner due to pending disciplinary proceedings and as per Regulation 60-A(iii), the disciplinary authority has empowered to withhold

payment of gratuity for ordering recovery from the gratuity of the whole or part of any pecuniary loss caused to the FCI, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence or misconduct as per the Payment of the Gratuity Act, 1972.

18. This Court considered the rival submissions and also perused the materials available on record.

19. Before advertng to the case canvassed by both parties, the following facts emerge from the pleadings:

- On 23.2.2018, the petitioner was issued a show cause notice for the alleged irregularities committed by him.
- On 11.10.2018, disciplinary proceedings were initiated against the petitioner by the disciplinary authority, wherein seven charges were framed against the petitioner.
- On 22.1.2019, an Inquiry Officer was appointed.
- On 09.8.2019, the Inquiry Officer submitted his report and on 18.12.2019,

inquiry report was served on the petitioner and he had also submitted his representation.

- On 06.1.2020, another disciplinary proceedings was initiated for the misconduct and misbehaviour in connection with the allegation of criminal case registered against him.
- On 13.2.2020, a penalty of reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.02.2020 was awarded and the reduction to time scale of pay will have effect on his pension and terminal benefits also.
- On 20.3.2020, the petitioner filed an appeal before the Chairman, FCI against the penalty imposed on 13.2.2020.
- On 10.7.2020, the petitioner filed W.P.(C) No.371 of 2020 pending statutory appeal.
- On 29.9.2020, another disciplinary proceedings was initiated against the

petitioner and charges framed for not noting down of property transaction in his service records.

- On 29.9.2020, the suspension of the petitioner was revoked in view of his superannuation.
- On 30.9.2020, the petitioner retired on superannuation.
- On 28.10.2020, the petitioner was imposed a penalty of censure on the disciplinary proceedings initiated by Memorandum dated 29.9.2020.”

20. Assailing the impugned Memorandum dated 29.9.2020, the petitioner has filed W.P.(C) No.581 of 2020. On a perusal of the impugned Memorandum, it is seen that as the petitioner failed to note down the property transaction as reflected in annual property record for the year 1997 to 2000, 2002, 2003, 2007, 2010 to 2012, 2014 and 2016 and vide another order dated 29.9.2020, the respondent authorities withheld the gratuity. Thus, in W.P.(C) No.581 of 2020, the petitioner prayed for setting aside the impugned order dated

29.9.2020 and also to direct the respondents to pay the gratuity amount of Rs.20 lakh to him and also other retirement benefits.

21. Challenging the impugned order dated 24.6.2021 passed by the appellate authority, the petitioner has filed W.P.(C) No.465 of 2021 on the following grounds:

- (i) The impugned order dated 24.6.2021 passed by the Chairman of FCI is based on misconceived facts, frivolous and not bona fide both on facts and law. The penalties prescribed under the heading major penalties under Regulation 60 and 54 of FCI (Staff) Regulations, 1971 also do not prescribe reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020 and the reduction of time scale will have effect on his pension and terminal benefits also and/or recovery either wholly or partially from the retirement benefits of a retired employee who retired on 30.9.2020 A.N., as the officer order dated 22.1.2021

was issued after three months and 21 days later than the date of retirement.

- (ii) Despite having knowledge of the order dated 19.4.2021 passed by the High Court, the Chairman/Appellate Authority of FCI has passed the impugned order dated 24.6.2021 not considering the merit of the appeals dated 20.3.2020 and 19.1.2021 filed by the petitioner against the order dated 10/13.2.2020 imposing penalty to the petitioner.
- (iii) Rule 34 of CCS (Pension) Rules, 1972 provides that the pension of an employee shall be calculated on the basis of the petitioner's last 10 months average pay and the average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last ten months of his service. Average emoluments will be calculated on the basis of pay drawn by the employee during the last 10 months prior to retirement drawing pay in IDA scale

will be taken into account for calculation of average emoluments. Therefore, reducing to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020. The reduction of time scale of pay will have effect on his pension and terminal benefits also.

