KHOIROM BIPINCHANDRA SINGH
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REPORTABLE

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.A. No. 19 of 2023
[Ref.: W.P.(C) No. 581 of 2020]

1. The Chairman and Managing Director, Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New Delhi – 110001.

2. The General Manager (Personnel & 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 Zone, GS Road, Ullubari, Guwahati – 781007.

4. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal- 795001.

..... ***Appellants***

- Versus -

Dr. S. James, aged about 63 years, S/o Late S. Manikchan, R/o Riha Village, P.O. & P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

..... ***Respondent***

with
MC(W.A.) No. 34 of 2023

[Ref: Writ Appeal No. 19 of 2023
Ref: Writ Petition (Civil) No. 581 of 2020]

1. The Chairman and Managing Director, Food Corporation of India, Headquarter, 16-20, Barakhamba Lane, New 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 Zone, GS Road, Ullubari, Guwahati – 781007.

4. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal- 795001.

..... ***Applicants***

- Versus -

Dr. S. James, aged about 63 years, S/o Late S. Manikchan, R/o Riha Village, P.O. & P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

..... ***Respondent***

with

MC(W.A.) No. 35 of 2023

[Ref: Writ Appeal No. 20 of 2023
Ref: Writ Petition (Civil) No. 465 of 2021]

1. Food Corporation of India Rep. by the Chairman and Managing Director, Food Corporation of India, Headquarter, 16-20, Barakhamba Lane, New Delhi – 110001.

2. The Executive Director (NE), Food Corporation of India, Zonal Office, NE Zone, GS Road, Ullubari, Guwahati – 781007.

3. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal- 795001.

..... ***Applicants***

- Versus -

Dr. S. James, aged about 63 years, S/o Late S. Manikchan, R/o Riha Village, P.O. & P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

..... ***Respondent***

with

MC(W.A.) No. 53 of 2023

[Ref: W.A. No. 19 of 2023 with MC(WA) No. 34 of 2023 & W.A. No. 20 of 2023 with MC(WA) No. 35 of 2023]

Dr. S. James, aged about 63 years, S/o Late S. Manikchan, a resident of Riha Village, P.O. & P.S. Litan, Kamjong District, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

..... ***Applicant***

- Versus -

1. The Chairman and Managing Director, Food Corporation of India, Headquarters, 16-20, Barakhamba Lane, New 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 Zone, GS Road, Ullubari, Guwahati – 781007.

4. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal- 795001.

..... ***Respondents***

with

W.A. No. 20 of 2023

[Ref.: W.P.(C) No. 465 of 2021]

1. Food Corporation of India Represented by the Chairman and Managing Director, Food Corporation of India, Headquarter, 16-20, Barakhamba Lane, New Delhi – 110001.

2. The Executive Director (NE), Food Corporation of India, Zonal Office, NE Zone, GS Road, Ullubari, Guwahati – 781007.

3. The Deputy General Manager (Region), Food Corporation of India, Regional Office, Old Assembly Office Complex, Imphal- 795001.

..... ***Appellants***

- Versus -

Dr. S. James, aged about 63 years, S/o Late S. Manikchan, R/o Riha Village, P.O. & P.S. Litan, District Kamjong, Manipur, presently residing at Peace Valley, Mantripukhri, Imphal East.

..... ***Respondent***

BEFORE
HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the appellants in W.A. No. 19 of 2023 and W.A. No. 20 of 2023 For the applicants in MC(WA) No. 34 of 2023 and MC(WA) No. 35 of 2023 And For the respondents in MC(WA) No. 53 of 2023	Mr. D. Julius Riamei, Advocate along with Ms. Thonrin YK Thangal, Advocate
Sole respondent in W.A. No. 19 of 2023 and W.A. No. 20 of 2023, MC(WA) No. 34 of 2023 and MC(WA) No. 35 of 2023 And applicant in MC(WA) No. 53 of 2023	Mr. Dr. S. James, party in-person
Judgment/order reserved on	29.05.2026
Date of Judgment & Order	**12.06.2026**

JUDGMENT & ORDER
(CAV)

[M. Sundar, CJ]

[1] The following Abbreviations/Short Forms/short references for the sake of brevity/convenience and clarity are used in this order:

Sl. No.	Abbreviation/ Short Form/reference for the sake of brevity/ convenience and clarity	Full Form/Expansion
1.	said Act	Food Corporations Act, 1964 (37 of 1964)
2.	said Regulation	Food Corporation of India (Staff) Regulations, 1971
3.	FCI	Food Corporation of India
4.	WA	Writ Appeal
5.	WAs	Writ Appeals
6.	MC	Miscellaneous Case
7.	MCs	Miscellaneous Cases
8.	WP	Writ Petition
9.	WPs	Writ Petitions
10.	ARP	Annual Performance Report
11.	FSD	Food Storage Depot
12.	MTF	Model Tender Form
13.	NIT	Notice Inviting Tender
14.	MD	Managing Director
15.	DP	Disciplinary Proceeding
16.	DGM	Deputy General Manager
17.	Common judgment/ order dated 10.01.2023 made by a Hon'ble Single Bench in WP(C) No. 581 of 2020 and WP(C) No. 465 of 2021	Impugned order

[2] This common order will now dispose of captioned 2 (two) WAs and captioned 3 (three) MCs thereat.

[3] Factual matrix in a nutshell i.e., short facts shorn of elaboration and details not imperative for appreciating instant common order are that the respondent in captioned WAs served and retired as Deputy General Manager (Genl.) from FCI; that while in service, FCI on 11.10.2018 initiated disciplinary proceedings against respondent *vide* a memorandum dated 11.10.2018 bearing reference No. Vig.4(35)/2018/Ne/2997 issued by the MD of FCI; that *vide* this memorandum dated 11.10.2018, 7 (seven) Articles of charges were famed; that post Departmental Inquiry, Managing Director of FCI made an order in February of 2020, to be noted, this order bears a date which reads as 10/13.02.2020 and this Court is informed that the date of order is 10.02.2020 and it was signed by MD on 13.02.2020, therefore for convenience, this Court also refers to date of this order as 10/13.02.2020 and this order bears reference No. Vig.4(35)/2018/NE/312; that in and *vide* this 10/13.02.2020 order, MD of FCI, exercising powers *inter-alia* under Regulation 56 of said Regulations imposed a penalty of reduction to lower time scale of pay by 3 (three) stages with cumulative effect from 10.02.2020 and further held that the reduction to time scale of pay will have effect on pension and terminal benefit also; that respondent preferred an appeal *inter-alia* under Regulation 67 of said Regulations against this punishment and this appeal is dated

20.03.2020; that the appellate authority according to FCI as per said Regulations is Chairman of FCI; that pending such appeal, memo of charges dated 29.09.2020 was issued by the MD *vide* a memorandum dated 29.09.2020 bearing reference No. PF/J-217/E.I/Part. I; that *vide* this memorandum, inquiry was kicked started against the respondent qua allegation that property transactions as reflected in the APR have not been noted down in the service record and this was as regards APR for the years 1997 to 2000, 2002, 2003, 2007, 2010 to 2012, 2014 and 2016; that pursuant to this memo of charges dated 29.09.2020, an order of censure was made on 28.10.2020 by the MD; that thereafter respondent on 03.11.2020 filed W.P.(C) No. 581 of 2020 *inter-alia* assailing 29.09.2020 memorandum besides seeking payment of gratuity and other benefits; that thereafter the respondent preferred another appeal under Regulation 67 of said Regulations being appeal dated 19.01.2021; that in the interregnum respondent filed W.P.(C) No. 371 of 2020 and W.P.(C) No. 106 of 2020 and the same came to be disposed of by a Hon'ble Single Bench on 19.04.2021 *inter-alia* directing the appeal to be expedited; that thereafter on 24.06.2021 the Chairman of FCI made an order rejecting the Regulation 67 appeals; that assailing such rejection, respondent filed a writ petition on 07.07.2021 being W.P.(C) No.

