IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP NO. 4405 OF 2014
DATE OF DECISION : 06.05.2019

Gurcharan Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

with (2) CWP NO. 11540 of 2014

Baldev Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

(3) CWP NO. 15485 of 2014

Harminder Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

(4) CWP NO. 15579 of 2014

Harish Chander

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

(5) CWP NO. 15573 of 2015

Avtar Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

and (6) CWP NO. 2716 of 2016

Gurnam Singh

... Petitioner

versus

The Punjab State Warehousing Corporation and another

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Jagdeep Bains, Advocate,
for the petitioners in
CWP Nos. 4405, 11540,15485,15579 of 2014 and
CWP No. 2716 of 2016.

Mr. J. P. Rana, Advocate,
for the petitioner in
CWP No. 15573 of 2015.

Ms. Amandeep Kaur, Advocate for
Mr. Parambir Singh, Advocate,
for respondents No.1 and 2.

Mr. G. S.Dhillon, Advocate,
for the respondents in
CWP No. 15573 of 2015.

Mr. Vikas Singh, Advocate,
for respondents in
CWP No. 2716 of 2016, 15579 and
15485 of 2014.

Mr. A. S. Miglani, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Owing to the loss caused to the Punjab State Warehousing Corporation(hereinafter referred to as Corporation, for brevity), due to poor storage condition of wheat stock, recovery has been ordered from the salaries of the petitioners. The question that needs adjudication is, whether the petitioners are responsible for loss so caused and/ or whether they were delinquent for the poor storage of the wheat stocks that caused the loss to the Corporation.

2. This order of mine shall dispose of above-mentioned six writ petitions, as common questions of law and facts are involved therein. For brevity the facts are taken from CWP No. 4405 of 2014, which was instituted earliest in time.

3. Petitioner, inter alia, seeks quashing of punishment order dated 14.05.2007(Annexure P-9) whereby punishment of recovery from his salary has been awarded and the same was upheld vide impugned appellate order dated

30.12.2013(Annexure P-31). Punishment was awarded on the ground that the petitioner was responsible for the loss caused to the respondent Corporation due to poor storage condition of the wheat stock pertaining to the years 1998 to 2001.

4. Storage and disposal of wheat procured for and on behalf of the Food Corporation of India(for brevity, FCI), before it suffers damage on account of prolonged or faulty storage or other factors, has been a perennial problem resulting in cross-litigation between procurement agencies viz. State Warehousing Corporation, MARKFED, PUNSUP and their employees on one hand; and between procurement agencies and Food Corporation of India on the other hand. In order to plug the same, two writ petitions bearing No. 7285 of 2002 and 7557 of 2003 were filed by the Employee Unions of PUNSUP and MARKFED before this Court, wherein vide an order dated 02.03.2005 this Court directed the Government of India and Food Corporation of India to frame a policy to ensure that procured wheat stocks are properly stored and/ or disposed of before suffering damage. Pursuant thereto, Policy guidelines dated 03.06.2005(Annexure P-14) have been framed by Government of India in respect of States of Punjab and Haryana.

5. Before proceeding further, it would be relevant to refer to the above-said policy guidelines, particularly, clauses 3.4, 4.3 and 5.3 as below:-

> *"XXX*
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> *3.4 Cover and Plinth(CAP) storage of the stocks shall be arranged only in extremely unavoidable circumstances. CAP storage shall be invariably on pucca, elevated, dry and termite resistant plinths. CAP storage shall be erected in the shape of inverted 'U' letter of the English Alphabet and in the matter of size, dunnage, cover and lashing of the CAP, the respective norms given in the Quality Control Manual and other guidelines of FCI shall be followed.*
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> *XXX*
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> *4.3 The Regional Offices of the FCI will chalk out a detailed programme to move out the stock of wheat available in the respective States including hose available with the State procuring agencies while duly adhering to FIFO principles, within six months. Where this is not possible, priority shall be given to State Agencies stocks and*

stocks kept under CAP storage. It shall be ensured that the FCI takes over the current year's procured stocks from the State Agencies not later than within a period of twelve months from the date of cessation of procurement.

