

GAHC010219892012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4682/2012

MD. SAIFUR RAJA CHOUDHURY
S/O- SAIDUR RAJA CHOUDHURY, R/O VILL.- HATKHALA, P.O.- KANAI
BAZAR, P.S.- PATHARKANDI, DIST.- KARIMGANJ, ASSAM.

VERSUS

THE FOOD CORPORATION OF INDIA and ORS.
REP. BY THE CHAIRMAN-CUM-MANAGING DIRECTOR, 16-20,
BARAKHAMBA LANE, NEW DELHI- 1.

2:THE EXECUTIVE DIRECTOR NE
FOOD CORPORATION OF INDIA
G.S. ROAD
ULUBARI
GHY- 7.

3:THE GENERAL MANAGER REGION
FOOD CORPORATION OF INDIA
G.S. ROAD
ULUBARI
GHY- 7.

4:THE AREA MANAGER
FOOD CORPORATION OF INDIA
STEAMERGHAT ROAD
SILCHAR
DIST- CACHAR
ASSAM
PIN- 788001

Advocate for the Petitioner : MR. A R TAHBILDAR

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Date of Hearing : 29.08.2023

Date of Judgment : 24.11.2023

Judgment and Order (CAV)

Heard Mr. N Dhar, learned counsel for the petitioner. Also heard Mr. P.K Roy, learned Senior Counsel and Standing Counsel, Food Corporation of India (FCI) assisted by Mr. SK Chakraborty, learned counsel for the respondents.

2] The termination of the petitioner from service as a Shed-in-Charge Food Storage Depot of the F.C.I. at Ramnagar, Silchar has been challenged in the present writ petition. His further prayer is to reinstate in service with all service benefits which he would be entitled to as per the law.

3] The petitioner was recruited into the F.C.I. in the year 1972 as a Grade- IV employee and in his service career spanning about 40 years he had served at different stations without any blame or blemish. At the relevant point in time the petitioner was posted at Food Storage Depot of the F.C.I. at Ramnagar at the

state of Silchar Assam. During his tenure as a Shed, In-charge of Food Storage Depot, the F.C.I. department conducted peripheral counting at the depot and it detected 304 bags = 144, 11, 000 quintals of wheat excess. On receipt of the physical verification report the competent authority in the F.C.I. by the Memo no. V&S21 911)/2010/9880 dated 23.11.2010 informed the petitioner that the Department proposed to hold an inquiry under regulation 58 of the FCI (Staff) Regulation 1971. The said memorandum included the statement of charges, statement of imputation of misconduct of his misbehavior in support of which article of charge as well as list of documents were prepared. The petitioner was directed to submit his reply within 10 (ten) days. The following charges were framed against the petitioner:

Charge-I

A Regional Office team after peripheral counting of stocks at Shed No.4 on the declaration of stocks as on 23.07.2010 (OB) submitted by the Shed-in-Charge detected 320 Bags Wheat excess only in the stack. The counting sheet was duly signed by Md. Saifur Raja Choudhury, AG-II(D) the Shed In-charge, Shed No.4

Charge No.II

A District Office Committee from FCI, District Office, Silchar supervised 100% delivery operation/weightment of wheat stocks during the month of September, 2010 detected excess of 304 Bags = 14411000 Qtls wheat (Indg) in Shed-4. The value of which comes to Rs.3,16,610/- @ Rs.2,197/- per Quintal.

The petitioner submitted his reply denying all the charges.

In his reply the petitioner stated that the spilled grains of wheat was collected from different chamber's stock but the same had not been duly reflected in stock ledger due to oversight for which the excess bags were noted

at the time of special peripheral verification. He further stated that another employee namely one Smabhu Dhar AG-II(D) was given responsibility to look after the stocks of the Chamber No.I on 12.07.2010 and upon enquiries with regard to the stock of Chamber-I the petitioner was informed that they are all in order and because of which the petitioner did not count the stock. Pursuant thereto the inquiry was conducted and the inquiry officer held that the charges framed against the petitioner had been found to be proved. The said inquiry report was served on the petitioner and he was given opportunity to submit his representation to the inquiry report. The petitioner submitted his representation on 22.07.2011. The petitioner represented that the findings of the inquiry officer were not based on any evidence and any punishment on the basis of such findings will be a travesty of justice. He submits that the report is pre conceived and most mechanical and without any application of mind as revealed from the report itself. The disciplinary authority thereafter vide impugned order dated 22.12.2011 issued the impugned order removing the petitioner from the service of the corporation with immediate effect and further a direction for forfeiture of his gratuity. The suspension period of the petitioner with effect from 06.08.2010 to 29.11.2010 was also treated as dies non to meet the ends of justice. The petitioner thereafter preferred another representation dated 16.01.2012 before the Executive Director, F.C.I. Another representation dated 12.04.2012 was also

preferred. However, no reply was received by the petitioner in response to the representations.