- (iv) As per Rule 50(5) of CCS (Pension) Rules, the emoluments for the purpose of gratuity admissible under the rule shall be reckoned in accordance with Rule 33, provided that if the emoluments of the Government servant have been reduced during the last 10 months of his service, otherwise than as a penalty, average emoluments as referred to in Rule 34 shall be treated as emoluments. Such abnormal and major penalty under Regulation 56 read with Regulation 54 of FCI (Staff) Regulations, 1971 would not be justified when there are no proceedings under Regulation 58 or criminal proceedings, pending against the employee.

- (v) Under Regulation 72(3) of the FCI (Staff) Regulations, 1971, in an appeal against any other order specifies in Regulation 68, the Appellate Authority or the Chairman of FCI shall consider all the circumstances of the case and make orders as it may deem just and equitable.
- (vi) Under Regulation 74(4) of the FCI (Staff) Regulations, 1971, powers similar to those specified in Clause (1) may be exercised by the Chairman in respect of orders passed by authorities subordinate to them that is Managing Director, FCI. Therefore, there is no reason to submit further statutory appeal for review which shall never lie with the Board of Directors as it is clearly mentioned in Regulations 72(3) and 72(4) clarifies the Chairman/Appellate Authority has been empowered to consider any type of appeal at his level only for Category-I Officer or Deputy General Manager. The regulation clearly provides that in case of a Deputy General

Manager or Category-I Officer, the Chairman of FCI is the competent authority to pass final order of appeal preferred by the petitioner.

- (vii) Shri Vineet Parkash, Presenting Officer has not given any opportunity to the petitioner or charged official for inspection of originals of the documents listed which the Presenting Officer produced documents 1 to 20 on the basis of deposition of six witnesses of the charge sheet, which the Presenting Officer presented to the Inquiry Officer. The Presenting Officer did not raise any anticipation for proper remedial cause of defence action during the departmental proceedings held on 6.3.2019, 8.5.2019, 9.5.2019, 15.5.2019 and 16.5.2019 at FCI, Zonal Office (NE), Guwahati, who had collected the document and recorded the statements of witnesses which have been relied upon during and in the final report of the Inquiry Officer, has resulted in depriving the petitioner of his valuable right to cross-

examine the officer who had conducted the preliminary enquiry, vitiate the entire enquiry proceedings, being contrary to the provisions as contained in Rule 14(11)(i) of CCA Rules, 1965.

22. As many as 7 charges were framed against the petitioner and the Inquiry Officer found Charges-I and III as “*proved*” and the other charges “*not proved*”. The disciplinary authority, upon going through the charge-sheet and inquiry report, imposed the following penalty on 10/13.02.2020:

“reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.02.2020. The reduction to time scale of pay will have effect on his pension and terminal benefits also.”

23. Aggrieved by the imposition of penalty, the petitioner has filed appeal petitions. By the impugned order dated 24.6.2021, assailed in W.P.(C) No.465 of 2021, the appellate authority has rejected the appeal petitions. The operative portion of the appellate order reads thus:

“.... I am in agreement with the observations of Disciplinary Authority that the standard procedure has not been followed during purchase of books and it is a deemed act of self-advocacy and such a purchase is tantamount to benefitting himself only.

It is observed that the appellant failed to put any new convincing fact in the instant appeal petitions and he cannot escape from his culpability in the matter. In view of position narrated above, I am of the opinion that the appellant has rightly been held responsible in the matter. The penalty imposed upon him by the disciplinary authority is commensurate to the charges levelled against him. The contentions raised by the appellant in his appeal petitions are devoid of merit. The appeal petitions are liable to be rejected.

NOW, THEREFORE, I, ATISH CHANDRA, CHAIRMAN, FCI being the appellate authority, in exercise of the powers conferred under Regulation-72 of FCI (Staff) Regulations, 1971, hereby “reject” the appeal petitions of Dr. S. James Singh, Ex-DGM (Genl.).

In case the appellant is aggrieved by the above decision, a statutory review shall be

with the Board of Directors, FCI, within 45 days from the date of delivery of this order.”

24. The petitioner contended that the disciplinary authority and the appellate authority both were administered by the same person – Shri D.V. Prasad at the time of personal hearing of the petitioner through video-conference held on 3.5.2021 at 2.00 P.M. for the appeal petitions submitted by the petitioner as well as the same officer had also issued charge-sheet and also presided over in the departmental proceedings/hearing/appeal. The aforesaid argument made by the petitioner has not been controverted by the respondent authorities.

