

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 03.09.2025
Pronounced on : 17 .10.2025

WP(C) 2444/2024

NISAR AHMAD WANI

... Petitioner(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha MAjid, Advocate

Vs.

FOOD CORPORATION OF INDIA TH
GENERAL MANAGER AND ORS.

...Respondent(s)

Through: Mr. Sheikh Umar Farooq, Advocate

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. In the instant petition filed under Article 226 of the Constitution, the petitioner herein seeks to challenge the continuation of disciplinary proceedings initiated against him by the respondent-Food Corporation of India (FCI) under the provisions of the Food Corporation of India Staff Regulations, 1971 (for short "the Regulations"), notwithstanding his exoneration by the Inquiry Officer appointed by the FCI to inquire into the alleged pilferage of the stocks at PEG, Baramulla during the period 20.03.2020 to 26.03.2020. The petitioner has further assailed the action of FCI in withholding his post-retirement benefits, including gratuity and leave salary without any lawful justification.

2. Facts:-

- (i) the petitioner herein was employed as AG-I (Depot) in the FCI and superannuated from the service on 31.08.2023.
- (ii) While being posted at FSD Baramulla, the petitioner was vide order dated 24.11.2018, temporarily given additional charge as Supervisor at PEG Baramulla under the Private Entrepreneurs Guarantee Scheme (PEG Scheme) which additional charge, however, ceased upon the joining of one Shri Syed Ahmad Bhat as Supervisor at PEG Baramulla on 28.08.2019, whereafter the petitioner was never posted there.
- (iii) While the petitioner was serving at FSD Baramulla, respondent -1 herein issued a show cause notice dated 10.08.2024 under the Regulation 58 read with Regulation 60 (4) of the Regulations of 1971, alleging therein the negligence on the part of the petitioner herein resulting in shortage of 7652 bags at PEG Baramulla during the period of 20.03.2020 to 26.03.2020 and pursuant to the said show cause notice disciplinary proceedings were initiated against the petitioner herein and upon completion of a detailed inquiry by Inquiry Officer- Respondent-3 herein and also after full participation of the petitioner herein in the said inquiry, the Inquiry Officer-respondent 3 herein concluded in his report dated 09.07.2024 that none of the charges were proved while observing that the petitioner was not posted at PEG Baramulla during the relevant

period when the deficiency was found and therefore recommended his exoneration.

(iv) The disciplinary authority – respondent 1, however, despite the said conclusions of the Inquiry Officer in the inquiry initiated against the petitioner issued a Disagreement Memorandum dated 08.10.2024, disagreeing with the finding of the inquiry officer for being not convinced.

(v) Meanwhile an FIR bearing No. RC1232020A0002 came to be registered by the CBI/ACB Branch Srinagar under Sections 120-B, 409, 420 IPC and Sections 7 and 13(a) of the Prevention of Corruption Act, 1988 against the officials posted at PEG, Baramulla, investigation whereof revealed that the pilferage occurred during 26.03.2020 to 22.10.2020, well after the petitioner's tenure, and also found no role of FCI officials therein but held one Sandeep Dagar, representative of FCI, negligent.

(vi) After the superannuation, the petitioner herein sought release of his post-retiral benefits including gratuity and leave salary for having become entitled thereto, however, the same were withheld by the respondents' citing pendency of disciplinary proceedings against the petitioner herein and when the respondents declined release of the said retiral benefits, the petitioner maintained the instant petition.