5] Learned counsel for the petitioner submits that the conclusion arrived at by the inquiry officer is not based on any evidence. A bare perusal of the inquiry report reveals that the witnesses did not support the case projected by the prosecution. Learned counsel for the petitioner submits that although strict rules of evidence are not required to be followed during the departmental inquiry, however, every charge will have to be proved on the basis of the materials which are presented by the prosecution during the course of the inquiry. It is submitted that under such circumstances, the conclusions arrived at by the inquiry officer are not at all based on any evidence. The conclusions arrived at by the inquiry officer are based on conjectures and surmises. It is submitted that since the inquiry was not based on any evidence, the consequential order of removal from service passed by the disciplinary authority is therefore non est in the eye of law and therefore, required to be interfered with and set aside. Accordingly, the petitioner may be reinstated in service with all service benefits. Learned counsel for the petitioner alternatively submits that the punishment imposed on the petitioner is not prescribed under the regulations and therefore, the disciplinary authority could not have imposed any punishment which is not prescribed under the regulation.

6] Mr. P.K. Roy, learned Senior Counsel for the respondents opposes the contention raised by the petitioner. He refers to the counter affidavit filed by the department. The learned counsel for the respondents submits that the petitioner being the shed-in-charge he was responsible for proper records to be maintained in respect of the foods grains available in that particular shed. Learned counsel for the respondents submits that these foods grains were for distribution to the persons who belonged below poverty line and s per such directions and orders were issued by the Central Government. The very fact that proper records of the foods grains in that particular shed had not been maintained. This rooms for leverage the food grains in which the petitioner was shed-in-charge. Learned Standing Counsel for the respondents submits that in his reply to the show-cause, he had admitted that the records were not maintained due to oversight. Under such circumstances, where the petitioner himself admitted that the records were not maintained properly, no further evidences were ordinarily necessary, nevertheless, the department proceeded with the inquiry and on the basis of the inquiry conducted, the conclusion had been arrived at by the inquiry officer. On the basis of the finding of the inquiry officer, the disciplinary authority imposed the punishment as prescribed under the Rules. He submits that there is no infirmity in the inquiry conducted or in the consequential order whereby the petitioner has been removed from service

and there is no merit in the writ petition and the same should be dismissed.

7] Rival submissions of the counsels for the parties have been heard. Pleadings on records have been carefully perused.

8] The F.C.I. in exercise of powers conferred under Section 45 of the Foods Corporation Act, 1964 incorporate with the F.C.I. (staff) Regulation, 1971. These Regulations were incorporated to govern the service conditions of the employees under the F.C.I. The charges leveled against the petitioner are for violation of Regulation 31(a)(b), 32 (A), (1) (5) (9) (30) of the FCI (staff) Regulation, 1971. Under regulation 32A Misconduct is prescribed. For the purposes of the present proceedings Section 32A is relevant. The relevant clauses under regulation 32 A is extracted below:

32A Misconduct.

Without prejudice to the generality of the term Misconduct” the following acts of omission and commission shall be treated as misconduct:

- (1) Theft, fraud or dishonesty in connection with the business or property of the Corporation or of the property of another person within the premises of the Corporation.
- (2) Taking or giving bribes or any illegal gratification.
- (3) Possession of pecuniary resources or property disproportionate to the known sources of income by the employee not satisfactorily accounted for.
- (4) Furnishing false information regarding name, age, father’s name, qualifications, ability or previous service or any other matter germane to the employment at the time of employment or during the course of the employment.
- (5) Acting in a manner prejudicial to the interest of the Corporation.
- (6) Willful insubordination or disobedience whether or not in combination with others, of any lawful and reasonable order of his superior.
- (7) Absence without leave or over-stay the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.
- (8) Habitual late or irregular attendance.
- (9) Neglect of work or negligence in the performance of duty including malingering or slowing-down of the work.
- (10) Damage to any property of the Corporation, either willfully or due to negligence.