25. Regulation 69 of the FCI (Staff) Regulations, 1971 provides:

“An appeal against an order imposing any of the penalties made by the disciplinary authority shall lie to the appellate authority specified in this behalf in appendix 2 or to any other authority (not lower in rank than the appellate authority specified in Appendix-2) empowered in this behalf by a general or special order of the Board. In other cases,

an appeal lies to the authorities next higher to the authority passing the order.”

26. On a perusal of Appendix-2, it is clear that in respect Category-I officers in FCI, the appointing authority is “*Managing Director*”; the authority competent to relax age limit and qualifications is “*Chairman*”; the authority competent to impose penalties is “*Managing Director*” and the appellate authority is “*Chairman*”.

27. Under Regulation 72(3) of FCI (Staff) Regulations, 1971, for consideration of appeal, it is stated that “*in an appeal against any other order specifies in Regulation 68, the appellate authority or Chairman of FCI shall consider all the circumstances of the case and make orders as it may deem just and equitable*”.

28. Since the jurisdiction of the disciplinary authority – *Managing Director* - and the appellate authority – *Chairman* - were exercised by the same person, namely Shri D.V. Prasad at the time of personal hearing of the petitioner through virtual hearing of the appeal petitions held on 3.5.2021 at 2.00 P.M. and the same officer had issued the charge-sheet and also presided over the departmental proceedings and also the fact

remains that there is no contra material produced by the respondents, this Court is of the view that there is a clear bias attributable to the disciplinary authority and the appellate authority.

29. The learned counsel for the respondents submitted that the High Court is not justified in interfering with the conscious decision taken by the disciplinary authority while imposing the punishment in exercise of powers under Article 226 of the Constitution of India.

30. On the other hand, the petitioner argued that Courts will interfere with the findings in the disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary or based on extraneous consideration and bias. It is also the submission of the petitioner that judicial power vests with the Courts to interfere with the decisions of the disciplinary and appellate authorities. This Court finds some force in the submission made by the petitioner. On a threadbare analysis of the case put forth by both sides, this Court is of the view that principles of natural justice and the statutory regulations have been violated in this case.

31. The petitioner also contended that the penalty order dated 10/13.2.2020 is unfair and biased because the penalty order is actuated by mala fide and that the allegations of mala fide have two facets – one malice in law and the other being malice in fact. According to the petitioner, the impugned penalty order is based upon malice in fact, as it is an action taken by the respondent FCI.

32. While imposing penalty, the disciplinary authority, namely Shri D.V. Prasad, Managing Director of FCI, arrived at a finding that the Charging Officer is guilty of the charges to the extent discussed in the order and, accordingly, imposed penalty in exercise of powers conferred under Regulation 56 read with Regulation 54 of FCI (Staff) Regulations, 1971. The disciplinary authority also held that the reduction to time scale of pay will have effect on his pension and terminal benefits also.

33. At this juncture, it is apposite to mention that Rule 34 of CCS (Pension) Rules, 1972 provides that pension of an employee shall be calculated on the basis of the last ten months average pay. Average emoluments will be calculated on the basis of the pay drawn by the employee during the last ten months prior to retirement drawing pay and IDA will be taken

into account for calculation of the average emoluments. Therefore, as rightly argued by the petitioner, reducing to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020 and the reduction of time scale of pay will have effect on his pension and terminal benefits is not justified when there are no proceedings under Regulation 58 or criminal proceedings pending against the petitioner. Further, the contention of the respondents that reduction of lower time scale of pay by three stages with cumulative effect for indefinite period is admittedly disproportionate to the charges levelled against the petitioner. The contention of the respondents that the penalty imposed means that the reduction shall not be restored at any point of time in future is too harsh and excessive, and the same is unsustainable under law.

34. Under Regulation 72(3) of the FCI (Staff) Regulations, 1971 while considering the appeal petitions, the appellate authority ought to consider all the circumstances of the case and make orders as it may deem just and equitable. However, in the case on hand, the appellate authority has not considered the appeal petitions of the petitioner in proper perspective and erred in rejecting the appeal petitions.