Case setup by the petitioner:-

3. The gist of the grievance urged by the petitioner herein in the instant petition is that the continuation of the disciplinary proceedings are illegal and arbitrary, in that, the alleged shortage at PEG, Baramulla happened after the petitioner's tenure there at PEG Baramulla and also substantiated from the record and the inquiry report as under the PEG scheme, the responsibility of safe storage of grains rested with the Private Entrepreneur Guarantee (PEG) Holder, and not with the FCI employees and that, as such, any shortage in this regard is recoverable from PEG Holder as per the contractual terms, but not from the petitioner and moreover in terms of Circular dated 20.08.2024, issued by FCI, wherein it stands clarified that storage agencies are responsible for maintaining the quantity and quality of stocks and that any losses are recoverable from them.
4. It is also urged by the petitioner herein in the grounds of challenge that he having superannuated cannot be subjected to fresh or continued disciplinary proceedings in absence of any express statutory authorization, rendering the said proceedings after his retirement as illegal and also that the disciplinary authority's disagreeing with the finding of inquiry officer is mechanical and unsupported by reasons, violating the settled law that requires cogent reasons for differing with a favourable inquiry report and that withholding of gratuity and leave salary despite his exoneration in the inquiry is contrary to the Payment of Gratuity Act, 1972 and also that the action of the disciplinary

authority's are tainted by mala fides and prejudice, based on no evidence and amount to abuse of administrative power and that withholding of his retiral dues violates Articles 14, 15 and 20 of the Constitution depriving the petitioner of his right to livelihood, dignity, and timely access to lawful entitlements.

Response of the respondents.

5. **Objections** to petition have been filed by the respondents, wherein the petition is being opposed, firstly, while raising a preliminary objection that the writ petition is premature as no final action has been taken by the disciplinary authority against the petitioner on the basis of Disagreement Memorandum dated 08.10.2024, as the said Memorandum is an interim step seeking petitioner's response before passing any final order and that disciplinary proceedings were rightly initiated against the petitioner for gross negligence and supervisory lapses during his posting as Supervisor at PEG, Baramulla which supervisory duties were assigned to the petitioner from 24.11.2018 till July 2021, not merely till August 2019 as is alleged, and that during the monthly peripheral counting conducted between 20.03.2020 and 26.03.2020, a shortage of 7,652 bags of rice was found, resulting into a loss of Rs. 2,86,51,678/- to the FCI and the petitioner herein being a Supervisory Officer was responsible to ensure proper maintenance of stock registers and accounts, which he failed to do thereby violated Regulations 31, 32, & 32-A of the Regulations of 1971.

It is further stated in the objections that the disciplinary authority after considering the inquiry report and the entire material of inquiry found that the Inquiry Officer had not fully appreciated the articles of the charge and facts of the case, as such, it issued the Disagreement Memorandum to the petitioner for seeking his response which he failed to submit.

It is also stated in the objections that the CBI investigation conducted in the matter established that the pilferage began from 06.02.2020 onwards i.e., during the petitioner's posting at PEG, Baramulla and although another FCI official namely Sandeep Dagar was also found negligent, the petitioner, as he being Supervisory Officer was found equally responsible for ensuring proper stock maintenance and the detection of pilferage.

It is also averred in the objections that the withholding of gratuity and leave salary is in accordance with Regulation 60-A (iii) of the Regulations, 1971 which authorizes the disciplinary authority to withhold gratuity during the pendency of disciplinary proceedings where pecuniary loss to the Corporation is alleged.

It is also stated that under Central Civil Service (Leave) Rules, 1972, the competent authority can withhold the cash equivalent of earned leave, if disciplinary or criminal proceedings, are pending and recovery thereof becomes imperative, and, as such, since proceedings under Regulations 58 of the Regulations 1971 are still pending,

against the petitioner the respondents have lawfully withheld the petitioner's post retiral benefits.

It is further stated in the objections that in terms of the PEG Scheme, liability of pilferage though rests on PEG owner, the responsibility for stock loss, however, does not solely rests with the private PEG owner, as the PEG, owner bears contractual liability, and FCI officials deputed for supervision are also accountable for negligence and that as such, the petitioner herein cannot claim innocence or immunity in this regard.

6. It is also stated in the objections that the FCI Circular dated 20.08.2024, is inapplicable to the case of the petitioner herein as the shortages in question pertain to the period 2020-21 and the circular stands issued in the year 2024, and that even otherwise also the circular itself stipulates that when FCI officials are deployed for supervision of PEG godowns, they are to be dealt with strictly in the event they fail in discharge of their duties.

