

GAHC010241342012



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

Case No. : WP(C)/4423/2012

JAYANTA MOHAN SINGHA
S/O MERACHAW SINGHA, R/O RAMNAGAR TUKU, RAMNAGAR, SILCHAR,
DIST- CACHAR, ASSAM, PIN-788003

VERSUS

THE FOOD CORPORATION OF INDIA and ORS.
REPRESENTED 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 REGIONAL
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-78800

Advocate for the Petitioner : MS.P BARUA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

Judgment and Order (CAV)

Date : 22-05-2024

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. P.K. Roy, learned Senior Counsel assisted by Mr. S.K. Chakraborty, learned Standing Counsel for FCI.

2] The petitioner before this Court was employed as an employee of the Food Corporation of India (herein after referred to as the FCI in short) at the relevant point in time where he was holding the charge of Assistant Grade-II. The petitioner was recruited in services of the FCI in the year 1977 and had completed about 34 years of unblemished service. While he was serving as an Assistant Grade-II, the petitioner was served with a charge-sheet/memorandum by the General Manager(R), FCI, Regional Office, Guwahati vide No. V&S.21(11)/2010/9875 dated 23.10.2010, whereby the petitioner was charged with causing shortage of about 3944/4077 bags which amounted to 2021.10 quintals of food grains and also shortage of 68 numbers of Gunny bags from Shed no.2 during July, 2010 and September, 2010 respectively.

3] The petitioner in his reply denied all the allegations and charges made against him with a prayer to hear him in person. The Disciplinary Authority being dissatisfied with the replies submitted by the petitioner, proceeded to institute an enquiry against the charges made against the petitioner by appointing an Enquiry Officer and the petitioner was placed under suspension. The Enquiry Officer upon conducting the enquiry submitted the report on 30.50.2011 holding that the articles of charges against the petitioner have been held to be proved. A copy of the enquiry report was duly furnished to the petitioner. The petitioner also submitted his written reply stating that the Enquiry Officer arrived at the conclusion without proper application of mind and without assigning proper reasons which is contrary to the procedure laid down. He further stated that the charges are held to be proved without any direct oral or documentary evidence and by placing reliance only on circumstantial evidence based on the presumption. The disciplinary authority considered the findings in the enquiry report and in exercise of powers conferred under the Regulation of 56 read with Regulation 59 (4) and Regulation 54 (viii) of the Food Corporation of India (Staff) Regulations, 1971, 'Removed' the petitioner from services of the Corporation with immediate effect and with a further direction of forfeiture of his gratuity and to treat the suspension period of the petitioner with effect from 06.08.2010 to 29.11.2010 as 'dies non'.

4] Against the order of dismissal passed by the Disciplinary Authority, the petitioner preferred an appeal before the Appellate Authority, namely, the respondent no.2 praying for revoking the punishment imposed by the Disciplinary Authority, as the same was harsh and disproportionate. The appeal preferred by the petitioner was dismissed by the appellate authority. However, it is stated that the copy of the order dated 27.07.2012 passed by the appellate authority had not been served on the petitioner. Being aggrieved, the present writ petition has been filed.

5] Learned counsel appearing for the petitioner submits that the allegations brought against the petitioner are totally uncalled for as the petitioner had rendered unblemished services for about 34 years in the FCI and he had discharged his duties with full responsibilities that was bestowed upon him. Learned counsel for the petitioner submits that no charge of misappropriation was brought against the petitioner and consequently, the Enquiry Officer also did not arrive at any finding of misappropriation against the petitioner. Learned counsel further submits that during the enquiry proceedings no loss was alleged to have been caused by the petitioner. The evidence adduced by the petitioner were not given due consideration by the Enquiry Officer and consequently, the same were not properly analysed before

concluding the enquiry. It is submitted by the learned counsel for the petitioner that the petitioner was the Shed in-charge of the Shed No.2, FSD, Ramnagar under the district Offices at Silchar. But he was not the only personnel who was responsible for managing the shed as well as the maintenance of the Shed. There are many other officers working at the relevant point in time along with the petitioner who were also bestowed with the similar responsibility. It is submitted that this was a collective responsibilities of all the officers towards maintenance and supervision of the Shed. It is submitted that the Presenting Officer's brief also reflects the same wherein the Presenting Officer had recorded that the petitioner is not free from collective responsibilities of the articles of charges framed against him. Learned counsel for the petitioner submits that where the Management had held that it was a collective responsibilities, there cannot be reasons to proceed for punishment of the petitioner alone. The further submission of the learned counsel for the petitioner is that there was no allegation of misappropriation and consequently, there was no enquiry or finding by the Enquiry Officer in this regard. As such, the Disciplinary Authorities while holding the petitioner to be guilty of misappropriation went beyond the findings in the enquiry proceedings. Learned counsel for the petitioner has also referred to the FCI circulars dated 12.02.2008 and 14.02.2008 on the subject of adherence to procedural formalities in respect