465 of 2021, in this writ petition respondent assailed 24.06.2021 order dismissing the appeals and sought setting aside of the punishment of reduction to lower time scale of pay by 3 (three) stages with cumulative effect from 10.02.2020 and the further part of the punishment that rejection will have effect on pension and terminal benefits also; that two writ petitions namely W.P.(C) No. 581 of 2020 and W.P.(C) No. 465 of 2021 were heard out in full by a Hon'ble Single Bench and after full contest a Hon'ble Single Bench in and *vide* a common order dated 10.01.2023 (impugned order) allowed both writ petitions filed by the respondent; that FCI contending that it is aggrieved by 10.01.2023 common order of Hon'ble Single Bench i.e., impugned order has preferred the captioned 2 (two) WAs along with captioned 2 (two) MCs thereat being MC(WA) No. 34 of 2023 and MC(WA) No. 35 of 2023 seeking interim prayers; that interim prayers were granted on 24.02.2023; that thereafter the respondent filed captioned MC(WA) No. 53 of 2023 with a prayer to vacate the 24.02.2023 interim order; that after completion of pleadings, captioned 2 (two) WAs and captioned 3 (three) MCs were before this Division Bench; that this Division Bench heard out the captioned matter in full.

[4] As would be evident from the factual matrix set out supra, respondent was inflicted with punishment *vide*

10/13.02.2020 order accepting report of the inquiry officer. To be noted, report of the inquiry officer was accepted by MD, FCI and MD, FCI made 10/13.02.2020 order. It is also evident from factual matrix set out *supra* that DP was initiated *qua* 7 (seven) Articles of charges. Out of the 7 (seven) Articles of charges, the inquiry officer returned a report saying that 2 (two) Articles of charges namely Articles I and III stood proved and remaining 5 (five) charges have not been proved. FCI has accepted the report, therefore this Court refrains from burdening this order with details of 5 (five) charges which were not proved. As regards the 2 (two) charges that were proved, 1 (one) charge was that with regard to a two part tender for transportation from Jiribam Rail Head to FSD godown. Respondent re-evaluated the technical bid after opening of the financial bid is the charge. The other charge was that when mementos were given to Parliamentary Standing Committee Members, 2 (two) books written/authored by the respondent were included in the mementos but the respondent who was chairperson of programme committee did not disclose it to the programme committee.

It may be relevant to reproduce Charge Articles – I and III against the respondent herein for the sake of clarity and better understanding:

'Article – I:

FCI, Headquarters Vigilance Squad vide their report dated 16.01.2018 pointed out irregularity in the tendering process in RO, Manipur. As per point no. 9 of the MTF issued by RO, Manipur vide the NIT No. Cont./HC/FSD Jiribam/RO-MAN/2017, "Opening of tenders", it is categorically mentioned that "The technical bids will be opened online first, in the office/offices of the Food Corporation of India, at the fixed time and date indicated in the NIT. The tenderer will be at liberty to be present either in person or through an authorized representative at the time of opening of Technical Bid with the Bid Acknowledgement Receipt or they can view the bid opening event online at their remote end. Price bids of only those tenderers shall be opened whose technical bids qualify at a time and place of which notice will be given. The tenderer Technically qualified will be at liberty to be present either in person or through an authorized representative at the time of opening of the Price Bids with the Bid Acknowledgement Receipt or they can view the bid opening event online at their remote end". However, in the said tendering process in RO, Manipur, the irregularities were observed to have taken place from the RO-Manipur Contract Division file no. Cont./HC/FSD-Jiribam/RO-MAN/2017, specifically re-evaluation of technical bids after opening of Price bid and appointing the technically dis-qualified tenderer during the initial re-evaluation in the 2nd attempt, which are in contravention to the Storage & Contract Manual.

Moreover, Dr. S. James Singh, being the DGM (Region) nominated a technical re-evaluation committee consisting of Area Manager and 2 (two) Cat-II Officers, whereas, ample numbers of AGM ranked officers were available in RO-Manipur during the material period. Further, Dr. S. James before accepting the tender and issuing the acceptance order to M/s N.R. Mathal Enterprises, never endorsed the file to his finance associate (i.e. AGM(F&A)) for financial concurrence.

The above act of Dr. S. James Singh, D.G.M (Region), Manipur is in contravention to the relevant rules, common ethics and the aforesaid rule as per MTF.

Article-III:

Hqrs Vigilance Squad report dated 16.01.2018 pointed out Irregularitles in purchase of two books. Dr. S. James Singh vide ION No. PA/DGM(R)/MAN/2017 dated 02.11.2017 requested Manager (H/k) RO-Manipur for reimbursement of Rs. 69,900/- i.r.o. purchase of two books which were given as Mementos to the members during the Study visit of the Parliamentary Standing Committee on Food, Consumer Affairs & Public Distribution at Imphal from 06.11.2017 to 10.11.2017.

For the above irregularities, SCN dated: 24.01.2018 was issued to Dr. S. James Singh. Further, Dr. James vide his reply

dated 02.02.2018 submitted that during a meeting with officers/officials of RO, Manipur, DO Imphal and Director, CAF&PD, Govt. of Manipur, Imphal, held in the chamber of Dy. General Manager (Region), Manipur on 24.10.2017 wherein Dr. S. James, Dy. General Manager (Region), Manipur was the Chairperson of Programme Committee, it was decided to give Mementos to the Parliamentary Standing Committee members, higher officers from Ministry and FCI along with two books of which were written by Dr. S. James himself.

Upon examination of reply dated 02.02.2018, it has been observed that Dr. S. James, being the DGM (Region) was the Chairperson of Programme Committee, and thereby, it was his prime responsibility to withheld any decision that are inappropriate as per FCI rules and regulations, since distribution of self-authored book as memento to the Parliamentary Committee members is deemed to be an act of self-advocacy of his creation and by claiming reimbursement from FCI for such purchase is tantamount to benefiting himself only.

The above act of irregularities is in contravention to the aforesaid FCI Staff Regulation by misusing official capacity for ulterior motives on part of Dr. S. James which is inappropriate as per FCI Staff Regulation.'

