*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   **W.P. (C) No. 3432/2007**

%   **2nd March, 2017**

SH. ZILE SINGH ..... Petitioner

Through: Mr. Mimansak Bhardwaj, Advocate.

Versus

FOOD CORPORATION OF INDIA & ORS. ..... Respondents

Through: Mr. Deepak Dewan, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the orders of the departmental authorities, of the disciplinary authority dated 27.6.2005 and the appellate authority dated 2.11.2006 and by which orders the petitioner has been imposed the punishment of dismissal from services along with the forfeiture of gratuity.

2. The facts of the case are that against the petitioner a charge-sheet was issued on 16.11.2002 alleging that petitioner has caused loss to the respondent no.1/Food Corporation of India (FCI)/ employer on account of accepting Below Rejection Level (BRL) rice

stocks and resulting in a loss of 3.18 crores to the respondent no.1. The Article of Charge against the petitioner reads as under:-

> "That the said Shri Zile Singh, AM (QC) while working as such at Zira Centre of District Ferozepur during the year 1993-94 to 2000 failed to maintain absolute integrity & due devotion to duty in so much so that during his incumbency at the centre the Rice stocks accepted/preserved by him/under his supervision was found BRL/undespatch worthy by the DM (QC) Sh. Irshad Alam during 1995 and same were again checked by Distt. Office Committee on 31.5.96, due to acceptance of BRL Rice and poor presentation by Tech/Godown staff the Rice stocks to the tune of 5825 MT(93-94) was declared as damaged by DCC/RCC during Dec., 1997. The stocks were disposed off through tender resulting the colossal loss of Rs.3.18 Crores to the Corporation.
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> He is thus charged for acceptance of such Rice which was found BRL poor preservation/non maintenance of health of stocks, negligent conduct and dereliction of duties causing colossal loss to the Corporation.
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> By doing so he has contravened Regulation 31, 32 with 32(A) of FCI (Staff) Regulations, 1971."

3. The disciplinary proceedings were contested by the petitioner. Both the parties appeared in the departmental proceedings. Enquiry Officer gave his report dated 8.10.2003 holding the petitioner guilty. The relevant paragraphs of the Enquiry Officer's Report dated 8.10.2003 are paras 26 to 33 and which paras read as under:-

> "26. After carefully considering all the pros and cons of this case, I am inclined to accept the view of the prosecution to the extent that some of the defence documents particularly those relating to his transfer order, leave relieving order are irrelevant as they have no bearing on the result of the analysis conducted by the DM FCI, Ferozpur Sh. Irshad Alam and by the two committees of Asstt. Managers except that his transfer/relieving orders does show that the charge sheet has not been framed cautiously as it mentions his stay at Zira from 1993-94 to 2000 whereas he actually left Zira in January, 1995. This aberration however, does not impact the essence of the main charge against the CO. His argument that he cannot be held responsible for the rice stock accepted during his leave period is of no consequence as he was duly bound to check the material accepted

during his absence and as admitted by him in his cross examination by the P.O., he had visually inspected the entire stock.

27. As regards the argument of CO that MIRs submitted by Sh. S. K. Grover show his innocence as he had recorded/reported in the MIRs that the material purchased and preserved by him/under his supervision was of "B" category does not absolve him of the charges against him particularly when these MIRs, are seen and examined in Juxtaposition with the report of DM FCI, Sh. Irshad Alam and the two committees of Asstt. Managers appointed to analyse the stock. It is also important to note that this stock could not be disposed of and had to be sold through tender/auction after the same was examined by DCC/RCC –a fact which has not been contested or controverted by the CO.