of storage and transit losses and fixation of responsibilities inter alia there on. Referring to the said circulars, the learned counsel for the petitioner submits that as per the said circular no recovery in respect of storage and transit losses should be effected without theft/pilferage and malafides being proved. It is submitted by the learned counsel for the petitioner that in view of such specific decision by the higher competent authorities of the FCI and in the absence of any specific findings in the enquiry report, the decision of imposition of punishment of dismissal and recovery of loss from his gratuity by the Disciplinary Authority is totally uncalled for and completely contrary to the provisions of law. It is submitted that in that view of the matter, the conclusion of the Enquiry Officer, the decision of the disciplinary authority as well as the impugned order of dismissal dated 22.12.2011 read with the impugned order dated 27.07.2012 passed by the Executive Director (NE), Food Corporation of India Guwahati as the appellate authority be interfered with, set aside and quashed.

6] It is further submitted that the FCI (Staff) Regulations, 1971 prescribes major penalties. Dismissal from service is not the first penalty which is specified under "Major Penalties". It is submitted that there are other penalties which are included in the major penalties like reduction to a lower stage in the time scale of pay with or without a bar to the promotion of the employee, compulsory

retirement, removal from service. Notwithstanding that dismissal from service is also one of the punishments prescribed under the Act, the Disciplinary Authority is duty bound in law to give reasons as to why the specific punishment of removal from service was imposed along with forfeiture of his gratuity. The authorities ought to have taken into consideration the 34 years of unblemished service rendered by the petitioner while imposing such extreme punishment. Learned counsel for the petitioner refers to the following judgments in support of his contentions:

1. WP(C) No.4682/2012 (*Md. Saifur Raja Choudhury vs. The Food Corporation of India & Ors.*).
2. 2012 SCC OnLine Gau 928 (*Padma Kanta Bora vs. Food Corporation of India & Ors.*)
3. 2011 SCC OnLine Gau 331 (*Dhananjay Narzary vs. Food Corporation of India & Ors.*)
4. (2007) 4 SCC 669 (*Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.*)
5. 2012 (5) GLT 264 (*Paban Chandra Das vs. Indian Oil Corporation Ltd. & Ors.*)
6. (2008) 11 SCC 319 (*Life Insurance Corporation of India vs. R Suresh*).

7] Per contra, Mr. P.K. Roy, Learned Senior Counsel representing the FCI strongly disputes the case projected by the learned counsel for the petitioner. Learned counsel for the respondents submits that the petitioner was working as the Shed in-charge in Shed No.2 in FCI Godown at Ramnagar under the FCI district Office of Silchar during January, 2010 to September, 2010. It is submitted that consecutive physical verification of stocks, one conducted by the

FCI Regional Office, Assam Region on peripheral counting and the other by the FCI district Office, Silchar on 100% check. During both these verifications, the Physical Verification (PV) teams found huge shortage of stocks in the said Shed No.2. After checking the relevant registers maintained by the petitioner and upon physical counting of the same, huge shortage of food grains was found in that Shed and a total loss for such shortage was quantified as Rs.44,72,694/- (Rupees Forty Four Lakhs Seventy Two Thousand Six Hundred Ninety Four only). It is submitted by the learned Senior Counsel for the respondents that in response to the show cause issued to the petitioner, the petitioner submitted his reply making a general denial as compared to the specific charges reflected in the show-cause notice. A regular Departmental proceeding was instituted by appointing an Enquiry Officer as well as a Presenting Officer. The proceeding was conducted under Regulation 58 of the FCI (Staff) Regulations, 1971. During the process of the enquiry, the Enquiry Officer examined all the relevant documents as well as the witnesses. The Enquiry Officer recorded during the enquiry the Charged Officer, namely, the petitioner admitted to the charges of shortfall but could not give proper reason for such shortfall. The Enquiry Officer after proper examination of the evidences placed on record as well as the witnesses held that the charges made against the petitioner had been proved. A personal hearing was also given to the petitioner. During the enquiry the