[5] Before proceeding further, it is necessary to write that both sides i.e., FCI and the respondent fairly submitted in one voice in unison that if the question of punishment *vide* 10/13.02.2020 order of MD on the afore-referred two proved charges is quashed and if the order dated 24.06.2021 made by the Chairman rejecting the appeal against the same is set aside, the gratuity and pensionary benefits sought for in the two writ petitions will follow/flow as consequence. This has been clearly recorded in proceedings made by this Court in the listing on 29.05.2026 when orders were reserved and the proceedings made on 29.05.2026 reads as follows:

> *'29.05.2026*
>
> *[1] Read this in conjunction with and in continuation of earlier proceedings made in the previous listing.*
>
> *[2] Today, Mr. Dr. S. James, respondent party in-person continued and concluded his submissions in full.*
>
> *[3] Mr. D. Julius Riamei (along with Ms. Thonrin YK Thangal), learned counsel for appellants made his reply submissions. Captioned matter heard out in full.*
>
> *[4] The undisputed position as between the parties before this Court is absent punishment dated 10/13.02.2020, respondent would be entitled to all the pecuniary, pensionary and other benefits which he has sought for in the writ petitions, namely W.P.(C) No. 581 of 2020 and W.P.(C) No. 465 of 2021. This undisputed obtaining position as between the parties is recorded.*
>
> *[5] Captioned matter will now stand over for consideration and verdict (CAV). To put it differently judgment/orders reserved.'*

[6] In the light of the above, this Division Bench ploughed into the afore referred two charges and punishment besides the appeal against the punishment and order thereat.

[7] As regards the first charge pertaining to tender, a careful perusal of the charge makes it clear that it merely says that re-evaluation of technical bids after opening of financial bids is contrary to MTF and point nine thereat but to be noted, the MTF is not before this Court. Be that as it may, the report of inquiry officer is also not before this Court. MTF is merely a template and it does not have any statutory force. Therefore, the charge itself is vague besides being not founded on any ground of violation of any rule requirement or codified conduct. Be that as it may, as already

alluded to supra, the tender itself was for handling food grains at FCI FSD Jiribam, Manipur. This Court is informed by both sides without any disputation that handling of food grains merely means loading, unloading and moving the food grains from rail wagons/bogies to godown at Jiribam. The nature of the tender by itself brings to light that there is very little nay little i.e., no scope for any technical evaluation. Another part of this Article of charge is that the respondent nominated a technical re-evaluation committee consisting of area manager and two other officers while DGM rank officers were available in the regional office of FCI in Manipur during the material point of time. This, in effect means that the respondent appointed a re-evaluation committee consisting of managers of a particular rank when managers of a higher rank were available.

[8] In the light of there being very little disputation or contestation about the nature and scope of the tender, re-evaluation itself is a non-starter. This part of the Article of charge does not merit any attention. This Court has no hesitation in writing that there is no real scope, much less scope for evaluation of the technical bid as even according to NIT, the technical bid evaluation merely is an exercise of verifying 12 (twelve) uploaded documents

and adumbration of these 12 (twelve) documents has been given in clause (5) of NIT and reproduction of the same is as follows:

> '***5. List of Document is to be uploaded in Technical Bid folder / cover***
>
> *i. Scanned copy of proof of payment of fee for cost of tender form and EMD. The details of center along with their corresponding EMD is to be mentioned therein.*
>
> *ii. Scanned copy of "TENDER SUBMISSION UNDERTAKING" accepting terms and conditions of the tender.*
>
> *iii. Scanned copy of "Forwarding letter" as per appendix – I of MTF duly filled and signed.*
>
> *iv. Scanned copy of "Details of Tenderer" as per appendix – II of MTF duly filled and signed.*
>
> *v. Scanned copy of undertaking by the tenderer, if applicable, stating that an additional Performance Guarantee in the form of Bank Guarantee of 10% of the contract value from SBI & Its Associate Banks/the other Public Sector Banks will be given, if selected. The format of the Bank Guarantee to be provided in such cases is at Appendix – V of MTF.*
>
> *vi. Scanned and Attested copy of Registered Deed of Partnership/Memorandum and Articles of Association/By-laws/Certificate of Registration etc. as applicable.*
>
> *vii. Scanned copy of Power of Attorney of person signing the tender (as per MTF Clause 5(b)).*
>
> *viii. Scanned copy of Certificate of experience and details thereof as per MTF.*
>
> *ix. Scanned copy of Duly audited P & L account and Balance Sheet of relevance completed years for which experience certificate has been submitted by the tenderer.*
>
> *x. Scanned copy of Income Tax Return/PAN Card.*

xi. Copy of EPF Code No. and proof of deposit of EPF for the relevant experienced period (for HC) if applicable.

xii. Any other document as per MTF, if applicable.'

[9] The above makes it clear that evaluation in any sense of the term really does not arise and therefore re-evaluation is a *non starter*. In any event, in the hearing, there is no disputation that DGM has discretionary powers to invite bidders other than L-1 and negotiate with them in larger public interest and in the interest of FCI. Such a discretionary power being conferred on the DGM by its very nature includes a relook at the technical bids after opening of financial bids. As an illustration, if the DGM invites L-2 and L-3 and negotiates as regards L-2 and L-3 matching L-1, the question of some aspects of technical bid not being left out in the bargain necessarily needs to be gone into. This Court refrains from ploughing further into the matter, as, as already alluded to *supra*, the report of inquiry officer is not before this Court, it was not before the Single Bench also and all that we are concerned with is the punishment dated 10/13.02.2020, Regulation 67 appeal against such punishment and dismissal of the appeal by the chairman on 24.06.2021 which has been assailed.

[10] As regards the second charge (Article-III), as already alluded to supra, the charge is that the respondent, as Chairman of

the Programme Committee did not disclose to the Committee at the time of deciding about mementoes to Parliamentary Committee that the mementoes included 2 (two) books authored by the respondent. To be noted, the mementoes are 2 (two) books (50 copies each), 30 wrist watches and 31 Executive Bags. A careful perusal of the minutes of the Programme Committee brings to light that as regards 30 wrist watches, the brand itself has been mentioned. We refrain from mentioning the brand in this order. However, as regards executive bags, no brand has been mentioned. We also find that the Programme Committee consists of as many as 33 members other than the respondent. All 33 members have signed minutes of the meeting on 24.10.2017. In this minutes, purchase of the 3 (three) sets of mementoes has been clearly set out and it is no argument to say that as many as 33 members (other than the respondent) signed the minutes without even knowing the title and author of the two books which is one of the three sets of mementoes. In any event, this Court finds that no rule violation has been mentioned either with clarity or specificity. All that has been alleged is, the respondent embarked upon self-promotion and also ultimately got the cost of the books reimbursed. In this regard, it is pertinent to write that There is nothing to demonstrate that the books were authored by the respondent while in service in

contravention of any rule. In other words, FCI has no grievance about the respondent authoring the two books. To be noted, there is no charge that the respondent sought reimbursement *qua* prices of the 2 (two) books given as mementoes in excess of the cover price. The respondent, in any case, only gets royalty from the publisher and any profits *qua* the cover price sale of the books goes to the publisher. To be noted, respondent is not the publisher of either of the books and he is only the author. In such circumstances, the two books having been authored and having hit the book stores (not only in India but in other parts of the world too) and the two books being available for circulation/sale in book stores there is absolutely no shred of violation of any Rule, Regulation or codified conduct.