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5.3 The FCI Headquarters will finally review the position of lifting/ out of wheat in Punjab and Haryana in January-February every year and intimate the reviewed position to the Ministry for taking decisions in the matter of disposal of the stocks, in balance with the FCI and the State Agencies, if any, even after commencement of the next procurement season of wheat."

6. Before proceeding further, it is apposite to mention here that the present writ petition is third round of cantankerous litigation. Prior to the instant writ petition, the petitioner had approached this Court vide CWP No. 1379 of 2007 impugning the punishment order dated 14.05.2007, which was disposed of directing the Appellate Authority to pass a speaking order after affording opportunity to the petitioner. In compliance thereof, the Appellate Authority vide its order dated 18.09.2009 rejected the appeal of the petitioner. Yet again, the petitioner filed another writ petition bearing CWP No. 18459 of 2009, which was allowed vide order dated 17.05.2011(Annexure P-20) and the order of Appellate Authority was quashed with a direction to pass speaking order afresh. In this background, the Appellate Authority, after re-considering the grounds of appeal filed by the petitioner, yet again dismissed the appeal vide order dated 17.10.2013, which is assailed in the present writ petition.

7. Adverting to the facts of the case, the petitioner was appointed in the respondent-Corporation on 06.04.1978 and retired as Chief Technical Assistant on 31.05.2010. During the relevant period 1998-2000, the petitioner was posted at State Warehouse, Raman.

It is the case of the petitioner that, *inter alia,* due to negligence of FCI, wheat stocks for crop years 1998-99, 1999-2000 and 2000-01 were not moved as per 'First In First Out Policy'(for brevity, FIFO Policy). Stock was stored on the 'kathcha' ground by respondent/ Corporation, as is reflected from proforma dated 28.07.1999, filled up by the respondent-Corporation in respect of relevant godown to be taken on hire. At Sr. No.9 of the said proforma, it is stated, thus:-

"9.(a) Height of Plinth	*Nil*
(b) Floor cemented/ crick paved	*Katcha*
(c) Walls Cement Plastered/ Pointed bricks	*Nil*
(d) Roofs RCC/RBC/GI/AC sheets/Wooden purlins	*Nil*
(e) Do the shutters of the doors and ventilators close tightly	*NIL*

Katcha ground only."

In this connection, the petitioner also relies on an order dated 30.03.2000(Annexure P-1) passed by Managing Director of respondent Corporation whereby he granted approval for 'katcha' unscientific storage at the warehouse at 0.07 paisa to 0.16 paisa per bag per month.

8. The petitioner states that the fact of unscientific 'katcha' storage is further corroborated by another letter dated 03.04.2002(Annexure P-2) by District Manager to Managing Director of respondent-Corporation pointing out, as below:-

> *"It is brought to your kind notice that during conducting of physical verification of SWC, Raman it has been observed that below mentioned stocks of PSWC wheat pertaining to crop year 1999-2K and 2000-01 stored in open plinths unscientifically require replacement to make the stocks fit for dispatches without quality cut and loss to the Corpn. as per undertaking given by TA Incharge SWC, Raman."*
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> *Further it is stated that stocks of wheat lying stored in open in the said premises can be shifted only if the above qty. of gunnies are replaced because the grains are in a very good forms and only gunnies have been damaged. TA has further assured that the stocks will be dispatched without quality cut and loss to the Corpn., if the said qty. is replaced and stocks are shifted from unscientific plinths to gov. godowns."*

9. Notwithstanding the above, wheat stocks stored at warehouse Raman

were auctioned/ dispatched after an inordinately long period, as late as in August, 2004, details of which are hereunder:-

Crop year	***Month of auction of stocks***	***Net amount received from FCI(in Rs.)***
1998-99	Aug-04	25,315.00
1998-99	Aug-04	8,16,849.00
1998-99	Sep-04	2,83,859.00
1998-99	Dec-04	1,85,485.00
1999-2000	Aug-04	34,33,806.00
1999-2000	Aug-04	24,13,411.00
2000-01	Aug-04	12,45,255.00
2000-01	Aug-04	12,29,514.00
	Total	96,33,494.00

10. The wheat stock thus, remained in prolonged unscientific storage on 'katcha' ground for a period of 4 to 6 years. The delay in disposal of wheat stock was due to slow processing in the office of Managing Director who issued belated release order dated 03.08.2004 (Annexure P-5).