35. At this stage, the learned counsel for the respondents submitted that in view of the statutory review available against to the order dated 24.6.2021, the writ petition is not maintainable. The argument of the learned counsel for the respondents cannot be countenanced for the reason that under Regulation 74(4), powers similar to those specified in Clause (1) can be exercised by the Chairman in respect of orders passed by the authorities subordinate to them i.e. Managing Director. Therefore, there is no reason to submit further statutory appeal for review. Further, in an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in the following three contingencies:

- (i) Where the writ petition seeks enforcement of the fundamental rights;
- (ii) Where there is failure of principles of natural justice; or
- (iii) Where the orders or proceedings are wholly without jurisdiction or the vires of the Act is challenged.

Prima facie, the instant case attracts applicability of the second contingency. As held supra, in the case on hand, not only violation of natural justice, but also violation of statutory regulations while imposing penalty on the petitioner by the disciplinary authority, which was erroneously affirmed by the appellate authority. Therefore, this Court is of the view that the writ petitions of the petitioner are very well maintainable.

36. It is settled law that the Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or findings be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

37. In view of the Regulations of FCI (Staff) Regulations, 1971 and the discussions held supra, this Court is of the view that the penalty imposed by the disciplinary authority is disproportionate to the misconduct proved and when the

petitioner challenged finding/order of the disciplinary authority by way of appeal petitions, the appellate authority has failed to consider the same in accordance with law. That apart, the same officer who issued the charge-sheet also presided over in the department proceedings, which proves personal bias on the petitioner. Moreover, the petitioner has been subjected to reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.02.2020 and such reduction of time scale of pay will have effect on his pension and retirement benefits of the petitioner. The said penalty imposed on the petitioner is in contravention of the retirement policy of the Food Corporation of India and, as such, such financial deduction and financial constraints would definitely cause immense hardship to the petitioner and his family members.

38. Despite having knowledge of the order dated 19.4.2021 passed by this Court in W.P.(C) Nos.106 of 2021 and 371 of 2020, the Chairman/Appellate Authority has passed the impugned order dated 24.6.2021 by not considering the merit of the appeal petitions of the petitioner preferred against the order of penalty dated 10/13.2.2020. A prima facie case has been made out by the petitioner that the Appellate Authority

without giving any meaningful and/or reasonable consideration and in total disobedience of the direction/order dated 19.4.2021 passed by this Court in the above referred writ petitions has rejected the appeal petitions. For all the reasons stated above, this Court is of the view that the orders of the disciplinary authority as well as the appellate authority, which are impugned in W.P.(C) No.425 of 2021 are not legally sustainable in the eye of law.

39. The petitioner admitted that by the office order dated 12.2.2021, the competent authority had accorded sanction of Rs.17,04,620/- towards payment of gratuity and also paid Rs.5,73,206/- towards EL encashment and Rs.3,04,331/- towards half pay leave. However, it is the submission of the petitioner that post-retirement medical scheme for self and spouse, employees pension scheme, subsistence allowance from October, 2019 to August, 2020 have not been paid to him.

40. At this stage, the petitioner urged that the gratuity, encashment of EL, HPL have been paid at the reduced amount based on the reduced rate of basic pay. Since the petitioner is entitled to draw the gratuity on the actual rate of basic pay @ Rs.1,09,090/-, the calculation made by the respondent

authorities on the reduced rate of basic pay @ Rs.99,820/- with effect from 22.1.2021 is unacceptable and, therefore, a direction may be issued on the respondents to pay the gratuity at the existing actual rate of basic pay which the petitioner was drawing in the month of January, 2020.

41. In reply, Mr. D. Julius Riamei, the learned counsel for the respondents submitted that the effect of reduction to lower time scale of pay by three stages with cumulative effect would be for indefinite period. Hence, the period of completion of penalty has not been specified in the order dated 13.2.2020. Therefore, the respondents are right in disbursing the payment of gratuity at the reduced rate of basic pay @ Rs.99,820/-.

42. As stated supra, the petitioner was imposed a penalty of reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020, which means the petitioner has to be paid at the reduced scale of pay with effect from 10.2.2020 to 30.9.2020 with three times reduction of annual increments in his pension, including all other retirement benefits with its monetary effect from 10.2.2020 till the date of his retirement. However, as could be seen from the penalty order, it did not clarify the particular period of completion of such

penalty, though commencement of the penalty order was with effect from 10.2.2020 as well as the order of pay fixation order dated 22.1.2021 while fixing the new pay fixation of the petitioner.