[11] This Court having set out its considered views on the two charges finds that the order of MD dated 10/13.02.2020 merely accepts the enquiry report without mentioning anything about why the report is being accepted and has straightway imposed a punishment/penalty of reduction to a lower time scale of pay by 3 (three) stages with cumulative effect with effect from 10.02.2020 (besides holding that the reduction in time scale of pay will have effect on respondent's pension and terminal benefits also) without any discussion much less about proportionality. To be noted, be

that as it may, it is pertinent to note that said Regulations do not provide for the punishment/penalty that has been imposed. The punishment/penalty appears to be an innovation of the MD who made the 10/13.02.2020 order. Proportionality point was urged in respondent's Regulation 67 appeal but the order of the Chairman of FCI dated 24.06.2021 rejecting the appeal does not discuss proportionality and it merely brushes aside the appeal by saying that the respondent has raised some superfluous issues about the enquiry officer which according to appellate authority is an afterthought. Therefore, the 24.06.2021 order made by the Chairman rejecting/dismissing the Regulation 67 appeal of the respondent is also bereft of dispositive reasoning.

[12] In the aforesaid scenario, Hon'ble Single Bench has gone into the matter in great detail and *inter*-alia returned a finding that the conclusions/findings are such that no reasonable person would ever reach such findings and thus interfered with the punishment as well as the order dismissing the said Regulation 67 appeal.

[13] This takes this Court to one intriguing aspect of the matter. This is captured in paragraph 24 of the impugned order made by the Hon'ble Single Bench and the same reads as follows :

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.

[14] There is disputation about whether Mr. D.V. Prasad who made the order of punishment heard the appeal on VC (Video Conferencing) on 03.05.2021 at 2 P.M. Therefore, we test this aspect of bias *qua* appellate authority without going into this factual disputation. A careful perusal of said Regulations makes it clear that Regulation 67 provides for appeals, Regulation 68 gives an adumbration of the orders against which appeals lie and Regulation 69 (Regulation 69 read with Appendix-II of said Regulations) prescribes 'appellate authorities'. Regulations 54, 67, 68, 69 and Appendix-II read as follows :

54. Penalties:

Notwithstanding anything contained in any other regulation, and without prejudice to such action to which an employee may become liable under any other regulation or law for the time being in force, the following penalties may (for good and sufficient reasons and as hereinafter provided) be imposed on any employee of the Corporation.

Minor Penalties:

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from; his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders;

*(iii) (a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay.

Major Penalties:

(v) ** save as provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of the Corporation was reduced and his seniority and pay on such restoration to that post;

(vii) compulsory retirement;

(viii) removal from service which shall not be disqualification for future employment under the Corporation;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation

Explanation: the following shall not constitute a penalty within the meaning of this regulation.

(a) discharge of an employee for failure to pass any examination or test or a medical test prescribed for fresh appointment to any category of post; compulsory retirement of an employee in accordance with the provision relating to superannuation or retirement;

(b) compulsory retirement of an employee in accordance with the provision relating to superannuation or retirement;

(c) termination of service or reversion to a lower category or post of an employee appointed or promoted on probation either during or at the end of the period of probation;

(d) discharge of an employee under regulation 19 or as a measure of retrenchment for want of vacancy;

(e) termination of service of an employee employed under a contract or agreement in accordance with the terms of such contract or agreement or in the case of an employee appointed for a specific period, at the end of such period;

(f) reversion of an employee promoted from a lower post to a higher post to such lower post for want of vacancy;

(g) on-promotion of an employee after consideration of his case for promotion; whether on a regular or on ad-hoc basis to a post to which he is eligible for being considered;

(h) replacement of the services of an employee whose services had been borrowed at the disposal of his parent organization.

67. Appeals:

Orders against which no appeal lies:

Notwithstanding anything contained in these regulations, no appeal shall lie against:

(i) any order made by the Board;

(ii) any order of an interlocutory nature or of the nature of a step–in-aid #of the final disposal of a disciplinary proceeding, other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of an inquiry under Regulation 58.

68. Orders against which appeals lie:

Subject to the provisions of Regulation 67, an employee of the Corporation may prefer an appeal against all or any of the following orders, namely:

(i) an order of suspension made or deemed to have been made under Regulation 66;

(ii) an order imposing any of the penalties specified in Regulation 54 whether made by the disciplinary authority or by any appellate or reviewing authority;

(iii) an order enhancing any penalty, imposed under Regulation 54;

(iv) an order which -

a) denies or various to his disadvantage his pay, allowances, and other retirement benefits as regulated by regulations or by agreement; or

b) interprets to his disadvantage the provisions of any such regulation or agreement;

(v) An order-

a) reverting him while officiating in a higher grade or post to a lower grade or post otherwise than as a penalty;

b) reducing or withholding the terminal benefits or denying the maximum terminal benefits admissible to him under the regulations;

c) determining the subsistence and other allowances be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

d) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal, or compulsory retirement from service, or from the date of his reduction to a lower grade, post, time scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to this grade or post, or

e) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower grade post, time-scale of pay or stage in time scale of pay to the date of his reinstatement or restoration to his grade or post shall be treated as a period spent on duty for any purpose.

Explanation: In this regulation-

(i) the expression "employee of the Corporation" includes a person who has ceased to be in the service of the Corporation.

(ii) The expression 'terminal benefits' includes gratuity/ and any other retirement benefit.

69. Appellate Authorities:

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.

APPENDIX-II

DISCIPLINE AND APPEAL REGULATIONS
STATEMENT SHOWING COMPETENT AUTHORITIES

Sl. No.	Post	Appointing Authority	Authority competent to relax age limit and qualifications	Authority competent to impose penalties and penalties it may impose		Appellate Authority
				Authority	Penalties	
1.	2.	3.	4.	5.	6.	7.
1.	**CATEGORY-IV**					
	Distt. Office	Area Manager	$$$$$General Manager (Region) /Deputy Genl. Manager.	Area Manager	All	$$$$$General Manager (Region)/ Deputy Genl. Manager(Region)/Deputy Genl. Manager
	Regional/Port Office	$$$$$Asstt. Genl. Manager/Deputy General Manager (Region)	$$$$$General Manager (Region)/ Deputy Genl. Manager(Region)/Deputy General Manager	$$$$$Asstt. Genl. Manager/Deputy General Manager	All	$$$$$General Manager (Region)/ Deputy Regional Manager(Region)/Deputy General Manager.
	Zonal Offices/Head-quarters	$$$$$Asstt. Genl. Manager	$$$$$General Manager (Zone) /Deputy Genl. Manager(Zone)	$$$$$Asstt. Genl. Manager	All	$$$$$Executive Director (Zone) /Executive Director(Personnel).
2.	**CATEGORY-III**					
	District/Regional/Port Office.	$$$$$General Manager(Region)/ Deputy General Manager(Region)	Executive Director(Personnel)	$$$$$Area Manager/Asstt. General Manager/ Deputy Genl. Manager	Minor	$$$$$General Manager (Region)/ Deputy Genl. Manager(Region)/Deputy Genl. Manager