In this background, the petitioner states that he was shocked to receive a charge-sheet dated 20.12.2004 in respect of loss caused due to prolonged wheat stock storage in an unscientific manner.

11. Response to the charge-sheet dated 20.12.2004 did not find favour and the respondent Corporation proceeded with the departmental proceedings against the petitioner. Neither charge sheet nor response thereto has been placed on record by either side but enquiry report shows that Enquiry Officer was to look into the following allegations:-

"1. Due to damage of wheat stocks crop year 1998-1999, resulting in

5180 kattas weighing 2552.60 qtls put to auction and a shortage of 252.20.925 qtl. has been occurred, the Corporation suffered a financial loss of Rs.1631329.60 including 50% incidental charges on account of cost of above shortage and difference in book value and the amount fetched on auction of wheat stocks, for which you are equally responsible with Sh. Baldev Singh, Senior Assistant.

2. Due to damage of wheat stocks crop year 1999-2000, resulting in 16614 bags, weighing 14468.10 qtls. put to auction and a shortage of 1597.97.45 qtls has been occurred, the Corporation suffered a financial loss of Rs.10718084.93 including 50% incidental charges on account of cost of above shortage and difference in book value and the amount fetched on auction of wheat stocks, for which you are equally responsible with Sh. Baldev Singh, Senior Assistant.

3. Due to damage of wheat stocks crop year 2000-2001, resulting in 14916 bags weighing 7802.40 qtls put to auction and a shortage of 677.08.790 qtls has been occurred, the Corporation suffered a financial loss of Rs.6272676.06 including 50% incidental charges on account of cost of above shortage and difference in book value and the amount fetched on auction of wheat stocks, for which you are equally responsible with Sh. Baldev Singh, Senior Assistant."

12. The petitioner states that after the framing of the policy dated 03.06.2005, another subsequent charge-sheet dated 09.12.2005 was issued to him containing the following charge:-

"1. That after the stocks of wheat crop year 1998-99 lying at SW Raman were damaged 801 kattas weighing 398.30 qtls had to be auctioned by the Corporation as a result of which a shortage 5.20 qtls was observed leading to loss of Rs.4,67,200.50 on account of the cost of above shortage as well as the difference in the rates of the stocks as per books and rates received on auction of the stocks and for making good this loss you are fully responsible."

The petitioner challenged above charge-sheet dated 09.12.2005 (which is not subject of present petition) before Civil Judge(Junior Division) at Bhatinda who decreed the civil suit in favour of petitioner vide order/ judgment dated 27.11.2012, which was later reversed in first appeal. The petitioner has filed second appeal vide RSA No. 248 of 2015, which is now pending consideration before this Court. The subject matter of present petition and of the civil suit arising wherefrom Regular Second Appeal is pending, are completely independent of one another.

13. As regards charge-sheet dated 20.12.2004, the Enquiry Officer per report dated 18.05.2006 (Annexure P-7), exonerated the petitioner of being negligent in discharging the duties due to which alleged loss was caused to the respondent-Corporation. Relying, inter alia, on the statement of MD of the respondent Corporation, Enquiry Officer held that wheat was stocked for lengthy period in an unscientific manner due to scarcity of space. The stock was subject to exposure to heavy rains due to unavailability of covers and nets. It was held that during inspection by the District Magistrate(PW1) the stock was in good condition even after the petitioner had relinquished the charge from the place of posting. Enquiry Officer also held that there was violation of Government of India Policy guidelines, 2005. Consequently, the Enquiry Officer exonerated the petitioner of the charges levelled against him. The relevant extract thereof reads as under:-

> *"The Hon'ble Punjab and Haryana High Court had directed the FCI that it may frame a policy for storage and early release of wheat which have been framed by the FCI vide letter at Annexure 22. In this letter the FCI has issued instructions that they will get the stocks released within six months and FCI will ensure that they will get the stocks transferred in their name after one year but in the present case stocks had been released after 6, 5 and 4 years and no attention was paid for early release of stocks neither any attention was given in this regard by the District Office due to which stocks got damaged and had to be auctioned during into losses for which it is not justified for the CO to be held responsible.*
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> *Considering the above mentioned circumstances, clarification forwarded by OP is consent(Sic) and thus charges No.1 to 3 are not proved."*