28. The evidence brought on record by the prosecution proves that the committee of three Asstt. Managers, namely Sarvshri Upadhyay, Sharma and Bedi and later by Sh. Irshad Alam DM, FCI, Ferozpur followed by another committee of Asstt. Managers namely, Sarvshri L.C.Garg, N.P.Singh and S.C.Anand and subsequently the DCC and RCC also declared the stock BRL/damaged. The plea of the CO is that the committee did not associate him with sampling and analysis and its members also failed to prepare or produce sample slips and report the result of their analysis concerning Hari Singh Unit on record and this shows that they had not actually conducted any Hari Singh Unit on record and this shows that they had not actually conducted analysis is not acceptable. **It is conceded that by not bringing the result of their analysis vis-à-vis Hari Singh Unit on record of enquiry as admitted by PW-2 in his cross examination, the officials concerned have definitely left a procedural gap.** They should have been careful and cautious to avoid this lapse, but the entire gamut of charges against the CO cannot be thrown out of consideration and dismissed on this ground particularly in view of the reliable evidence produced regarding the stocks being BRL. **In my view what is significant and constitutes the crux of the matter is the fact that the stocks under reference were declared as BRL by Sh. Irshad Alam DM, FCI, Ferozpur as well as the two committees which had as many as six Asstt. Managers as its members and the stock was also treated to be BRL and damaged by the members of DCC and RCC.** The CO has not produced any evidence to show that the two committees of Asstt. Managers and Sh. Irshad Alam DM FCI, Ferozpur erred in declaring the stock as BRL or DCC followed by RCC also failed to see that the stock accepted by him was actually within specification.

29. It has been argued by the CO that "the Mirs of Sh. S.K.Grover AM(QC) EX-D-6(8 pages) are the self speaking documentary evidence which proves that the stocks were confirming to the laid down specifications even after my relief from the centre upto December, 1995 whereas I was relieved from the centre on 02.01.1995 for Haryana Region". But acceptance of this line of argument will require treating MIRs as gospel truth or ignoring the opinion and judgment of six Asstt. Managers who constituted the two committees, one DM and No. of

important and knowledgable members of DCC/RCC. Even otherwise, if MIRs were to be treated as a last word or an infallible proof of a particular stock being BRL or not, then where was the need to initiate the enquiry.

30. FCI has laid down elaborate procedure for selling the rice which cannot be disposed of through normal channel. The officials represented on DCC and RCC are deemed to be knowledgeable and responsible officials. It is not desirable to presume, unless clinching evidence to show that all of them were so careless and casual that they could not ascertain the quality of the stock and they erred in declaring the stock as damaged, that they took a wrong decision.

31. The CO has argued that none of the members of DCC and RCC was produced before the enquiry officer to prove that their decision of the rice stock was correct but in my view this was not necessary. Their recommendations regarding the disposal of the impugned stock through open tender/auction stands conclusively established. **The CO has not given any evidence to prove that DCC/RCC did something fundamentally wrong or their decision to declare the stock as damaged was perverse.** He has also not challenged the fact that FCI suffered huge loss due to the disposal of the impugned stock. His defence is based more on procedural inadequacies than on denial of the basic fact that the rice accepted under his supervision could not be disposed of through normal channel and ultimately had to be sold through tender/auction. In my view this in itself is an ample proof of his guilt.

32. On going through the D.O. addressed by Sh. Ishad Alam to Nitya Anand regional manager FCI, RO, Punjab (EX-P-1/102). I find that he had stated "on perusal of sample and also stock, it has been concluded that high moistured rice were accepted in the initial stage with highly low polish, and no aeration was provided for considerable period and, therefore, most of the stocks had become badly encrusted giving very very dirty look of the stocks is unfit for dispatch. Besides stacks at sr. no.57, 59 and 61 where insect damage have been noticed as 8%, 6% and 8% respectively shows unscientific and bad preservation and had deteriorated during storage. Apart from the good percentage of grain had been found touched through its germ portion by insects". This opinion of DM, FCI, Ferozpur has not been contested.

33. The evidence produced by the prosecution, in my opinion, fully sustains the charge contained in the charge sheet subject to the modification that CO worked at Zira not from 1993-94 to 2000 as mentioned in annexure-1 of the chargesheet but up to 02.01.1995 and further the loss caused to the FCI because of his lapse should be deemed to be restricted to the quantity purchased and preserved by him or under his supervision as mentioned in annexure-1 ibid."