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				$$$$$General Manager(Region)/ Deputy Genl. Manager	All	Executive Director(Zone)
	Zonal Office	$$$$$General Manager (Zone)	Executive Director(Pers.)/*Executive Director (Zone)	$$$$$General Manager (Zone)	All	$$$$$Executive Director (Zone)
	Headquarters	$$$$$Deputy Genl. Manager	Executive Director(Pers.)	$$$$$ Deputy Genl. Manager	All	Executive Director(Personnel)
3.	**CATEGORY-II**					
	Zone	$$$$$Executive Director (Zone)	Managing Director	$$$$$General Manager (Region/Deputy Genl. Manager(Region)/Deputy Genl. Manager $$$$$Executive Director (Zone)	Minor All	$$$$$Executive Director (Zone) $$$$$Managing Director
	Headquarters	Executive Director(Pers.)	Managing Director	$$$$$Deputy Genl. Manager Executive Director(Pers.)	Minor All	Executive Director(Personnel) Managing Director
4.	**CATEGORY-I**					
	Category-I	Managing Director	Chairman	Managing Director	All	Chairman

*Executive Director (Zone) will exercise the powers only in respect of appointments of dependents of deceased employees or employees retire on medical grounds. (Amended vide Notification No.EP.8-1/84 dated 16.10.1987, effective from 16.10.1987- 98th Amendment).

$$$$$ Re-designated vide Notification No.93/EP-32(4)2004 dated 20thMay, 2005(2nd Amendment). Effective from the date of Notification.

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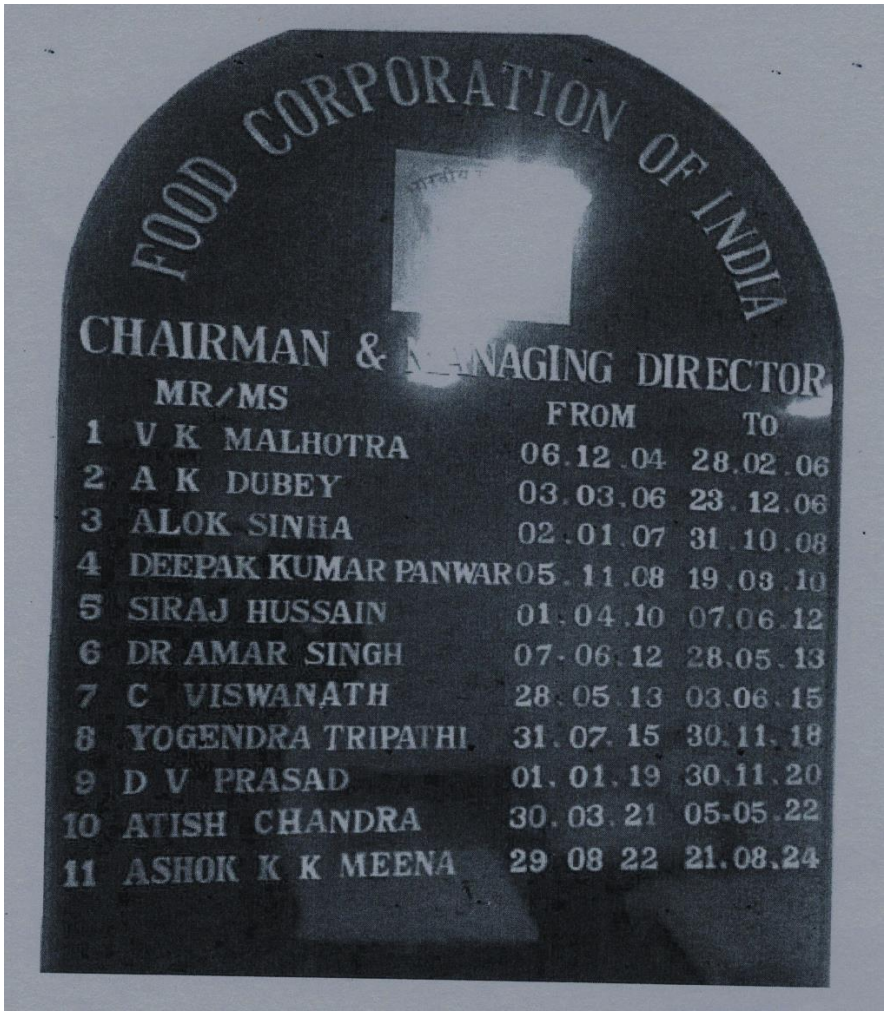
[15] The papers placed before this Court in the hearing as additional parts of the paper books bring to light that one Mr. DV Prasad assumed charge as Chairman and Managing Director of FCI on 01.01.2019, he continued in office till 30.11.2020 and thereafter, Mr. Atish Chandra assumed office as Chairman and Managing Director on 30.03.2021 and he continued till 05.05.2022. A roll of FCI and 'Chairmen and Managing Directors' displayed in the FCI office has been photographed and placed before this Court as part of the typeset of papers and scanned reproduction of the same is as follows :



To be noted, the above (photograph and factual contents) is not disputed by FCI. Therefore, as regards the original authority imposing punishment and the appellate authority being same and bias in this regard in DP, the following points comes to the fore :

i) Orders dated 01.01.2019 and 31.03.2021 vide which Mr. DV Prasad and Mr. Atish Chandra respectively assumed charge have been placed

before us. A careful perusal of these two orders makes it clear that both have assumed charge to one post and that one post is 'Chairman and Managing Director'. Scanned reproduction of these two orders is as follows :

तार: 'फूडकोर्प'
GRAM: 'FOODCORP'

फैक्स नं:
एचएफसीआईएनडी
Fax No. HFCI ND
00 91 11 2341 3241
00 91 11 4352 7433

भारतीय खाद्य निगम

FOOD CORPORATION OF INDIA

मुख्यालय:
नई दिल्ली
HEAD QUARTERS:
New Delhi

16-20, बाराखम्बा लेन, नई दिल्ली - 110011, दूरभाष: 011-43527697, 43527698
16-20, BARAKHAMBA LANE, NEW DELHI -110001, PHONE: 011-43527697, 43527698

Dated: 01.01.2019

OFFICE ORDER NO.01/2019-E.I

With reference to Government of India, Ministry of Consumer Affairs, Food and Public Distribution letter No.4-1/2018-FC.I dated 28.12.2018 read with Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Letter No.36/01/2018-EO(SM.I) dated 20.12.2018, Shri D. V. Prasad, IAS(KN:1984) has assumed the charge of the post of Chairman & Managing Director, Food Corporation of India w.e.f 01.01.2019(F/N).