following shortage of stocks as per the stack ledger was revealed, namely, Rice Grade-A, shortage of 3944 bags rice Grade-A, were detected by the Regional Office's Physical Verification team as on 23.07.2010, which was against the stocks received during July, 2010 i.e. from 01.07.2010 to 22.07.2010, except 50 bags of rice (Pckts) which were found short against two stacks of June, 2010 (stack No.U2A/7= 23 B/S & Stack No.U2B/1 = 27 B/S. From the records it was also disclosed that the petitioner had issued out all the stocks received during July 2010 had shown nominal shortage loss, which were detected by the Regional Office's Physical Verification team. It was found during the enquiry that, as per declaration as on 16.09.2010 (OB), there were only three stacks (stack No. U2 A1A, 1371 B/S= 681.88 Qtls. Stack No.U2B7, 1371 bags =676/93 Qtls and stack No. U2C4, 1426 B/S = 706/42 Qtls.), built up during August, 2010 but out of these three stacks, two stacks were not found in existence (Stack No.U2A1A & U2C4) physically and against stack No. U2B7 only 91 bags were found in existence against the declaration of 1371 bags. During 100% weighment, total shortage came out to be 4077 bags = 2021/10 Qntls and another 133 bags were found short during 100% weighment. The charged officer was the Shed In-charge of the shed and as against the huge shortage of stock, the stand taken by the charged officer that, the shortages were the culmination of years of bottom layer damages of bags, could not be supported

by any evidence. The loss resulted from the shortage was huge.

8] Learned counsel for the respondents submits that although the order of the penalty dated 22.12.2011 has been challenged in the present proceedings, the appellate order dated 27.07.2012 rejecting the appeal of the petitioner and upholding the order of penalty is not under challenge. He further submits that under the Regulation 74 of the FCI (Staff) Regulations, 1971, there is a further alternative remedy available to the petitioner, namely, Statutory Review which was not availed of by the petitioner before approaching this Writ Court. Learned counsel for the respondents submits that there was no procedural irregularity or infirmity in the decision making process and the enquiry report was based on a proper enquiry instituted against the petitioner by following principles of natural justice. The enquiry report holds the charges proved against the petitioner on the basis of the various evidences adduced during the process of enquiry. Such being the case, no interference in judicial review is called for at this stage. The punishment imposed is also as per the prescription of the Regulations and therefore, it was open for the Disciplinary Authority to decide and to impose any of the punishments prescribed under the major penalty of the Regulations. No specific reasons are called for to justify as to why a particular punishment and not any other punishments prescribed under the major penalty has been imposed by the disciplinary authority. In support of his contentions the learned

counsel for the respondents has relied upon the following judgments:

1. (2008) 5 SCC 209 (*Nahar Singh vs. Food Corporation of India & Ors.*)
2. (1995) 5 SCC 762 (*Bank of India & Anr. Vs. Degala Suryanarayana*)
3. (2011) 10 SCC 249 (*State Bank of India vs. Ram Lal Bhaskar & Anr.*)
4. (2013) 10 SCC 106 (*Deputy Commissioner, Kendriya Vidyalaya Sangathan & Ors. vs. J. Hussain*)

9] The rival contentions have been considered. Pleadings on record have also been carefully perused. Judgments cited at the Bar has been perused.

10] The charges leveled against the petitioner by the show cause notice dated 23.10.2010 are as under:

Charge – I

A Regional Office team after peripheral counting of stocks at Shed No.2 on the declaration of stocks as on 23.07.2010 (OB) submitted by the Shed In-charge detected 3944 Pkts. Rice (Raw) Grade-A short against 20 stacks. The counting sheet was duly signed by Shri Jayanta Mohan Singh, AG-II (D) the Shed In-charge, Shed No.2

Charge –II

A District Office Committee from FCI, District Office, Silchar supervised 100% delivery operation weighment of Rice (Gr-A) stocks during the month of Sept, 2010 detected shortage of 4077 bags 2021.10.000 Qtls. in respect of Rice Gr-A in Shed-2. The total loss comes to Rs.44,72,694/- per Qtl. (economic cost).