- (11) Interference or tampering with any safety-devices installed in or about the premises of the Corporation.
- (12) Drunkenness or riotuous or disorderly or indecent behavior in the premises of the Corporation or outside where such indecent behaviour is related to or connected with the employment.
- (13) Gambling within the premises of the office or other place of work, where it is prohibited.
- (14) Smoking within the premises of the Office or other place of work, where it is prohibited.
- (15) Collection, without the permission of the competent authority, of any money (within the premises of the Corporation) except as sanctioned by any law of the land for the time being in force or rules of the Corporation
- (16) Sleeping while on duty.
- (17) Commission of any act which amounts to a criminal offence involving moral Turpitude.
- (18) Absence from the employee's appointed place of work without permission or sufficient cause.
- (19) Commission of any act subversive of discipline or of good behaviour.
- (20) Willful absence from duty after expiry of joining time on transfer from one post to another
- (21) Slackness/carelessness in the performance of duty of Watchman/Head Watchman which may result in theft, pilferage of Corporation's property.
- (22) Willful and prolonged absence from duty without reasonable cause.
- (23) Neglect of his/her spouse and family in a manner unbecoming of an employee of the Corporation.
- (24) Failure to maintain a responsible and decent standard of conduct in private life, thereby bringing discredit to the Corporation.
- (25) Failure to observe proper decorum during lunch hour, playing games/cards beyond the prescribed lunch hour and playing cards/gambling in the open spaces or building in the immediate vicinity of the office building.
- (26) Becoming a member of and participation in Indo-foreign cultural organization, without prior permission of the competent authority.
- (27) Any unruly or irresponsible behavior before a Department Enquiry Officer when appearing as a witness or as a delinquent or a before Assistant or a Presenting Officer or in any other capacity.
- (28) Leakage of classified information either through Press or otherwise to an individual not entitled to receive the same, in writing or verbally.
- (29). Having obtained an advance from the Corporation for a specific purpose such as House Building, purchase of a conveyance, leave travel or for any other declared purpose, not utilizing the same for the intended purpose within the period specified and diverting the money for any other purpose
- (30) Any act unbecoming of an employee of the Corporation.
- (31) Assaulting or abusing or insulting any of the officers or employees of the Corporation within the premises of office or other place of work or outside.
- (32) Interference in the work of other employees.
- (33) Approaching higher authorities direct or through other persons for promotion or any other personal favour or gain except through proper channel.
- (34) Writing of anonymous or pseudonymous letter criticizing the Management or any other officer/ employee of the Corporation.
- (35) Spreading false rumours or giving false information or making defamatory statements

(written or oral) which tend to bring the Management or its officers into disrepute.

(36) Carrying on money-lending, or any other private business.

(37) Willful failure to appear before Medical Board, when called upon to do so.

(38) Abetment of or attempt at abetment of any act which amounts to misconduct.

9] Section of 54 of the Regulation prescribed minor and major penalties. Under

Section 5 of the Clause 54(viii) of the Regulations (Major Penalties) specifies that *removal from service which shall not be disqualification for future employment under the Corporation*. The inquiry report reveals that as many as 8 witnesses were examined by the prosecution. An Issue Register with effect from 05.05.2010 to 09.08.2010, Receipt Register with effect 01.09.2010 and Gunny Register with effect from April, 2008 along with Master Ledger with effect from 01.06.2010 and Stack Ledger (Wheat) with effect from April, 2009, Weigh Bridge Receipt Register with effect from January, 2009 and Weight Bridge Issue Register with effect from April, 2010 were examined during the inquiry process. The report of the District Committee was also examined by the inquiry officer during the inquiry process. From the inquiry report, it is seen that the inquiry officer had found upon examination of the various registers that the charge of excess bags being found in the Shed in which the petitioner was a Shed, In-charge is supported from the said registers. Some of the witnesses were examined, namely, Nirmal kr. Hazarika, Manager, Sri Anil Ch. Das, AG1(D) F.C.I. R.O., Guwahati, Sri Subhash Ch. Das, AG1(D) F.C.I. R.O. Guwahati and Sri Rabindra Kr. Das, AG1(D) F.C.I. R.O, Guwahati supported the case of the

prosecution that 320 bags of wheat were found to be excess during the peripheral verification. On such examination of the materials available, the inquiry officer concluded that the charges leveled against the petitioner have been found to be proved.

10] What is noticed from the charges against the petitioner as well as from the inquiry conducted that the allegation against the petitioner is the availability of excess bags of wheat as compared to wheat reflected in the register maintained by the petitioner as a Shed, In-charge. The fact that there were excess bags of wheat is also not denied by the petitioner as is evident from the reply of the petitioner submitted in response to the show-cause notice. However, there is no specific allegation that this failure on the part of the petitioner to properly record the bags of wheat as required under the rules and procedure of the FCI or whether it results in any financial losses to the FCI.