14. However, the Managing Director, dissenting with the findings of Enquiry Officer, issued show cause notice dated 22.09.2006 to the petitioner

proposing to impose major penalties, including recovery of Rs.1,86,22,090.59 from the petitioner. The petitioner filed his reply to the show cause notice. Disregarding the same, Managing Director/Punishing Authority vide order dated 14.05.2007(Annexure P-9) awarded punishment of recovery of an amount of Rs.15,02,593.99 from the salary of the petitioner in monthly installments of Rs.4,000/-. Vide appellate order dated 17.10.2013(Annexure P-13), the punishment was upheld. Hence, the instant writ petition.

15. In CWP No. 11540 of 2014 (Baldev Singh Vs. The Punjab State Warehousing Corporation & Anr.) and CWP No. 2716 of 2016(Gurnam Singh Vs. The Punjab State Warehousing Corporation), charge-sheets were issued to petitioners therein for dereliction of duties in maintaining the health of the food stocks. Though, they were exonerated by the Enquiry Officer, still the punishing authority awarded punishment of recovery of an amount of Rs.15,02,593.99/- and Rs. 39,63,640.50/- respectively from the petitioners/-. The appeals filed by them were dismissed by the Appellate Authority.

16. As regards CWP No. 15485 of 2014, 15579 of 2014 and 15573 of 2015, the petitioners therein were charge-sheeted on the allegations of having failed to maintain the health of stocks, resulting into its deterioration which resulted into causing loss to the respondent-Corporation. The Enquiry Officer indicted him of the charges and recommended penalty of recovery of an amount of about Rs. 56,000/- each from them on account of loss. At the same time matter regarding losses of stocks, still in storage, was recommended to be taken up on release of the stocks and after ascertaining the loss. The Punishing Authority, however, arbitrarily and in contravention thereof, without assigning any reasons re-assessed the losses and enhanced the amount to about Rs.21.00 Lakh each, way more than the amount recommended by the Enquiry Officer, to be recovered from the petitioners.

17. In the return, the stand taken by the respondents is that during the

period 1998-99, 1999-2000 and 2000-2001, the petitioners were entrusted with maintaining health of wheat stock. However, they failed to preserve the stocks properly. The deterioration in the stock started soon after its entrustment. As a result thereof, the stock could not be offered to the nodal agency of Government of India i.e. Food Corporation of India. They thus caused huge losses to the State exchequer. The petitioners were charge-sheeted and departmental proceedings were initiated and they were rightly imposed the punishment of recovery, which was upheld by the Appellate Authority. According to the respondents, the petitioners had remained negligent in maintaining the health of food stocks, due to which Corporation had suffered substantial losses. The respondents further denied that there was any discrimination while imposing the penalty upon the petitioners.

18. Regarding the exoneration of the petitioner vide the enquiry report, the stand of the respondent Corporation is that since the enquiry report was unsatisfactory, the Disciplinary Authority, after giving reasons, disagreed with the said report and rightly passed the punishment order dated 14.05.2007. The action of Disciplinary Authority is in tune with the decision of the Board of Directors taken in its meeting held on 06.01.1998. The following decision taken by the Board of Directors in the said meeting is stated to be the reason for initiation of disciplinary action against the petitioner:-

> *"It is also explained to the Board that although deterioration to the stocks was due to prolonged storage in the open, yet lapses in individual cases could also not be ruled out and the factors/ persons responsible for damage to stocks in each case would be looked for taking necessary action separately."*

19. The appellate order is sought to be justified that the same had been passed giving cogent reasons observing that the petitioner, due to his negligence, had failed to ensure non-deterioration of wheat stocks for the years 1999 to 2001. The Appellate Authority made specific observations that the stock had deteriorated due to dispatch/ negligence of the petitioner and therefore, the same

was fully justified and no interference of this Court is warranted.