On verification of record, it reveals that Shri Jayanta Mohan Singh, AG-II (D) taken proper care he could have saved the property of the Corporation and the Corporation would not have sustained such huge loss to the tune of Rs.44,72,694/- for shortage of 2021,10,000 Qtls. Rice Gr-A.

11] The Enquiry Officer and a Presenting Officer were appointed. The show-cause notice also included all the documents as well as the list of

witnesses proposed to be examined during the enquiry proceedings. The copy of the enquiry report is enclosed to the affidavit in opposition filed by the respondents. The enquiry report reflects that the petitioner was permitted to go through all the registers and the documents which were relied upon in support of the charges brought against him. It is seen from the enquiry report that there is a finding by the Enquiry Officer that the charged official, namely, the petitioner accepted the shortage without any dispute although reasons for such shortage were not given. The relevant documents which reflects the shortage of food grains during the physical verification conducted by the 2 (two) different teams were duly confronted to the petitioner. There is no specific stand taken by the petitioner that these findings were incorrect or were factually incorrect. The petitioner stood up the defence that other persons were also involved in supervision of the shed and therefore, it was a collective responsibility and which fact has also been referred to by the Presenting Officer in his brief. Prior to the enquiry, during the course of physical verification undertaken, the findings arrived at by the physical verification team were also shown to the petitioner. No challenge thereto at any point of time has been made by the petitioner. In his reply filed before the authorities, there is no finding that conclusions of the physical verification are contrary to the actual position or are not based on correct appreciation of the facts and circumstances. However, it is

also noticed that there is no findings arrived at by the Enquiry Officer with regard to the theft or pilferage or misappropriation of any foods grains or any materials of the FCI during the period when the petitioner was the In-charge of Shed no.2.

12] In the present writ petition, there is no challenge in the procedure adopted by the Disciplinary Authority. The proceedings are not assailed on the ground that manner in which the proceedings were initiated or that the findings have been arrived are inconsistent with the procedure prescribed under the FCI Regulations, 1971. The FCI authorities have also not disputed the correctness of the circular dated 12.02.2008 relied upon by the learned counsel for the petitioner. The said circular reads as under:

Food Corporation of India

Headquarters : : New Delhi

ISO9001 :2000 Certified

**16-20, Barakhamba Lane, New Delhi-110001, Phone :23413871 -23414871
-23414880**

No. STK/35(3)/07/54

Executive Director (Zone)

Food Corporation of India,

Zo Noida/Chennai/Mumbai/Kolkata/

Guwahati

Date : 12th Feb, 2008

All General Manager (Region)

Food Corporation of India

Regional Office

Sub: Adherence of procedural formalities in Shortage & Transit Loss Cases - Fixation of responsibility – Regarding.

Ref: Hqrs' Circular No STK/23/1(7)/(NORMS) /02 dated 07.06.2002.

Sir,

Your attention to invited to Hqrs. Instructions Issued vide Circular referred above wherein it was Inter-alia emphasized that the existing procedure for fixing accountability for

Shortage and transit losses mentioned in Hqrs. Circulars dated 06.11.1998 & 21.12.1999 would be continued to be Followed. Of late the Staff Bodies have been expressing resentment over the manner in which the responsibility is fixed on the employees by issuing chargesheets and making recoveries from them for abnormal unjustified S&T losses arbitrarily and without following the procedural formalities as required under the FCI (Staff) Regulations, 1971. The Unions have also been emphasizing that no employee be made responsible for such foodgrains losses unless his/her involvement in theft and misappropriation is proved beyond doubt on the plea that the quality and quantity losses of foodgrains during storage are obvious and unavoidable due to natural factors beyond the control of employees. Also there is no point to make employees responsible for transit losses and to ask them to visit at the destinations to verify the shortages while they have already got the consignment verified from the representatives of insurance company and obtained the certificate of this effect.

The whole matter was discussed by FCI Management with the BKNK Sangh and FCIES Union in a joint meeting at FCI Hqrs. On 28.12.2007 wherein, after detailed deliberations, it has been decided that henceforth it would be ensured by all concerned authorities that no recovery in respect of storage and transit losses should be effected without the theft/pilferage and malafide being proved.

All the competent authorities are also advised that they should pass speaking orders establishing malafide etc. on the part of each employee while imposing penalties/making recoveries from the field staff consequent upon investigation of abnormal S&T loss cases. These instructions may be strictly followed.

The instructions issued vide Hqrs. Circular letter of even No. dated 31.01.2008/ 01.02.2008 are hereby withdrawn.