(Issued from file No.PF/D- 526/E.I)

01/01/19
(जग प्रसाद)
उप महाप्रबन्धक(स्था)

DISTRIBUTION :

1. Shri D. V. Prasad, IAS(KN:84),CMD, FCI Hqrs., New Delhi.
2. Cabinet Secretary, Govt.of India, Cabinet Secretariat, New Delhi.
3. The Chief Secretary, Govt of Karnataka, Bangalore.
4. Secretary, Deptt. of Personnel & Training, New Delhi.
5. Secretary(Cordination & PG), Cabinet Secretariat, New Delhi.
6. Secretary(F&PD), Ministry of CAF&PD, Krishi Bhawan, New Delhi.
7. Principal Secretary to Hon'ble Prime Minister, South Block, New Delhi.
8. PS to Home Minister, New Delhi.
9. PS to Hon'ble Minister, Ministry of CAF&PD, Krishi Bhavan, New Delhi.
10. Establishment Officer, Department of Personnel & Training, Ministry of Personnel, Public Grevience & Pension, New Delhi.
11. The Director (FC.I), MOCAF&PD, Krishi Bhavan, New Delhi.
12. All ED(Zones) / GM(Regions) FCI
13. PS to C&MD, FCI, Hqrs.
14. All EDs/CGMs/Secretary, FCI, Hqrs.
15. All Head of the Divisions, FCI, Hqrs.
16. Director, IFS, FCI, Gurgaon
17. DGM(Fin./IT) FCI, Hqrs.
18. AGM(Genl/Omiss/Coord/RPI/Trg/Pension/Bills/E&P) FCI, Hqrs.
19. Manager(CR Cell/Intg/E.I/Library) FCI, Hqrs.
20. Officers Assocaition, FCI, Hqrs New Delhi
21. O.O.file/Stock file.

तार: 'फूडकोर्प'
GRAM: 'FOODCORP'

फैक्स नं:
एचएफसीआईएनडी
Fax No. HFCI ND
00 91 11 2341 3241
00 91 11 4352 7433

भारतीय खाद्य निगम

FOOD CORPORATION OF INDIA

मुख्यालय:
नई दिल्ली
HEAD QUARTERS:
New Delhi

16-20, बाराखम्बा लेन, नई दिल्ली - 110011, दूरभाष: 011-43527697, 43527698
16-20, BARAKHAMBA LANE, NEW DELHI -110001, PHONE: 011-43527697, 43527698

Dated: 31.03.2021

OFFICE ORDER NO. 13/2021-E.I

With reference to Government of India, Ministry of Consumer Affairs, Food and Public Distribution letter F.No.4-1/2021-FC.I dated 30.03.2021 read with Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training Order No.36/01/2021-EO(SM.I) dated 25.03.2021, Shri Atish Chandra, IAS(BH:94) has assumed the charge of the post of Chairman & Managing Director, Food Corporation of India w.e.f 30.03.2021(A/N).

(Issued from file No.PF/A-616/E.I)

(Anil Dhillan)
Dy. General Manager (Estt.)

DISTRIBUTION :

1. Shri Atish Chandra, IAS(BH:94),CMD, FCI Hqrs., New Delhi.
2. Principal Secretary to Hon'ble Prime Minister, South Block, New Delhi.
3. Cabinet Secretary, Govt.of India, Cabinet Secretariat, New Delhi.
4. The Chief Secretary, Govt of Bihar, Patna.
5. Secretary, Deptt. of Personnel & Training, New Delhi.
6. Secretary(Cordination & PG), Cabinet Secretariat, New Delhi.
7. Secretary(F&PD), Ministry of CAF&PD, Krishi Bhawan, New Delhi.
8. PS to Home Minister, New Delhi.
9. PS to Hon'ble Minister, Ministry of CAF&PD, Krishi Bhavan, New Delhi.
10. Establishment Officer, Department of Personnel & Training, Ministry of Personnel, Public Grevience & Pension, New Delhi.
11. The Director (FC.I), MOCAF&PD, Krishi Bhavan, New Delhi.
12. All ED(Zones) / GM(Regions) FCI
13. PS to C&MD, FCI, Hqrs.
14. All EDs/CGMs/Secretary, FCI, Hqrs.
15. All Head of the Divisions, FCI, Hqrs.
16. Director, IFS, FCI, Gurgaon
17. GM(Fin./IT) FCI, Hqrs.
18. AGM(Genl/Omiss/Coord/RPI/Trg/Pension/Bills/E&P/HRMS) FCI, Hqrs.
19. Manager(CR Cell/Intg/E.I/Library) FCI, Hqrs.
20. Officers Assocaition, FCI, Hqrs New Delhi
21. O.O.file/Stock file.

ii) In the case at hand, the first of the Regulation 67 appeals is dated 20.03.2020 and this is directed against 10/13/02/2020 order of punishment order. This 10/13/02/2020 order of

punishment was made by Mr. DV Prasad in his capacity as MD but on 20.03.2022 when the appeal was presented Mr. DV Prasad continued to be the Chairman. Therefore, the question of whether Mr. DV Prasad heard the appeal (or not) through VC on 03.05.2021 at 2:00 PM pales into insignificance. The reason is, appeal was presented to the same individual i.e., same incumbent who made the order of punishment. This is clearly a case of Ceasar to Ceasar.

iii) Appellate authority, while examining an appeal as Chairman continues to discharge duties as an MD also. Therefore, even on a demurer, at any given point of time, the same incumbent holds the offices of MD as well as Chairman (on a demurer because assumption of office orders describe it as one post i.e., 'Chairman and Managing Director'). This by itself is perceived bias.

iv) With the retirement of Mr. DV Prasad as Chairman and MD of FCI after passing of the impugned order of punishment dated

10/13.02.2020 and Mr. Atish Chandra who succeeded as Chairman and MD of FCI and decided the appeal, the question of personal bias may not, as such, exist; however the perceived institutional bias will still remain. One Chairman and MD will hear and decide the appeal as Chairman against an order passed by another Chairman and MD in the capacity of MD. It may be noted that one person always holds both posts of Chairman and MD in the FCI as seen from the roll of Chairman and MD and in any event the charge assumption orders cited *supra* refers to 'Chairman and MD' as 'post' in singular.

[17] Reverting to the impugned order made by the Hon'ble Single Bench, Hon'ble Single Bench, after ploughing into the two (proved) charges, the order of punishment made by MD as well as the order of Chairman rejecting the Regulation 67 appeals has interfered by saying that the enquiry officer has a conclusion which no reasonable person would have arrived at. Besides this, the Single Bench has also embarked upon the legal drill of examining all the pensionary benefit details and acceded to the prayers in this regard.

In this intra-court appeal, as both sides have fairly agreed that absent 10/13.02.2020 punishment all the pensionary benefits, retirement benefits and other benefits/monetary benefits which the respondent has sought for in the two writ petitions are there for the asking, this Court deems it appropriate to not to burden this order with these details. To be noted, except saying that Shri D.V. Prasad did not conduct personal hearing on VC on 03.05.2021 at 2:00 PM as set out in paragraph 24 of Single Bench order, there is no ground of substance that persuades this Court to interfere with Single Bench order. As this Court has tested bias dehors paragraph 24 of Single Bench order and come to the conclusion that there is perceived bias and institutional bias, we have not hesitation in writing that Single Bench order does not warrant interference.