20. Learned counsel for petitioners argues that the punishing authority, in a cryptic manner, dissented with the findings of the Enquiry Officer. He has not assigned any cogent reasoning while imposing the punishment upon the petitioners Gurcharan Singh and Baldev Singh. Punishing authority also failed to take into account the resolution dated 15.10.1999(Annexure P-13) where shelf life of wheat stock at open godown was taken as one year. There was non-adherence of Government policies too, regarding storage and movement of stocks by the respondents. The damage to crop stock is totally attributable to the respondents due to prolonged storage. According to her, the petitioners have been discriminated by imposing major penalty while similarly situated employees stand exonerated.

21. Learned counsel for the petitioners contends that once the enquiry officer had exonerated similarly situated employees, as is apparent from a perusal of Annexures P-25 to P-29, for the punishing authority to go ahead and hold the petitioners guilty of having caused loss to the State is highly arbitrary. It is further contended that the fact sheets of wheat loss prepared jointly by the officials of respondent-Corporation and Food Corporation of India for crop years 1998-99, 1999-2000 and 2000-2001(Annexures P-34 to P-36) to seek damages from FCI reflect that the loss was caused due to prolonged storage of the wheat stock in an unscientific manner. No officer from Warehousing Corporation was held responsible for the same. It was mentioned therein that the wheat stocks pertaining to the crop year 1998-99, 2000-01 and 2001-02 were stored in May-1998, May-1999 and May-2000, respectively and it was rejected after 4-6 years on 29.05.2004 and thereafter, put to auction. The reason assigned for quality degradation that led to rejection of wheat stock was 'prolonged storage'. Relevant extract of one sample fact sheet dated 20.08.2004(Annexure P-35) jointly prepared by the respondent Corporation/ FCI officials bearing their signatures in respect of wheat stocks for the year 1999-2000 is reproduced as under:-

"Fact sheet of wheat lots with agencies in Punjab rejected by FCI.

I	Details of stocks stored Wheat	
(i)	Crop year	1999-2000
(ii)	Type of storage(If stored in CAP,please indicate whether the plinth was scientific/unscientific	CAP(non scientific) in OP No. 14 & 15
(iv)	Date on which storage provided	5/99
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IV MISCELLANEOUS

(i)	Reasons for degradation in quality leading to rejection of the lot	Prolong storage and non movement of stocks
(ii)	Name and designation of officers, held responsible(if rejection of lot was due to failure/ negligence of the official)	NIL

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Sd/- Manager Punjab State Warehousing Raman	Sd/- Manager(Depot) Food Corporation of India	Sd/- Manager(QC) Food Corporation of India."

Likewise joint fact sheets of other relevant years also reflect the same position as above.

22. It was the duty of the FCI to move the wheat stock as per the 'First In First Out Policy' contends learned counsel for petitioner. FCI failed to perform its statutory duty which had resulted in the loss caused to the exchequer.

23. The learned counsel for the petitioners also points out that similarly situated persons, as reflected in Annexures P-25 and P-29, have been exonerated in the enquiry proceedings on the ground that there was inordinate delay in issuance of charge-sheet(s). Calculation of loss is highly incongruous in various cases reflecting disparity and arbitrariness on the part of Punishing Authority. Owing to the departmental delay, delinquency of the alleged loss/damage to the food grains could not have been fastened on the charge-sheeted employees. Delay in issuing the charge-sheet is fatal to the case of respondents Corporation as the petitioners loses his right to defend himself in an effective manner after such a long gap.

24. Learned counsel has cited judgments of this Court in **'The Punjab State Cooperative Supply and Marketing Federation Ltd. vs. Additional**

Registrar (Administration) Cooperative Societies, Punjab and others' bearing **CWP No. 15452 of 1994**, **'Punjab State Cooperative Supply and Marketing Federation Ltd. vs. The Financial Commissioner, Cooperation and others'** bearing **CWP No. 14862 of 2007.** She argued that perusal of these judgments show that in cases where the loss was caused due to storage of crop in unscientific manner, blame cannot be placed on the persons who were working in the State Warehouse.