13] A perusal of the circular reflects that the competent authority in the FCI has taken a policy decision not to recover losses unless theft, pilferage or

misappropriation is proved in the enquiry.

14] There is no finding by the enquiry officer that there was any theft caused by the petitioner. There is no finding by the enquiry officer that the petitioner had acted in a manner prejudicial to the interest of the Corporation or was negligent towards his performance thereby slowing down the work of the F.C.I. There is also no finding by the enquiry officer that under the Regulations of 1971, the failure of the petitioner to correctly maintain the books and records will amount to an act which will entail 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. The law relating to the judicial review of the disciplinary proceedings is also well settled. 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.

15] In the present case the materials available before this Court does not reveal as to how the allegation of misconduct can be sustained against the petitioner. The petitioner had himself admitted that he did not hold the keys to the shed and the keys were under the custody of the Depot Office. In spite of that the authorities imposed on the petitioner the extreme punishment of removal from service.

16] Coming to the facts of the present case as has been discussed that there is no challenge made to the Disciplinary Proceedings on the ground that it has not been conducted as per the procedure prescribed in the regulation. No infraction of rules of natural justice is also noticed upon perusal of the enquiry report. What is, however, seen is that the Enquiry Officer did not arrive at any findings that misappropriation or loss was caused by the petitioner. While the petitioner may have considered responsible in respect of shortfall of foodgrains as detected by the Physical Verification teams, however, the FCI authorities came to the conclusion that the theft or pilferage or misappropriation leading to the loss of the food grains and financial losses are to be arrived on the basis of proper enquiry and evaluation of facts and materials as may be available. Such

conclusion will have to be arrived at as per the procedure prescribed by law. Finding of guilt in respect of financial loss and misappropriation or theft/pilferage cannot be left to presumption. There must be specific findings based on evidence by the Enquiry Officer which sufficiently proves that the allegation of theft or pilferage leading to loss of foodgrains and causing financial losses to the FCI. In the facts of the present case as well as from the charges brought against the petitioner, it is seen that there is no specific charge against the petitioner that due to dereliction of his duty such theft, pilferage or misappropriation of foodgrains had resulted and thereby, causing financial loss and/or misappropriation of any amount of the FCI. Since, there is no specific charge in that regard, there was no occasion for the Enquiry Officer to proceed for an enquiry ordinarily. A perusal of the enquiry report also reveals that such findings are not arrived at by the Enquiry officer specifically against the petitioner. The enquiry report on the basis of the enquiry conducted holds that the two charges which were framed against the petitioner have been held to be proved. The findings of the Disciplinary Authority that the petitioner is responsible for causing the financial loss or has misappropriated any amount of money could not have been arrived at without following the due procedure prescribed in law namely without there being a proper enquiry therefore.

17] A Writ Court is not an appellate forum for deciding the punishments

awarded pursuant to disciplinary proceedings. A Writ Court is only required to examine process of the decision arrived at by the Enquiry Officer, as well as by the disciplinary authority, and whether the procedure prescribed has been duly followed and that the basic requirements of natural justice have been complied with and also whether such enquiry was conducted on the basis of evidences adduced before the Enquiry Officer. These salutary principles have been laid down by the Apex Court in *State of Karnataka and Anr. Vs Umesh* reported in (2022) 6 SCC 563.

18] These principles culled out by the Apex Court in the case of *Deputy General Manager (Appellate Authority) and Others Vs Ajai Kumar Srivastava* reported in (2021) 2 SCC 612 reiterates that the limits for judicial review under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed in matters of disciplinary enquiries conducted by departmental or Appellate Authorities. The Apex Court in this Judgment after examining the earlier judgments of the Apex Court rendered, reiterated the principles for exercise of judicial review under inter alia Article 226 of the Constitution of India. The Apex Court held that in respect of disciplinary enquiries conducted or alleged misconduct against public servant, the Court is to examine and determine the following:-

“25. When the disciplinary enquiry is conducted for the alleged misconduct against the

public servant, the Court is to examine and determine:

(i) Whether the enquiry was held by the competent authority;

(ii) Whether rules of natural justice are complied with;

(iii) Whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion”.