It is next stated in the objections, that the allegations of mala fides alleged by the petitioner herein inasmuch as the exercise of the arbitrary action are denied as all the steps in the matter qua the petitioner herein have been taken in accordance with the Regulations 1971 and the principles of natural justice.

It is lastly stated in the objections that since no final order has been passed against the petitioner herein pursuant to the Dis-agreement Memorandum, issued within the jurisdiction

by the disciplinary authority, no final order adverse to the petitioner has been issued, as the petitioner has an opportunity to file response to the said Memorandum, thus, rendering the petition at this stage pre-mature.

Heard learned counsel for the parties and perused the record both available on the file as well as produced by the counsel appearing for the FCI.

Determination by Court:-

7. Having regard to the respective pleas of the parties, coupled with the submissions made by their respective appearing counsels, the following issues arise for determination by this Court:-

- (i) Whether the present petition is maintainable at this stage or whether it is premature in view of the disciplinary authority not having passed a final order in the matter.
- (ii) Whether the disciplinary authority was justified in issuing the Disagreement Memorandum dated 08.10.2024 and in continuing the disciplinary proceedings notwithstanding the Inquiry Officer finding of exoneration of the petitioner and if not, whether the continuation of the disciplinary proceedings are liable to be quashed; and
- (iii) Whether the respondents were justified in withholding the petitioner's post retiral

benefits (gratuity and leave salary) in the circumstances of the case.

Analysis & Reasons

(i) Maintainability

The legal position qua the plea of a petition being premature filed under Article 226 of the Constitution is well settled in series of cases, wherein it is the consistent view that a writ petition can be entertained even before a final punitive order is passed where;-

- (a) the action complained of causes irreparable prejudice or causes infringement of a vested right;
- (b) where the administrative action is wholly without jurisdiction or ex facie mala fide; or
- (c) where waiting for the final order would render the challenge nugatory or cause irreparable loss.

In order to advert to aforesaid issue of maintainability, this Court must therefore examine whether the Disagreement Memorandum dated 08.10.2024 and the consequent withholding of retiral dues result in such a grievance which can be remedied without waiting for the final order.

To answer the said question, a reference to the Regulation 59 of the Regulations 1971 being germane to the controversy becomes imperative hereunder;-

59. Action on the inquiry report:

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the cause to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 58 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clause (1) to (iv) of Regulation 54 should be imposed on the employee, it shall, notwithstanding anything contained in Regulation 58, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clause (v) to (ix) of Regulation 54 should be imposed on the Corporation employee, it shall make an order imposing such penalty and it

shall not be necessary to give the Corporation employee any opportunity of making representation on the penalty proposed to be imposed.

(5) The disciplinary proceedings shall come to an end immediately on the death of the charged employee. No disciplinary proceedings under the FCI (Staff) Regulations can, therefore, be continued after the death of the concerned charged employee.

A plain reading of the Regulation supra makes it manifest that the disciplinary authority though not bound by the findings of the inquiry officer yet is under a statutory obligation to record specific reasons if it disagrees with those findings, thus suggesting that the power to differ is not absolute or uncanalized, but has to be exercised within the parameters of Regulation 59(2) which mandates that the disagreement must be supported by cogent reasoning and must be solely based on the evidence already adduced during the inquiry, therefore, embodying two vital safeguards, firstly namely that the disagreement cannot be a matter of subjective satisfaction or conjecture, but must rest on the evidentiary record and secondly, the reasons for disagreement must be expressly recorded and communicated to the delinquent official so that he may effectively represent before any final decision is taken.

Coming back to the case in hand, record tends to show that the disciplinary authority after the receipt of the inquiry report

dated 09.07.2024, while issuing the Disagreement Memorandum on 08.10.2024, has merely observed that the findings of the Inquiry Officer are not convincing without least specifying as to how and why are they so. Nothing is forthcoming there from that the disciplinary authority analyzed the evidence relied upon by the inquiry officer or pointed out any infirmity, omission, or mis-appreciation of fact/s, thus, manifestly suggesting that the Memorandum of Dis-agreement is issued mechanically and without any reasons.