25. Reliance has also been placed on **'Baldev Singh Sandhu and others vs. The Financial Commissioner, Cooperation, Punjab and others'** bearing **CWP No. 8215 of 2010,** wherein it has been held that when one set of persons having been accused of the same malfeasance, have been exonerated, the respondent/Corporation cannot proceed harshly qua another set of delinquent employees in a pick and choose manner. It has been held as under:-

> *"10. It is in the light of the above scenario that the impugned order dated 7th May, 2005 passed by the Financial Commissioner, Cooperation, Punjab, deserves to be read on punishment(sic) with the recovery of loss in terms of money aspect foreclosed, but still the punishment inflicted stands though considerably watered down, but still is a major penalty without sufficient proof of guilt even in its preponderance of probabilities. There is also no reason assigned by any of the authorities why such a harsh punishment was chosen when the recovery aspect ultimately stands detached from reckoning holding firmly that the petitioners were not responsible for the loss and liable for recovery of money when the fault squarely lies in the acts of the Millers. Then the punishment imposed appears excessively disproportionate to the charge leveled against the petitioners. It appears to this Court in its considered view that the petitioners by all means deserve similar treatment as was accorded to Anil Kumar vide order dated 30th March, 2010(Annexure P-24) and this order has thus become the bedrock of relief in the present case to be handed down on the touchstone of Articles 14 and 21 of the Constitution of India and not in negation of fundamental rights of equal treatment in the matter of imposition of punishment."*

26. Per contra, learned counsel for the respondents have controverted the

stand taken by the petitioners. They have argued that the petitioners cannot shirk responsibility, casted on them at the relevant time. They were specifically entrusted with maintaining the wheat stocks for the crop years 1998-99, 1999-2000 and 2000-01. Having failed to do so the respondent-Corporation is entitled under Rule 5(iii) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 to effect recovery from an employee for any loss caused to the government.

27. It is further contended that it is settled position of law that even though the enquiry officer may have exonerated some of charge sheeted employees, the disciplinary authority is not bound by the findings of the enquiry officer. Learned counsel relies on judgment rendered passed the Apex Court in **'Punjab National Bank vs. Kunj Behari Misra' AIR 1998 SC 2713**. Other similarly situated employees having been exonerated would be of no consequence to the case of the petitioner as each case is to be decided on its own peculiar facts and circumstances.

28. It is contended that even otherwise this Court has limited scope to interfere in the acts of the disciplinary authority. This Court while exercising powers under Article 226 cannot act as a Court of appeal and venture into re-appreciation of evidence to take a contrary view taken by the departmental authorities. Unless it is shown that the procedure was vitiated or conclusion drawn was arbitrary and capricious, no interference is warranted in the conclusion arrived at by the departmental authorities. Reliance has been placed on judgment of Hon'ble the Supreme Court in **'Union of India vs. P. Gunasekaran' AIR 2015 SC 545**. According to learned counsel for respondents, the impugned orders are well reasoned and based on facts on record and the petitioners were rightly awarded punishment of recovery as they remained negligent in ensuring non-deterioration of wheat stocks.

29. Learned counsel for the respondents contends that the lapses on the part of the FCI would not absolve the petitioners for the loss caused to the

exchequer as it was their duty to look after the wheat stock to the best of their ability. The delay in issuing the charge-sheet is not fatal to the present case as the financial loss could only be computed once the extent of damage was conclusively ascertained. The petitioners cannot derive any benefit from Policy Guidelines Annexures P-14 & P-15) as the same were notified in 2005 much after the issuance of charge-sheets to the petitioners. It is argued that the Courts ordinarily should not quash the departmental proceedings merely on technical grounds viz. delay herein. It should not throw out matters which pertain to serious allegations like in the present case. He relies on judgment of Hon'ble the Supreme Court in **'Chairman, LIC of India and others v. A. Masilamani' 2013 (2) SCT 283.**

30. Having heard arguments of respective learned counsels on both sides and after perusal of rival pleadings, I am of the view that lackadaisical approach in issuing the charge-sheet(s), after a lapse of 4-6 years of having come to know of the loss/damage of food-grains, though may not ex-facie be a ground to exonerate a delinquent employee, but benefit of delay on the part of employer must ensue to an employee. It unfairly puts an employee in a situation where he is unable to adduce proper evidence, which in normal course would have been otherwise available at the relevant time. Particularly, in a case where the charges are with respect to loss/ damage to the wheat stocks/ perishable goods, which by its nature do not have a shelf life beyond a certain period. Reliance may be placed on judgment of Hon'ble the Supreme Court rendered in **'State of Punjab vs. Chaman Lal Goyal'** reported as **1995 (2) SCC 570**, wherein it has been held:-