The impugned order of punishment of reduction to lower time scale of pay by three stages with cumulative effect passed by MD *vide* order dated 10/13.02.2020 and affirmed by the Chairman in appeal order dated 24.06.2021 cannot be sustained as such punishment is not prescribed in Regulation 54 of the said Regulation. In the case of ***Vijay Singh -vs- State of Uttar Pradesh [(2012) 5 SCC 242]*** factual matrix is, while serving as Sub-Inspector of Police it was alleged that the delinquent had not recorded the past criminal history while arresting and investigating

a case. On a preliminary enquiry, delinquent was show caused as to why his integrity certificate for year 2010 should not be withheld. In ***Vijay Singh,*** at paragraph No. 11, Hon'ble Supreme Court held that the punishment of withholding integrity certificate of an employee as a punishment was held to be without any jurisdiction, as such punishment was not prescribed by relevant rules. In the present case also, punishment awarded against the respondent herein has not been prescribed as one of the penalties under Regulation 54. Moreover, the charges against the respondent are vague and lack clarity about infringement of any provisions of relevant service rules and punishment on the basis of such vague charges cannot be sustained. In this regard, Hon'ble Supreme Court in the case of ***Union of India -vs- Gyan Chand Chatar [(2009) 12 SCC 78]*** at paragraph No. 35, held that no enquiry can be sustained on vague charges. On facts, ***Gyan Chand*** is a case where delinquent while serving as Shroff in Western Railway and travelling in a train was charge sheeted *inter alia* for travelling in first class without being entitled to do so, played cards with Railway Police personnel and failed to convince staff who demanded pay allowances. Principle in ***Gyan Chand*** is, enquiry has to be conducted fairly, with objectivity and not driven by subjectivity. Findings should neither be perverse/ unreasonable nor be based on

conjectures and surmises. There is a distinction between proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

[18] This takes this legal drill to the case laws that were pressed in to service by both sides. On the side of appellant/FCI, 6 (six) case laws were pressed into service and adumbration of the same is as follows:

(i) ***Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. -vs- Rajendra Singh [(2013) 12 SCC 372]***;

(ii) ***Union of India & Ors. -vs- P. Gunasekaran [(2015) 2 SCC] 610;***

(iii) ***Chief Executive Officer, Krishna District Cooperative Central Bank Limited & Anr. -vs- K. Hanumantha Rao & Anr. (2017) 2 SCC 528];***

(iv) ***State of Karnataka & Anr. -vs- N. Gangaraj [2020) 3 SCC 423];***

(v) ***Union of India & Ors. -vs- Dalbir Singh [(2021) 11 SCC 321] and***

(vi) ***State of Karnataka & Anr. -vs- Umesh [(2022) 6 SCC 563].***

Common proposition for which the case laws were pressed into service is that Courts exercising judicial review *qua* disciplinary proceedings should not act as appellate authorities, re-

appreciate evidence and substitute a specific penalty with another penalty.

As regards ***Rajendra Singh*** *supra* , on facts, it was a case of 6 (six) bank employees being issued with identical charge sheets. While 3(three) employees who maintained their innocence were found guilty and dismissed from service, 3 (three) other employees who later admitted their guilt and apologised, were left out with a lighter penalty of pay reduction. The Allahabad High Court directed the bank to give the dismissed employees the same lighter punishment by resorting to the principle of parity. Therefore, this Court has no hesitation in respectfully writing that ***Rajendra Singh*** is clearly distinguishable on facts as this is not the case of parity as between delinquents. Therefore, ***Rajendra Singh*** does not come to the aid of appellant/FCI.

As regards ***P. Gunasekaran***, on facts, an individual working as Deputy Office Superintendent in the Central Excise Department while under suspension from his regular duties stood at a local bus stand, pretended to be a high ranking Central Excise Executive Officer boarded a public bus, searched in the luggage of ordinary passengers (without any authority) threatened the passengers and extorting money. In the DP, the delinquent was found guilty of gross misconduct and was dismissed from service.

On appeal, the departmental appellate authority scaled down the punishment from dismissal to one of compulsory retirement which allowed to keep some of his pensionary benefits. However, the delinquent was not satisfied, he challenged the punishment. The Madras High Court re-examined all the evidence from scratch, cleared the delinquent of all charges and directed State to reinstate him with full back wages. It is in such factual background that when the State appeal, Hon'ble Supreme Court held that a High Court should not re-appreciate evidence in Articles 226/227 jurisdiction and must not act as an appellate authority. In ***P. Gunasekaran***, it was a case of re-appreciation of evidence and the question was where the finding of fact that has attained finality can be re-opened in Article 226 jurisdiction. Therefore, ***P. Gunasekaran*** also is distinguishable on facts *qua* the case at hand. In this regard, this Court deems it appropriate to respectfully write that ***P. Gunasekaran*** in law also does not make a departure from the well settled principle that judicial intervention is permitted when the inquiry findings are based on no evidence, when it is entirely perverse and violation of principles of natural justice besides statutory rules being broken. Therefore, ***P. Gunasekaran*** besides being distinguishable on facts does not come to the aid of the appellant/FCI as this Court is of the considered view that this is a

case where principles of natural justice have been violated (Caesar to Caesar appeal) the findings are entirely perverse (as what is clearly permissible has been framed as a charge and the delinquent has been found guilty) and this is not a case where this Court is re-appreciating evidence.

As regards ***Hanumantha Rao***, on facts, it was a case where the delinquent was employed by the bank as a Supervisor of five Primary Agricultural Cooperative Societies (PACS) cooperative societies and while serving as Supervisor, significant financial fraud and cheating had taken place resulting in massive misappropriation of society funds for which disciplinary action was initiated. The disciplinary authority accepted the enquiry report and dismissed the delinquent from service. The departmental appeal was rejected and so was the writ petition by a Single Bench of the Andhra Pradesh High Court. However, when an intra Court appeal was preferred to a Division Bench, Hon'ble Division Bench of Andhra Pradesh High Court drastically entered the penalty substituting dismissing with a minor punishment of stoppage of 2 (two) increments for 3 (three) years. It is in this context that alteration of penalty by the Division Bench of High Court was held to be impermissible. Therefore, ***K. Hanumantha Rao*** is clearly distinguishable on facts and it does not come to the aid of appellant/FCI. In any event, ***K.***

Hanumantha Rao also does not make any departure from well settled principles in which a writ Court can interfere.

As regards in ***N. Gangaraj*** on facts, the delinquent was serving as a Police Inspector and was accused of demanding and accepting illegal gratification in exchange for not including a vehicle in a pending case. The departmental proceedings ended in a dismissal order and the Karnataka Administrative Tribunal set aside the dismissal order. State filed an appeal against the order of Administrative Tribunal and the Karnataka High Court upheld the order of the Tribunal. It is in this factual background that the question as to whether punishment order being made by a disciplinary authority can be interfered with was examined and it was held that judicial review is *qua* decision making process. In the case at hand, the decision making process has been found to be fraud besides being a case of violation of principles of natural justice, a case of no evidence and the case of perversity. Therefore, in ***Gangaraj*** also it does not come to the aid of the appellant/FCI as it is distinguishable on facts and it is not an exception to settled grounds of intervention i.e., natural justice, perversity and no evidence.

In ***Dalbir Singh,*** on facts, the delinquent was a General Duty Constable in CRPF (Central Reserved Police Force)

and an FIR was lodged against him for murder/attempted murder resulting in conviction and life imprisonment. It is in this factual ground that it was held that the High Court exceeded its jurisdiction by reappreciating oral evidence and overturning the findings of a domestic inquiry. The case at hand is certainly not one of murder/attempted murder much less one resulting in conviction and life imprisonment. ***Dalbir Singh*** is completely different on facts and therefore, it does not come to the aid of appellant/FCI.

