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

% *Released on: 06.01.2023*

\+ W.P.(C) 12941/2009

TEJ SINGH ..... Petitioner

Through: Mr. Manoranjan Mishra, Advocate.
(M): 9811564139
Email: advmamishra@gmail.com

versus

FOOD CORPORATION OF INDIA, AND OTHER ..... Respondents

Through: Mr. Om Prakash with Mr. Vicky Kumar and Ms. Shivangini Sharma, Advocates for respondent/FCI.
(M): 9810794902
Email: om.prkashmv@yahoo.co.in

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed against the order of penalty dated 18.01.2003 passed by the Senior Regional Manager, the disciplinary authority, thereby imposing penalty of censure on the petitioner and recovery of Rs.64,756/- from the petitioner. The petitioner has also sought quashing of the order dated 10.08.2004 passed by the Zonal Manager (North), the Appellate Authority, thereby rejecting the appeal of the petitioner. The petitioner has also challenged the order dated 02.03.2009 passed by the Reviewing

Authority.

2. Petitioner is an employee of the respondent, Food Corporation of India. He was appointed as Assistant Grade (AG) III (Depot) with the respondent in the year 1976 and promoted to the post of AG II (Depot) in the year 1988.

3. The petitioner was posted as AG II (D) at Kasganj Depot, pursuant to order dated 07.01.1988. While the petitioner was posted at Kasganj Depot on 05.10.1994, the charge of rice stocks was handed over to the petitioner on peripheral counting of bags, on book balance without any physical weighment from S.M. Haider, AG I (D), as per the case put forward by petitioner. The petitioner at that time was still working as AG-II (D).

4. When the petitioner was still working as AG-II (D) at Food Storage Depot, Kasganj, a memorandum dated 09.01.2002 along with statement of imputation of misconduct and misbehaviour was issued by respondent No. 3, Senior Regional Manager against the petitioner. As per the memorandum dated 09.01.2002, the allegation against the petitioner was that the petitioner failed to maintain absolute integrity and devotion to duty while posted and functioning at Kasganj Depot during the period 1997-98 and 1998-99. The statement of imputation of misconduct against the petitioner as given along with memorandum dated 09.01.2002 is reproduced as below:

"

FOOD CORPORATION OF INDIA
REGIONAL OFFICE
1/150, VIVEK KHAND, GOMTI NAGAR
LUCKNOW

No. Vig.4(1326)/RO.LKO/ALG/STL/2001/2184
Dt: 9.1.02

MEMORANDUM

Shri. Tej Singh AG.II(D)(PP) is hereby informed that it is proposed to take action against him under Rule 16 of CCS(CCA) Rules, 1965/ Regulation 60 of Food Corporation of India (Staff) Regulation, 1971. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

Shri. Tej Singh AG.II(D) (PP) is hereby given an opportunity to make such representation as he may wish to make against the proposal. If he wishes to inspect records he may do so within 03 days of receipt of this memorandum and omit his reply within 07 days after that.

If Shri. Tej Singh AG.II (D) (PP) fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri. Tej Singh AG.II (D) (PP) ex parte.

Senior Regional Manager
Disciplinary Authority

To

Shri Tej Singh, AG.II (D) (through DM FCI, Aligarh)

Copy to: - X X X

Senior Regional Manager

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON THE BASIS OF WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST Shri.Tej Singh AG.II(D)/PP

Shri Tej Singh AG.II/PP while posted and functioning as such at FSD Kashganj during the period 97-98, 98-99 failed to maintain absolute integrity, devotion to duty and committed following irregularity:-

Shri. Tej Singh AG.II/PP was entrusted with the work of storage and maintenance of foodgrains. The following cases of storage loss of wheat/ rice has been reported in respect of FSD Kashganj for the month of 11/97 and 12/97. The losses are found to be unrealistic and unjustified as per the enclosed statement:

Statement of storage loss submitted in respect of FSD Kashganj for the period indicated above shows storage loss of 4.56% to 4.86% during the storage period of 56 to 83 months. The stocks were received in 'B' category and issued in 'B' category. The mode of weighment of stocks at the time of despatch was 100% and at the of receipt. 10%

Said Shri Tej Singh AG.II/PP accepted stocks with higher percentage of moisture in connivance with depot staff and also recorded incorrect moisture at the time of issue/ despatch of stocks. Due to improper preservation and incorrect recording of moisture by Shri Tej Singh AG II/PP FCI suffered a loss as indicated in the enclosed statement.