> *"10. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. <u>They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of</u>*

bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

31. The argument of learned counsel for the respondents and reliance placed by him on Masilamani case (supra), is totally misplaced. What has been observed/ held by Hon'ble the Supreme Court is that the Court should not generally set aside departmental enquiry and quash the charges on the ground of delay in initiation of disciplinary proceedings as in that event it exceeds its power of judicial review at the very threshold. The same principle is applicable in relation to there being delay in conclusion of disciplinary proceedings. The principle enunciated in the judgment, *ibid,* is not applicable in the facts of present case. The petitioner herein has neither challenged the charge-sheet nor pendency of departmental proceedings nor even the outcome thereof i.e. enquiry report on the ground of delay of issuance of charge-sheet. The challenge herein is to the punishment orders awarding punishment of recovery on account of loss of wheat stock which was damaged due to prolonged storage qua which the responsibility/ liability has been fastened on the employees who have been held delinquent by the disciplinary authority. It may also be relevant to mention here that while delay in issuance of charge-sheets may not be ground to quash the charge-sheets and/ or the disciplinary proceedings and/ or the punishment orders arising therefrom, but the same definitely has an extenuating effect, depending, of course, on the relevant facts to be taken into consideration in the interest of principles of justice, in affording a fair opportunity to the delinquent employees to defend themselves, by adducing the evidence which may not be available/ destroyed due to delay and thus, giving rise to a situation where an employer can misuse his power in

malafide manner to issue a charge-sheet to an employee, no matter howsoever delayed the same may be.

32. Reliance on P.Gunasekaran's case(supra) is also of no help to the respondents, rather the same favours the petitioners. In the present case, neither any fault has been either argued or held by this Court in the procedure adopted in conducting disciplinary proceedings nor any interference in the conclusion recorded in the enquiry report nor the inadequacy of evidence is under question. In fact applying the ratio in the said judgment, it was incumbent on the punishing/ appellate authority not to interfere in the conclusion of the enquiry report. Inadequancy or reliability of evidence was required to be dealt with by the Punishing Authority as well as Appellate Authority. On the contrary, without going into these aspects, as noticed above, no cogent and summary reasons have been recorded by both punishing/ appellate authority in not accepting the conclusions recorded in the enquiry report.

33. Coming to the merits of the case, it is apparent that some of the petitioners were absolved of the primary charge of having failed to maintain the health of the wheat stock, by the Enquiry Officer. In that view of the matter, the Punishing Authority without assigning cogent reasons could not have held them liable for storage on unworthy plinths or negligence in preservation of stocks.

34. A perusal of the orders passed by the Punishing Authority makes it evident that no details, whatsoever, were given therein as to how the book value of the three stocks in question were calculated and at what rate the claims were lodged with the FCI relating to the difference in the sale price at the time of auction and disposal of stocks and also the matter regarding reimbursement of carry-over charges on these wheat stocks. In my opinion, no employee ought to be charge sheeted for non-payment of carry-over charges by the FCI. Once the stocks had been categorized by the Committee then any difference in the sale price of the same and payment of carry over charges is purely an administrative matter of the

Corporation and/ or FCI.

35. As per instructions issued by the Ministry of Consumer Affairs, Food and Public Distribution and Food Corporation of India, all the procuring agencies were directed to lodge their claims regarding the reimbursement of losses suffered on disposal of damaged wheat stocks pertaining to the crop year 1998-99 to 2003-2004. A claim of Rs.194.39 Crores was lodged by the Warehousing Corporation with the FCI for reimbursement of losses suffered on account of damaged/ rejected Central Pool wheat stocks for the crop year 1995-96 to 2000-2001. The fact sheets prepared jointly by officials of respondent Corporation and Food Corporation of India, as noted above, clearly show that the stocks had deteriorated due to prolonged storage and non-movement of stock. Concededly, it was due to this reason that degradation in the wheat stock had taken place. Loss cannot, therefore, be attributed to the petitioners and the punishment order(s) are thus not sustainable.