Further perusal of the record also tends to show that there is no whisper in the impugned Memorandum as to which piece of evidence was overlooked or misread by the inquiry officer, nor is there any indication that the disciplinary authority found new material against the petitioner herein which the inquiry officer failed to appreciate thereby manifestly suggesting that the entire exercise undertaken by the disciplinary authority is an afterthought merely to sustain a pre-determined conclusion.

It is significant to mention here that the phrase “ **for reasons to be recorded in writing**” used in Regulation 59(2) has been judicially interpreted to mean that the reasons must be substantive and germane to the material on record and not a mere ritual formality, as the underlying principle is that the inquiry officer’s report is quasi-judicial determination which cannot be disregarded without an equally reasoned quasi-judicial assessment by the disciplinary authority and that the disciplinary authority cannot substitute its subjective

satisfaction for the evidentiary analysis as otherwise the statutory safeguard would be rendered an empty formality. A reference in this regard to the judgment of the Apex Court passed in case titled as **“Punjab National Bank Vs. Kunj Behari Misra, (1998) 7 SCC 84”** would be advantageous and appropriate.

It is an admitted fact that the petitioner has retired on 31st of August 2023 and on that date became entitled to monetary retiral dues for the services rendered with the FCI and the withholding of the said dues certainly has the effect of depriving the petitioner of his accumulated said dues and as pleaded has caused serious hardships to the petitioner. That being so inasmuch as in view of the findings of the inquiry officer, this court is of the considered view that the question whether the disciplinary authority can mechanically continue proceedings and withhold retiral dues of the petitioner without cogent reasons is a live and justifiable controversy which falls squarely within the exceptional circumstances where a pre-emptive judicial intervention under Article 226 could be sought, as to hold otherwise would permit the employer to keep retired employee in limbo indefinitely and make enforceability of a statutory entitlement contingent upon protracted administrative proceedings. Therefore, in view of above, the petition is held maintainable and not premature, and consequently, the above first question is answered in affirmative.

(ii) Validity of the Disagreement Memorandum and continuation of disciplinary proceedings.

As has been noticed in the preceding paras, the inquiry officer conducted the detailed disciplinary inquiry, wherein the petitioner participated, filed his defence as also the oral evidence, whereupon the inquiry officer in his findings recorded in his report dated 09.07.2024 that none of the charges were proved against the petitioner and as such recommended his exoneration.

It is pertinent to mention here that when an inquiry officer after a fair hearing in a disciplinary inquiry records findings favourable to a delinquent employee, the disciplinary authority may differ with the same, in law, but only after a careful appreciation and for cogent, credible recorded reasons and not by a bald or mechanical statement of disagreement.

It is reiterated while risking repetition that the settled administrative law and judicial precedent requires that when a disciplinary inquiry is conducted in accordance with rules, the disciplinary authority's disagreement must show that it has applied its mind to the material which the inquiry officer has considered, identify the specific aspects which the disciplinary authority finds unacceptable, and also must state why the prosecution brief or other material warrants a different conclusion than that of the inquiry officer. Mere *ipse dixit* or a generalized assertion that the inquiry report is not convincing will not meet that standard and cannot in law be accepted.

In the present case, the Disagreement Memorandum dated 08.10.2024, as has been noticed in the preceding paras, does not disclose specific, cogent reasons to demonstrate that the inquiry officer's appreciation of evidence was palpably wrong or that material evidence was overlooked.

A closer examination of the inquiry report reveals that the foundational findings of the inquiry officer was that it was not established by the witnesses produced by the Presenting Officer that the petitioner was posted at PEG godown during the period when the shortages of the grains were detected, whereas on the contrary the disciplinary authority's disagreement rests upon a generalized view and remark that the inquiry officer had not fully appreciated the Articles of Charge or the facts without particularization.