43. Aggrieved by the penalty order, earlier, the petitioner has filed W.P.(C) No.371 of 2020 questioning the said order and during the pendency of the said writ petition, an order dated 22.1.2021 was issued fixing the penalty etc. Being aggrieved by the same, W.P.(C) No.106 of 2021 came to be filed by the petitioner. By the common order dated 19.4.2021, this Court disposed of the writ petitions and the operative portion of the order reads thus:

“[3] When these matters are taken up for consideration, in compliance with the earlier order dated 6-4-2021, it has been submitted by Shri D. Julius Riamei, learned counsel for the FCI that the two statutory appeals preferred by the petitioner before the respondents and in particular, the Chairman and Managing Director, FCI, respondent No.2 herein can be disposed of within three months from today and that the personal appearance of the petitioner before the appellate authority may be required to which

it has been submitted by the petitioner in person that since he has been waiting for the last more than six months, two appeals can be disposed of within two months. Keeping in mind the COVID-19 pandemic prevailing in the country, three months' time as contended by the learned counsel appearing for the FCI is quite reasonable and accordingly, these two writ petitions stand disposed of with the direction that the statutory appeals dated 20-03-2020 and 19-01-2021 preferred by the petitioner shall be considered and decided by the appellate authority, the Chairman & Managing Director, FCI within a period of three months from today. In case the personal appearance of the petitioner before the appellate authority is not possible because of COVID-19 pandemic, it is open to the appellate authority to adopt any other methods like video conferencing, webinar, etc. so that the appeals can be disposed of without fail, within the time granted by this Court."

44. By the impugned order dated 24.6.2021, the first respondent rejected the appeal petitions. The petitioner challenged the impugned order dated 24.6.2021 contending that the penalties prescribed under the heading – major

penalties under Regulation 60 and 54 of FCI (Staff) Regulations also do not prescribe deduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.2.2020 and the reduction of time scale will have effect on his pension and terminal benefits also and/or recovery either wholly or partially from the retirement benefits of a retired employee who retired on 30.09.2020 A.N. as the office order was passed on 22.1.2021 after three months and 21 days later than the date of retirement i.e. 30.09.2020. This Court in the earlier paragraphs of this order held that the penalty imposed on the petitioner by the disciplinary authority and the rejection of the appeal petitions by the appellate authority are erroneous. Since the penalty imposed on the petitioner is found to be disproportionate, the pay fixation order dated 22.1.2021 is also legally not sustainable.

45. The petitioner urged only the basic pay taken by the respondent authorities for calculating the gratuity by stating that the retirement benefits like gratuity, EL encashment and HPL etc. is by fixing his salary on the existing pay of Rs.1,09,090/- and not at the reduced basic pay of Rs.99,820/-. Further, by way of filing MC (WP) No.134 of 2021, the petitioner claims release of his retirement benefits with the last existing

basic pay at the rate of Rs.1,09,090/- admissible from 01.2.2020.

46. Section 6 of the Payment of Gratuity Act, 1972 stated that – Notwithstanding anything contained in sub-section (1) –

- (a) The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction property belonging to the employee shall be forfeited to the extent of the damage or loss so caused;
- (b) The gratuity payable to an employee may be wholly or partially forfeited-
 - (i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - (ii) If the services of such employee have been terminated for any act

which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

47. Section 4 of Payment of Gratuity Act provides that (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. –

- (a) On his superannuation, or
- (b) On his retirement or resignation, or
- (c) On his date or disablement due to accident or disease.

48. Pending writ petitions, payment of gratuity, encashment of EL, HPL have been calculated on the reduced rate of basic pay by the respondent authorities themselves. In view of the finding arrived at by this Court that the penalty imposed on the petitioner is disproportionate and the appellate authority erred in rejecting the appeal petitions of the petitioner, the reduced rate of basic pay adopted by the respondent

authorities and paid certain amounts to the petitioner is unacceptable.