4. The disciplinary authority has accepted the Enquiry Officer's Report by making the following observations in its impugned order dated 27.6.2005:-

> " I have gone through the contents of the charge sheet, Inquiry Report, representations of the CO and other related record of the case in a careful manner. The CO's pleas that he was neither associated nor was called to associate in sampling and analysis by the committee/squad and no senior officer had declared the same as BRL, are of no help to him since the FCI has the powers/authority to get the stocks procured by its official/officers checked at any time. From his plea that he was not given the copies of SIRs of DM(QC)/DM as demanded by him during the proceedings, it seems that it was aware of these SIRs. If the prosecution had not provided him the copies of SIRs, then he could have produced the same in his own defence if the same were so vital to him.
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> As regards the MIRs of Sh. S.K. Grover, AM (QC) Exbt-D-6 (8 pages) produced by the CO to prove that the stocks were conforming to the laid down specifications even after his relief from the centre up to April, 1995 whereas, he was relieved from the centre on 1.1.1995, the same cannot be given any credence in view of the evidence brought on record by the prosecution which proves that the Committee of three Asstt. Managers (QC) namely S/Shri M.S. Bedi, R.S. Sharma and Balram Upadhayay, and later by Sh. Irshad Alam, DM(QC), FZR followed by another committee of three AMs QC S/Sh. L.C. Garg, S.C. Anand and N.P. Singh & subsequently the DCC and RCC had declared the stocks BRL/damaged. The CO could not produce any evidence to show that the two Committee of AM (QC) and the DM (QC) had done any wrong while declaring the stocks as BRL. Further, Sh. S.K. Grover, AM (QC) too had been found to be responsible for deterioration of rice stocks during preservation at Zira by the DM (QC), Ferozpur vide his D.O. No. E/DM(QC) Inspection/Kharif 1995-96/6781 dated 20/27-2-96 Exbt. P1/112. As regards CO's plea that prosecution did not get the prosecution documents except Exbt P-1 authenticated through any PW, it is stated that all the Exbts P-1/1 to P-1/125 are official documents and through the contents of these documents the prosecution has brought on record that CO failed to maintain absolute integrity and due devotion to duty and that during his stay at the centre the stocks accepted under his supervision were BRL in refraction of high moisture %age with low polish which resulted in badly encrusted and giving very dirty look to the rice stocks. Similarly in this regards, it is also most important to note that DM (QC), Ferozpur in his inspection report dated 29-12-1995 (Exbt-P1/100) has found that the main cause of deterioration of the stock is that it has been procured at very high %age of moisture and low polish. This fact appears to be the clear cut evidence of negligence on part of the CO. This stock was ultimately declared as damaged by the DCC/RCC during

Dec, 1997 and disposed off through tender resulting in pecuniary loss of Rs.3.18 crores to the Corporation. The stocks were observed as BRL by Shri Irshad Alam, DM(QC) Ferozpur during Dec., 1995 and the CO was transferred from Zira centre in Jan., 1995 and no rice stocks can deteriorate to BRL in the short span of 11 months. Besides, he has himself certified that when he joined the depot on 14.1.94, the stocks were conforming to the specifications.

Thus, I find that IO has carefully and judiciously evaluated the oral & documentary evidence brought on record of the inquiry before arriving at his conclusion and has correctly proved the charge against the CO. I, therefore, agree with the findings of Inquiry Officer, keeping in view the supervisory lapse on the part of Shri Zile Singh, AM (QC) in acceptance and preservation of rice stocks and causing colossal loss of over Rs.1.4 crores to the Corporation which is proportionate to the rice stocks of 2582 MTs accepted under his supervision, in my considered opinion the penalty of "Dismissal" from the services of the Corporation alongwith forfeiture of his gratuity will meet the ends of justices.

Now, therefore, I, J.P.Sharma, Zonal Manager (N) in exercise of powers conferred under Regulation 56 of FCI (Staff) Regulations, 1971 hereby impose the penalty of "Dismissal" from the services of the Corporation along with forfeiture of his gratuity under section 4, Sub. Sec. 6(a) of the Payment of Gratuity Act, 1972 upon Shri Zile Singh, AM (QC).