11] A careful perusal of the Section 5 of the 54 (viii) of the Regulation specifies removal from service as one of the penalties. However, there is no penalty prescribed under the said regulation for withholding gratuity as has been done in the present case. In the inquiry proceedings, no reference has been found in respect of the petitioner's conduct or record of past

performances, referred to by the officer. There is no finding by the Inquiry officer or the Disciplinary Authority that the petitioner is a habitual offender and has been found to have indulged in mal practices or misconduct in the course of his service in the past. No additional materials have been placed before this Court by the respondents that such failure to correctly record stock available in the Shed in a food grains depot, will invite major penalties. The charges leveled against the petitioner are found to have been proved for commission of misconduct under Regulation 32A (1) (5) (9) and (30). Under regulation 32A(1) theft, fraud or dishonesty in connection with the business or property of the Corporation or the property of another person within the premises of the Corporation will be construed to be misconduct. Under 32A(5) acting in a manner prejudicial to the interests of the Corporation is construed to be a misconduct. Under 32A (9) neglect of work or negligence in performance of duty including malingering or slowing down of work is a misconduct. Under 32A(30) any act unbecoming the employee of the corporation is a misconduct. There are only two charges which are construed to be misconduct brought against the petitioner. Under charge no.1 in the declaration of stocks as on 23.07.2010 submitted by the Shed, In-charge, namely, the petitioner, 320 bags of wheat were found to be excess in one stack. The counting sheet was found to be duly signed by the petitioner as the Shed In-charge of the Shed no .4. In

so far as, the charge no.2 is concerned, the excess bags of 304 wheat were detected to be excess which was weighed 144,11,000 quintals in Shed no.4. The value of these wheat were quantified as Rs.3,16,160/- @ Rs.2,197/- per quintal and it reveals that the petitioner did not take proper care during receipt and issuance of restock in the Shed due to which excess 304 bags of wheat weighing 144,11,000 quintals were remained in the Shed. No charge is brought against the petitioner as is evident from the show-cause that because of the excess bags of wheat, which was not found to be recorded properly in the concerned register, financial loss was caused to the FCI. No such loss was quantified or alleged to have been caused by the petitioner.

12] Under such circumstances, there is no finding in the inquiry which specifically points out as misconduct prescribes under 32A (1) (5) (9) (30). There was no finding by the inquiry officer that there was any theft caused by the petitioner. There was no finding by the inquiry officer that the petitioner had acted in a manner prejudicial to the interest of the Corporation or negligency towards his performance thereby slowing down the work of the F.C.I. There is also no finding by the inquiry officer that under the Regulation the failure of the petitioner to correctly maintained the books of records will amount to an act which will be construed to removal of the petitioner from

service. That apart, it is also seen that the punishments prescribed under the Regulation are specifically prescribed in Regulation 54. While under regulation 54 (viii) removal from service is specifically mentioned, there is no mention or reference of forfeiture of gratuity. In *Vijay Singh vs. State of Uttar Pradesh (UP)* reported (2012) 5 SCC 242, the Apex Court held that the punishment is not prescribed under the rules cannot be awarded. The Apex Court held that the authorities will have to strictly adhere the statutory rules while imposing the punishments. The Apex Court upon examination of the facts and circumstances of the case also held that misconduct cannot be left to the vagaries of the employer to say that some act or omission or commission not enumerated into the relevant Rules will amount to misconduct.

13] In the present case from the materials available before this Court does not reveal as to how the allegation of misconduct can be sustained against the petitioner. However, the fact remains that the petitioner had himself admitted that non recording of the particulars in the respective ledger's were due to oversight. Whether such admission will amount to misconduct which will entail the punishment of removal from service ought to have been appropriately decided by the disciplinary authority.

14] Accordingly, this Court is of the considered view that in the

absence of any material before this Court, it cannot be accepted that an omission on the part of the petitioner can have such a serious effect so as to entail a punishment like dismissal from service. There is no dispute that ordinarily it is the Disciplinary Authority or the Administrative Authority who has to decide the quantum of punishment in case of misconduct and where misconduct has been held to be proved, the punishment imposed by the Disciplinary authority should act as a warning to other employees rather than as avenges against the petitioner. This Court is of the view that in the facts and circumstances of the case, the punishment imposed on the petitioner appears to be harsh and disproportionate to the charges leveled against him. During the course of hearing it was also submitted at the Bar that other similarly situated persons and against whom proceedings had also been initiated were imposed lesser punishment than the petitioner. If that be so, then the department is required to reexamine this issue and pass appropriate order. Considering the fact that this Court has arrived at a finding that the punishment imposed is disproportionate to the allegation made against the petitioner, the impugned order of termination dated 22.12.2011 is hereby interfered with and set aside. The matter is remanded back to the disciplinary authority to redecide the issue and impose proportionate a lesser punishment.

Since the petitioner would have already superannuated by now, the authority is directed to redecide on the issue of imposition of proportionate lesser punishment within the outer limit of 60 (sixty) days from the date of receipt of a certified copy of this order. In view of the finding of the Court that no pecuniary loss has been caused to the F.C.I. by the petitioner, his gratuity amount shall not be withheld and shall be released forthwith.

15] With the above directions, the writ petition stands disposed of. No order as to cost.

Interim order, if any, stands vacated. I.A., pending if any, also stands disposed of.

JUDGE

Comparing Assistant