49. Admittedly, the basic pay of the petitioner while issuing the order dated 22.1.2021 is at Rs.1,09,090/-. As per the penalty order, the punishment is reduction to a lower scale of pay by three stages for a period of 8 months with effect from 10.2.2020 to 30.9.2020. The penalty order dated 10/13.2.2020 did not clarify the particular period of completion of such penalty though commencement of the penalty order mentions with effect from 10.2.2020 as well as the order of pay fixation order dated 22.1.2021 while fixing the new pay fixation of the petitioner, which are culpable lapses in exercise of powers conferred upon the Managing Director, FCI, Headquarters under Regulation 56 read with Regulation 54 of the FCI (Staff) Regulations. Therefore, as rightly argued by the petitioner, it is the clear instance of deliberate miscarriage of justice while issuing penalty order as well as pay fixation dated 22.1.2021.

50. As stated supra, the petitioner has been subjected to reduction to a lower time scale of pay by three stages with cumulative effect with effect from 10.02.2020 and such reduction of time scale of pay will have effect on his pension

and retirement benefits in contravention of the retirement policy of the FCI and such financial deduction and financial constraints have caused not only hardship to the petitioner but also deprived of in getting the entitled payments.

51. The petitioner claims the following outstanding dues and pension, which had remained due and payable with effect from 30.9.2020:

- (a) Last location to home town TA grant from Imphal to Riha Village, Phyangar Sub-Division, Kamjong District.
- (b) FCI post-retirement medical scheme medical benefits as admissible per year OPD for prolong diseases.
- (c) IPD & OPD medical treatment benefits as per FCI HQ Circular.
- (d) Rs.5,000/- as memento on the day of the petitioner's retirement day.
- (e) FCI-Defined Contribution Pension Scheme.
- (f) Employees' Pension Scheme, 1995.

52. The respondent authorities filed affidavits detailing the payment of retirement benefits payable to the petitioner. As could be seen from the material papers, by the office order dated 12.2.2021, the competent authority had accorded sanction of Rs.17,04,620/- towards payment of gratuit; Rs.5,73,206/- towards leave encashment of 145.5 days of EL and Rs.3,04,331/- towards HPL of 154.5 days of HPL was approved and the said sum has been paid to the petitioner vide cheque dated 16.2.2021. It is stated that the petitioner is entitled for FCI post-retirement medical schemes for self and spouse.

53. According to the petitioner, the petitioner had already submitted the prescribed pension claim forms well in advance prior to the retirement and release of pension and other retiral benefits would be calculated through the existing basic pay of Rs.1,09,090/- of the petitioner as already drawn on 31.1.2020 in the scale of pay of Rs.80000-220000. Therefore, re-submission of prescribed pension claim forms are not necessary.

54. In reply, Mr. D. Julius Riamei, the learned counsel for the respondents submitted that the petitioner was requested through various correspondences to submit the dully filled

DCPS pension forms, however, he has failed to submit the same for the reasons best known to him.

55. Payment of monthly pensions could not be completed unless the petitioner submits pension forms in prescribed forms and all the requisite documents so as to enable the department to process the pension papers. Since petitioner pleads that he is suffering a lot from financial constraints without getting pension, he is directed to submit the prescribed pension forms, if not already submitted, to the respondents as expeditiously as possible enabling them to process the pension papers.

56. For the foregoing discussions, this Court is inclined to pass the following orders:

- (i) *These writ petitions are allowed.*
- (ii) *The impugned orders assailed in W.P.(C) No.581 of 2020 and W.P.(C) No.465 of 2021 are set aside.*
- (iii) *The respondent authorities are directed to settle the eligible pending retirement benefits to the petitioner, including pension and arrears of salary, if any.*

- (iv) *The respondent authorities are directed to disburse the eligible pending retirement benefits at the last existing basic pay @ 1,09,090/- as admissible with effect from 01.01.2020 till 30.09.2020.*
- (v) *The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.*
- (vi) *There will be no order as to costs.*
- (vii) *In view of the disposal of the writ petitions, MC (WP) No.134 of 2021 in WP (C) No.581 of 2020 is closed, as no deliberate delay on the part of the respondent authorities in settling the outstanding dues payable to the petitioner.*

JUDGE

FR/NFR

Sushil