A copy of this order be placed in his CR Dossier and receipt of this order should be acknowledged by him.

(J.P.SHARMA)
ZONAL MANAGER (NORTH)"

5. The appellate authority has rejected the appeal of the petitioner against the order of the disciplinary authority dated 27.6.2005 by the appellate authority's order dated 2.11.2006. The relevant portion of the order of the appellate authority reads as under:-

"I have carefully gone through the relevant records of the case viz. charge-sheet, findings of the Inquiry Officer, contents of orders issued by the Disciplinary Authority and also weighed and considered the defence pleas raised by him both in his Appeal as well as in the personal hearing given to him.

The Appellant nowhere has disputed the bare facts of the case viz. his posting at Zira Centre of Ferozpur district Viz-a-vis acceptance or rice stocks under his supervision which later on were found BRL. The stocks in question thus could not be disposed of in normal channel and had to be disposed of through tender sale which caused extensive loss to the organization.

The Inquiry Officer has systematically and analytically analyzed the facts of the case and after evaluating the entire evidence he returned his findings and held the allegation leveled against him as proved. The Disciplinary Authority viz. ZM(N)/ED(N) too appreciated the factum of the case rightly and considering the delinquency committed by him, the Appellant was imposed the penalty which evidently commensurated to his proven misconduct. There apparently does not appear to be any substance in his defence plea in which he has asserted that sampling from the stocks was not done in his presence nor was he associated with it. The stocks in question as has come in evidence were accepted under his supervision and sampling there from was done in accordance with the extant instructions and DCC/RCC or the stocks too was conducted impartial authorities and Appellant cannot derive any benefit from it. Since the penalty has been imposed upon him on the basis of record and evidence, it is not appropriate to interfere with it. The Appeal Petition is, therefore, liable to be rejected.

NOW, THEREFORE, I, A.K.DUBEY, MANAGING DIRECTOR being the Appellate Authority in exercise of powers conferred under Regulation 72 of FCI (Staff), Regulations, 1971 hereby reject the Appeal Petition of Shri Zile Singh. Ex.AM (QC) of Punjab Region.

Sd/-
(A.K. DUBEY)
MANAGING DIRECTOR"

6. (i) On behalf of the petitioner, it is argued that as against the petitioner there were two charges. First was of Below Rejection Level (BRL) quality rice being accepted by the petitioner during the period of posting of the petitioner from January 1994 till December 1994 at Zira Centre, District Firozpur in Punjab. As regards the aspect of acceptance of stocks below BRL at the inception itself, the charge is that stocks which were accepted initially had high percentage of moisture content and were of low polish. The second charge against the petitioner was of poor preservation of the stocks i.e quality of rice deteriorating on account of bad preservation.

(ii) It is argued that the entire case has been decided against the petitioner on the basis of three reports prepared by the officers of the respondent no.1. The first report is a report dated 29.12.1995 of one Sh. Irshad Alam who was the Deputy Manager (Quality Control). The second report is the report dated 20/27.2.1996 of a committee of the three persons including Sh. L.C. Garg, Sh. S.C. Anand and Sh. N.P. Singh, all Assistant Managers (Quality Control). It may be noted that there is a third 'report' which is undated, and which is said to be given prior to the report dated 29.12.1995 of Sh. Irshad Alam, however, this 'report' is of Sh. Manmohan Singh, Sh. R.S. Sharma and Sh. Balram Upadhyay, all Assistant Mangers (Quality Control), is actually only a two line note appended at the end of stocks chart stating that the quality of the stock varies from bag to bag and some stocks are highly encrusted and absolutely dull in appearance. It is argued on behalf of the petitioner that the entire enquiry proceedings as also the orders of the departmental authorities are wholly illegal and bound to be set aside for the reason that if the issue is of acceptance of bad quality stocks of rice in the year 1994 then the issue as regards quality of rice accepted has to be seen by a report prepared in around the time of acceptance of the stocks in the year 1994 itself and which admittedly has not been done. The only two reports which are prepared are, one of