19] It was held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegations against the delinquent must be established by some evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against a delinquent employee. It is true that mere conjectures or surmises cannot sustain the finding of guilt even in Departmental enquiry proceedings. A Constitutional Court while exercising jurisdiction under Article 226 would not interfere with the findings of fact arrived at in departmental enquiry proceedings except in a case of malafides or perversity, namely, where there is no evidence to support a finding or where a finding is such that no man reasonable and with objectivity would have arrived at those findings. No interference is called for so long there is some evidence to support the conclusion.

20] In *State of Karnataka and another Vs Umesh* reported in (2022) 6 SCC 563, the principles for exercise of judicial review by Constitutional Court while

exercising jurisdiction under Article 226 of the Constitution of India has yet again been reiterated. The Apex Court, while examining the challenges made in respect of findings of the disciplinary authority, held that the court does not act as appellate forum over the findings of a disciplinary authority and does not appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Court in exercise of judicial review must restrict its review to determine whether- i) rules of natural justice have been complied with, ii) findings of misconduct are based on some evidence, iii) statutory rules governing the conduct of disciplinary enquiry were followed, iv) findings of disciplinary authority does not suffer from perversity, v) penalty imposed should not be disproportionate to the proved misconduct.

21] It is only when all or any of these findings are arrived at by a Constitutional court in exercise of judicial review, that it would warrant interference of disciplinary proceedings conducted and as well as consequential orders of penalty imposed on the delinquent personal and any personal.

22] An analysis of the law laid down of the Apex Court clearly reveals that under Judicial Review, it is not open for a writ Court to examine the sufficiency of evidence led in a departmental enquiry. Whether the explanation given by the petitioner in support of his unauthorized absence that he was suffering from the

ailments and was advised long period of rest, was incorrectly appreciated by the enquiry officer on the basis of the Group Medical Officer's opinion, is an area which the writ Court is not required to venture into. Under Judicial Review of Departmental Proceedings, a writ Court would ordinarily interfere where the proceedings are not conducted as per the Rules of the provisions of law, opportunity of proper hearing is not granted to the delinquent employee, the officer conducting the enquiry is not authorized under the provisions of law to be appointed as an Enquiry Officer or the findings of the enquiry officer is completely perverse inasmuch as that it is based on no evidence or it has taken into consideration materials which are not at all relevant for the purposes of deciding the issue or has left out materials which are germane for deciding the issue.

23] While this Court declines to interfere with the findings of the Disciplinary Authority to the extent it is based on the enquiry conducted by the enquiry officer and therefore this Court declines to consider the prayers of the petitioner for interference of the enquiry report, the findings of the enquiry officer in the report as well as the imposition of the penalty by the Disciplinary authority. As has been discussed above, the disciplinary proceedings are not to be conducted as criminal trials. So long there is some evidence on the basis of arriving at conclusion of the charges, a Writ Court in Judicial Review will decline

to interfere with.

24] Accordingly, this Court in its considered view does not consider that the disciplinary proceeding dated 02.12.2010 and the report of the Enquiry Officer dated 30.05.2011 calls for any interference. The prayer made in the writ petition to that extent is therefore declined. Having said that the Court is also of the considered view that in the absence of any specific findings in the enquiry causing financial losses by the petitioner or any theft or pilferage or misappropriation of food grains by the petitioner, the imposition of penalty for forfeiture of gratuity read with the FCI circular dated 12.02.2008 cannot be permitted to be imposed by the Disciplinary Authority. Further considering that the petitioner has rendered 34 years of service which has not been denied by the respondents and also taking into account the fact that no specific reason has been cited by the Disciplinary Authority in the support of his imposition of punishment of removal from service, this Court is of the considered view that the punishment of removal appears to be harsh and disproportionate. Ordinarily the imposition of punishment is in the realm of Department concerned, however, considering several years have elapsed since the dismissal of the petitioner as well as for the reasons discussed above, this Court does not consider it appropriate to remand the matter back and instead considers it appropriate to alter the punishment of removal from service to that of compulsory retirement.

The findings of the Disciplinary Authority with regard to the recovery of forfeiture of gratuity are also interfered with. The respondent authorities will now release all benefits including gratuity forthwith to the petitioner. The punishment having been altered to that of compulsory retirement, any benefits available to the petitioner should be released by the FCI authorities with effect from the date of the order of imposition of punishment by the Disciplinary Authority.

25] The writ petition accordingly stands disposed of in terms of the above. No order as to cost. Records, if any, be returned to the respondents.

JUDGE

Comparing Assistant