36. There is another aspect of the matter. While disagreeing with the findings recorded in the enquiry report, the Punishing Authority recorded his dissent and noted that the Enquiry Officer erred in not holding the delinquent officials guilty despite storage of the wheat stock on “katcha” plinths in an unscientific manner by them. Was it petitioners or was the respondent Corporation responsible to take the administrative decision of storage on “katcha plinth” in the light of letters dated 30.03.2000(Annexure P-1), 03.04.2002(Annexure P-2) and dated 28.07.1999(Annexure P-3), which apparently show that the wheat stock was stored at hired sites on “katcha” plinth in an unscientific manner and this was done with the approval of higher authorities of respondent Corporation. Therefore, petitioners cannot be fastened with any liability, who are/ were lower level Supervisory Staff.

37 Regarding Enquiry Officer's findings of non-release of the stock in time by the FCI, the Punishing Authority dissented on the ground that priority of

release of stock is given only to sound/ healthy stock. Since wheat stock stored by the delinquent official was unsound/ unhealthy, the same was not released. Nothing has been stated with regard to the violation of "First In First Out Policy' of the FCI, according to which the stock in question was to be released, being prior in time, so as to avoid the same becoming unhealthy.

The Punishing Authority though has observed in the impugned punishment order(Annexure P-31) that as per report dated 21.09.2000 of the Technical Analyst, there was pocket damage and "atta" formation at the lower layers. So it is proved that deterioration had started in year 2000 itself due to negligence of the employee and not after 4 to 6 years, as claimed. However, there is nothing on record to show that when the factum of deterioration of wheat stock had came to the knowledge of the Corporation then why no prompt action was taken by them for lifting the wheat stock.

38. The Punishing Authority has also travelled beyond the scope of charge-sheet by adding stitching charges and inflicting a punishment for a charge which did not form part of the original statement of imputation. The findings of the Enquiry Officer are based on cogent reasoning and evidence adduced in the course of enquiry proceedings. The said evidence has been totally discarded by the Punishing Authority while inflicting the punishment. The reasons of dissent recorded by the Punishing Authority, therefore, cannot be sustained.

39. The argument of learned counsel for respondents that charge-sheets were issued to the petitioner much prior to the formulation of the Policy Guidelines(Annexure P-14) is also devoid of merit. I am of the view that, even otherwise, in absence of said policy, on the basis of decision/ resolution/ applicable circulars as well as FCI's FIFO Policy, the petitioners' case stand on equally strong footing, if not better. The Policy of 2005 is nothing but reiteration and re-enunciation of the pre-existing principles with certain elaboration arising out of common sense.

40. Things do not rest here. The petitioners have also been discriminated against in the matter of awarding of sentence. A perusal of Annexures P-25 to P-29 would reveal that similarly situated delinquent employees were given clean chit. Whereas, a different yardstick has been applied to the case of the petitioners by inflicting harsh punishment upon them. Wheat stocks were stored in an unscientific manner on katcha plinths and the respondent failed to adhere to the FIFO Policy, leading to deterioration in the healthy conditions of the crop. The shelf life of the stocks, stored in open plinths, on one hand has been determined as one year by the respondent Warehousing Corporation itself yet it decided for its prolonged storage of 4 to 6 years, which naturally resulted into its deterioration. As such the respondents cannot be allowed to encash upon their own inaction and apathy by making the petitioners a scapegoat. The impugned punishment orders effecting recovery from the petitioners and appellate orders, upholding the same, being not sustainable in law are thus liable to be set aside.

41. In view of my above discussion and the reasoning contained therein, the writ petitions are allowed. It is held that the respondents were not justified in imposing the punishment upon the petitioners. The impugned punishment orders and the appellate order(s) are set-aside. As a consequence of having quashed the impugned orders, the respondents are directed to refund the amount of recovery effected from the petitioners till date along with interest @ 6% per annum with effect from the date of recovery till its disbursement. Needful be done within a period of three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

MAY 06, 2019
shalini/Jiten

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No