December 1995 of Sh. Irshad Alam, Assistant Manger (Quality Control) and the next report even later and dated 20/27.2.1996 of three other Assistant Managers (Quality Control). Therefore, it is argued that such reports cannot by any stretch of imagination be accepted as reports with respect to quality of rice which was accepted during the year 1994, and much less with respect to the alleged moisture content in the same inasmuch as moisture content would also have admittedly seeped in the rice during the period after the petitioner was transferred from Zira in Firozpur i.e of the period in the year 1995 which would include the entire monsoon season of the year 1995. It is further argued that once the departmental authorities including the appellate authority holds that one of the reasons for bad quality of rice is on account of bad preservation and storage, then it cannot be argued that the moisture content which is found to be in excess allegedly at the time of taking over of stocks in the year 1994 can be the reason for the BRL stocks because bad storage and preservation of the year 1995 when the petitioner was not posted on the subject site Zira Centre at Firozpur will also be a reason for the high moisture content and deterioration of the stocks which were stored earlier in the year 1994 .

(iii) Learned counsel for respondent no. 1 has, on the other hand supported the orders which are passed by the disciplinary authority as also the appellate authority and has argued that such orders are correct, inasmuch as, such orders rightly have placed reliance upon the three quality control reports which have been referred to above.

7. In my opinion, the writ petition has to succeed inasmuch as when two issues are of what was the quality of the stocks when accepted in the year 1994 and whether there was fall in the quality of stocks on account of bad preservation, then it was necessary that for both these aspects reports should have been of the year 1994 itself i.e from January, 1994 to December, 1994. Surely, the reports which are relied upon by the departmental authorities and the Enquiry Officer are admittedly of many months later after the year 1994, with the report of Sh. Irshad Alam being after one year of the petitioner being transferred out of the subject post at Zira in Firozpur and the second report is of around one year and two months after i.e of 20/27.2.1996. Also, it is seen that both these reports of around one year and one year two months after the petitioner was transferred out of the subject place of posting, have been prepared *ex-parte* against the petitioner because admittedly, the petitioner was not called to be part of the process of preparation of reports or the analysis of the samples. It is not as if petitioner was not available and could not have been called at the time of preparing of the reports and taking/examining of samples, but in

spite of the petitioner being available, he was not called. Very little value therefore can be attached to these reports against the petitioner for this reason with the further reason that alleged extra moisture content at the time of acceptance of rice in the year 1994 and fall in the quality of stocks on account of bad storage in the year 1994 cannot be by reports prepared around one year and one year two months after 1994. I have already stated above that the so called third report is no report inasmuch the same is actually a chart of stocks of sometime of the year 1995, and which only states that quality of stocks varies from bag to bag and some stocks are highly encrusted and absolutely dull. In my opinion, therefore, the entire evidence led by the respondent no.1 in the departmental proceedings, and which ultimately turns only upon the three reports, cannot be accepted so as to hold the petitioner guilty on account of having accepted BRL stocks in the year 1994 and bad storage in the year 1994. It bears repetition and reiteration that issue of fall in the quality of stocks as also moisture content in the stocks, would also definitely arise on account of storage in the entire calendar year 1995 including the monsoon season of the year 1995, and accordingly, this Court accepts the argument urged on behalf of the petitioner that even if the entire evidence led by the departmental authorities is considered in this case, such evidence being the reports cannot in any manner be such evidence for holding petitioner guilty of accepting BRL stocks in the year 1994 and bad storage in the year 1994.

8. In view of the above discussion, this writ petition is allowed. The impugned orders dated 27.6.2005 and 2.11.2006 are set aside. Respondent no.1 will, subject to any other disciplinary judgment/order against the petitioner now process the papers of the petitioner with respect to any service benefits and terminal benefits which have to be given to the petitioner, and such service benefits and terminal benefits, in accordance with law, be released to the petitioner within a period of three months from today.

MARCH, 02, 2017 **VALMIKI J. MEHTA, J**

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