As regards ***Umesh,*** on facts, the delinquent was a Village Accountant in Karnataka, he was accused of demanding and accepting a bribe for making charges in revenue records. Thereafter, a trap was laid leading to departmental inquiry resulting in compulsory retirement. When this punishment was set aside, it was held that acquittal in a criminal case does not automatically absolve an employee in departmental proceedings. Therefore, this Court has no hesitation in respectfully writing that ***Umesh*** is also clearly distinguishable on facts and principle does not come to the aid of appellant/FCI in the case at hand and the principle regarding a delinquent not being absolved on being acquitted in criminal proceedings does not come to the aid of appellant/FCI.

This takes this Court to 4 the (four) case laws pressed into service by the respondent. The 4 (four) case laws pressed into service by respondent are as follows:

(i) ***State of Kerala & Ors. -vs- M. Padmanabhan Nair [(1985) 1 SCC 429];***

(ii) ***Dr. Uma Agrawal -vs- State of U.P. & Anr. [(1993) 3 SCC 438];***

(iii) ***Bhagirathi Jena -vs- Board of Directors, O.S.F.C. & Ors. [(1999) 3 SCC 666] and***

(iv) ***State of Uttar Pradesh & Ors. -vs- Dhirendra Pal Singh [(2017) 1 SCC 49].***

M. Padmanabhan Nair, on facts, is a case of a retired Government servant whose pension and gratuity were paid after a delay of more than 2 (two) years. The employee filed the suit claiming interest owing to delay in payment of his retiral benefits. The Courts in the State granted interest and State carried the decree to Hon'ble Supreme Court. In this scenario, Hon'ble Supreme Court held that pension and gratuity are not a bounty or ex-gratia payment as they are valuable rights and property of an employee. Hon'ble Supreme Court held that administrative delays such as obtaining Last Pay Certificate or No Liability Certificate cannot ordinarily justify withholding retiral benefits. It was held that State can be made liable to pay interest with compensation for delay payment of pension and gratuity. ***M. Padmanabhan Nair*** is

no doubt in a different facts setting but there can be no two views about the well settled principle that pension is not a bounty. However, this is not the case where interest for delayed payment, delayed owing to administrative delay has been claimed as already alluded to supra, in this case, both sides agree that if the disciplinary proceedings, punishment and departmental appeal are dislodged the claims of the respondent *qua* retiral benefits will follow as an inevitable consequence. This Court is interfering with the punishment/departmental appeal and the retiral benefits followed. Therefore, this Court is of the considered view that the legal grind on ***M. Padmanabhan Nair*** is really not necessary.

As regards ***Uma Agrawal*** on facts, it was a case of Medical Officer whose pension, gratuity, provident fund and other retiral benefits were not released for several years post retirement, owing to which the retired medical officer approached Hon'ble Supreme Court by invoking Article 32. In this context, Hon'ble Supreme Court reiterated the principle that pension and retiral benefits are not bounties and that the State has duty to ensure timely payment of pensionary benefits and the same cannot be delayed on administrative grounds. On the same reasoning set out *supra*, *as* regards ***M. Padmanabhan Nair***'s case, this Court

respectfully writes that the legal grind on ***Dr. Uma Agrawal*** principle also is not really necessary in the legal drill at hand.

As regards ***Bhagirathi Jena***, on facts, it was a case of an employee of State Financial Corporation being chargesheeted in respect of misconduct subjected to departmental proceedings which were not completed before retirement but were continued post retirement and retiral benefits were withheld. It is in this factual matrix that Hon'ble Supreme Court held that retiral benefits cannot be withheld or reduced on the basis of pending departmental inquiry unless there is a specific enabling provision in service rules. This Court again deems it appropriate to write that while respectfully following ***Bhagirathi Jena*** principle further legal grind on the same is not necessary owing to the reason set out *supra* as regards ***M. Padmanabhan Nair*** and ***Dr. Uma Agrawal*** cases.

As regards the last case law viz., ***Dhirendra Pal Singh,*** on facts, the delinquent was an Assistant Store Superintendent in the Irrigation Department of the Government of Uttar Pradesh and post retirement though leave encashment and part of his gratuity and pension were released, remaining gratuity with pension were withheld citing alleged stock discrepancies and contemplated recovery but no departmental or judicial proceedings

had been instituted before his retirement. It is in this context that Hon'ble Supreme Court on finding that validly instituted departmental proceedings were not pending and therefore, the action of the State is unsustainable. ***Dhirendra Pal Singh*** is clearly distinguishable on facts as in the case at hand, the departmental proceedings were commenced/initiated while the respondent was in service. To be noted, in the case at hand, the DP was initiated on 11.10.2018 when the respondent was in service as he superannuated only on 30.09.2020. Suffice to write that ***Dhirendra Pal Singh*** is also a distinguishable on facts.

This Court deems it appropriate to write that while applying the case laws cited by both sides, this Court has respectfully followed that declaration of law made by the Hon'ble Supreme Court in the oft quoted and celebrated **Padmasundara Rao's** case reported in ***(2002) 3 SCC 533 [Padmasundara Rao(Dead) & Ors. -vs- State of Tamil Nadu & Ors.***

As regards ***Padmasundara Rao,*** this Court has chosen to describe the ratio as declaration of law as ***Padmasundara Rao*** was rendered by an Hon'ble Constitution Bench. On facts, ***Padmasundara Rao*** arose under Land Acquisition Act, 1894 (Central Act) and the question was after quashing of land acquisition Notification under Section 6 of the

Central Act whether a fresh period of one year is available to the State Government to issue another Notification under Section 6. While dealing with this question/this fact, Hon'ble Constitution Bench of Supreme Court laid down the manner in which reliance has to be placed on case laws. In ***Padmasundara Rao*** it was made clear that Courts should not place reliance on case laws without discussing as to how the facts fit in *qua* the facts of the case at hand and went on to declare that one additional or different fact can make a world of difference. Relevant paragraph of ***Padmasundara Rao*** (as reported in SCC) is paragraph 9 and the same reads as follows:

> *'**9.** Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in **Herrington Vs. British Railways Board** reported in **(1972) 2 WLR 537.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

[19] In the light of the narrative, discussion and dispositive reasoning thus far, this Court has no hesitation in coming to the conclusion that the order of the learned Single Bench allowing both the WPs of the respondent deserves to be sustained and there is no ground whatsoever for interfering with the same.

[20] In the result, captioned 2 (two) WAs fail and the same are dismissed. Consequently, MC(WP(C)) Nos. 34 of 2020 and 35 of 2020 also perish with the WAs and the same are also dismissed. As a further consequence, MC(WP(C)) No. 53 of 2023 taken out by the respondent for vacating interim order becomes infructuous in the light of dismissal of MC (WP(C)) Nos. 34, 35 of 2020 as well as writ appeals. Therefore, this MC(WP(C)) No. 53 of 2023 is disposed of as closed. There shall be no order as to costs.

JUDGE **CHIEF JUSTICE**

FR/NFR

Bipin/Sushil

P.S. I : **Upload forthwith**

P.S. II : **All concerned will stand bound by web copy uploaded in High Court website inter-alia as the same is QR coded.**