Given the nature of inquiry officer's finding as also the lack of cogent reasons in the Disagreement Memorandum as well as the potential for irreparable prejudice to the petitioner if the inquiry is permitted to be perpetuated as an instrument of harassment post-retirement, coupled with the fact that the CBI investigation in the matter did not fix criminal liability on the petitioner, this Court finds that the disciplinary authority is continuation of proceedings on the basis of impugned Disagreement Memorandum is arbitrary unreasonable and legally unsustainable.

(ii) Withholding of Gratuity and Leave Salary

In law gratuity and leave salary are statutory and recognized monetary entitlements accruing to a retiree by reason of his past service and while administrative rules generally permit the making of recoveries or the withholding of amount of gratuity and leave in certain tightly defined situations like where a pecuniary liability has been established or where statute expressly authorizes suspension of payment pending criminal conviction- the exercise of such a power must be lawful, reasonable and proportionate.

The respondents herein having relied upon Regulation 60-A (iii) and Rule 39 (3) of Central Civil Services (Leave) Rules of 1972, which according to them permits withholding of gratuity and leave salary during pendency of disciplinary/criminal proceedings where pecuniary loss is alleged to withhold yet such a regulatory power to withhold retiral benefits cannot be exercised arbitrarily or mechanically.

A plain reading of the aforesaid rules would show that the power to withhold gratuity and leave salary can be exercised only when the competent authority records its satisfaction that there was possibility of some money becoming recoverable from an employee on conclusion of the proceedings.

In the instant case importantly, the respondents in the reply filed to the petition admit that the loss incurred by FCI in the PEG warehouse is to be recovered from PEG investor/owne, yet disciplinary proceedings have been initiated against the petitioner for supervisory loss, thus, further demolishing the case of the respondents qua the withholding of the retiral dues

of the petitioner as in this view of the matter, there was no reason or occasion for the respondents to have withheld the retiral dues of the petitioner.

It is significant to mention here that the Payment of Gratuity Act, and analogous jurisprudence recognizes that gratuity is an earned amount and cannot be withheld except under clear statutory mandate or where recovery is necessary after due process. This Court is not oblivious to the said statutory mandate and is mindful that the administration must be able to protect public finances, but that cannot be done in a manner that violates the rule of law and leaves a retiree without his lawful entitlements on the basis of a mechanically recorded “Disagreement” that lacks reasons.

Lastly it is also pertinent to mention here that the petitioner has pleaded mala fides and selective treatment and while mala fide is a plea that has to be established with clear material, the cumulative record prima facie suggests that the disciplinary authority’s action was not a reasoned application of mind in tune with procedural fairness and even if this Court does not rest on the plea of mala fides, urged by the petitioner yet it is a relevant consideration in assessing the reasonableness of the administrative action and also as to whether the proceedings should be permitted to continue.

8. Viewed thus, for what has been observed, considered and analyzed hereinabove, the only inescapable conclusion that could be drawn in the instant case is that the petition succeeds and consequently by issuance of a writ of certiorari the

Disagreement Memorandum dated 08.10.2024 and consequent proceedings initiated thereof against the petitioner herein are quashed and by issuance of a writ of Mandamus, the respondents are commanded to release the petitioner's gratuity and leave salary forthwith preferably within a period of eight weeks from the date a copy of this judgment and order is produced by the petitioner before the respondents, and in the event of failure to release the same within the period stipulated, the petitioner herein shall also be entitled to the interest thereof @ 7% from the date the amount of gratuity and leave salary became due to the petitioner till the date of its actual payment.

9. The record of inquiry produced by the counsel for the respondents be returned back.

10. Disposed of

**(JAVED IQBAL WANI)
JUDGE**

**SRINAGAR:
17.10.2025**

"S.Nuzhat"

Whether the order is speaking	Yes/No
Whether the order is reporting	Yes/No