It is, thus, established from above that said Sri Tej Singh AG II (D)/PP intentionally accepted rice/ ~~wheat~~ stocks with higher moisture content and at the time of despatches recorded incorrect moisture to adjust the storage losses in connivance with Depot staff and for this purpose made manipulation in records to hide his misdeeds.

Shri Tej Singh AG.II(D)/PP is, therefore, found equally responsible for abnormal storage losses leading to huge loss to the Corporation, 1151-54 valuing Rs.6,67,054-75.

Shri Tej Singh AG.II(D)/PP thus contravened Regulation, 31 & 32A of Food Corporation of India (Staff) Regulations, 1971.

(B.K. Agarwal)
Sr. Regional Manager
Disciplinary Authority"

5. Petitioner denied the allegations made against him in the statement of imputation of misconduct as baseless and unjustified. The petitioner filed his reply/ representation to the memorandum before the respondent No.3/ the disciplinary authority. However, the disciplinary authority by its order dated 18.01.2003 imposed the penalty of censure and recovery of Rs.64,756/- upon the petitioner. The said amount of Rs. 64,756/- as directed to be recovered from the petitioner was on the basis that the respondent herein had suffered loss of Rs. 1,29,511/- and the petitioner was imposed 50% of the said loss amounting to Rs. 64,756/-.

6. Aggrieved by the aforesaid order dated 18.01.2003 passed by the Disciplinary Authority, petitioner filed an appeal before the Appellate Authority, respondent No. 2 herein.

7. It may be mentioned herein that during the pendency of the appeal before the Appellate Authority, the Disciplinary Authority issued another memorandum dated 13.04.2004 along with statement of imputation of misconduct with the same allegation of storage loss during the same period, but for different stocks of rice. As regards the

second charge-sheet dated 13.04.2004, the petitioner herein was exonerated and was not found guilty, considering the longer storage period of stocks, by way of order dated 08.10.2004 passed by the Disciplinary Authority.

8. By order dated 10.08.2004, the Appellate Authority rejected the appeal of the petitioner on the ground that the petitioner herein had not made any new contention in his appeal and had reiterated the same pleas that had already been taken into consideration by the Disciplinary Authority.

9. The petitioner, thereafter, filed writ petition being W.P.(C) No.18192/2004 challenging the order of penalty and stay of recovery of the amount. The said petition was dismissed vide judgment dated 01.07.2008 on the ground that the petitioner failed to advance any plausible reason for not seeking the remedy of review, as provided under Regulation 74 of FCI (Staff) Regulation. The petitioner was granted liberty to seek review of the order of the Appellate Authority, with further liberty to seek his legal remedies in case he was still aggrieved with the outcome of the order passed by the Reviewing Authority.

10. Pursuant thereto, the petitioner filed a review petition before the Reviewing Authority, respondent No.5. By order dated 02.03.2009, the Reviewing Authority rejected the review petition of the petitioner. Hence, the present writ petition came to be filed.

11. On behalf of the petitioner, it is contended that the order of penalty passed by the Disciplinary Authority as well as the orders passed by the appellate and the reviewing Authority are illegal on the

face of it, as the petitioner cannot be held responsible for the alleged storage loss only because he was custodian of stocks at the time of disposal of the stocks of rice, after 5-7 years of its receipt. It is submitted that the petitioner neither accepted the stock nor recorded the moisture at the time of disposal of the stocks. The alleged stocks were stored from different dates in the year 1991-92 and disposed of during the years 1997-99. It is further submitted that the stocks of rice were accepted in the year 1991-92, whereas the charge was handed over to the petitioner only on 05.10.1994 on the book balance, without any physical verification. Further, the moisture percentage was being recorded by the then Technical Assistant and that recording of moisture percentage was not the job of the petitioner, as the petitioner was AG II (D) at that time.

12. It is further submitted on behalf of the petitioner that during the storage period, the stocks in question were subjected to physical verification and no discrepancy was pointed out by any physical verification team. It is further submitted that the Disciplinary Authority has violated the specific mandatory provisions of Regulation 60(d) of the Food Corporation of India (Staff) Regulations, 1971 ('the Regulations') by not giving finding on each imputation of misconduct. This fact of not following the procedure laid down in the Regulations was also not considered by the Appellate Authority in terms of Regulation 72 (a).

13. It is further submitted on behalf of the petitioner that though names of several persons were mentioned in the statement showing details of storage loss cases, however, action has been taken only

against the petitioner as he was holding a lower post than others. It is further contended that when the alleged total loss is Rs.1,29,511/- and number of persons were involved as per the statement of imputation of misconduct, the penalty of censure and recovery of 64,756, i.e., 50% of the total alleged loss imposed upon the petitioner, is highly disproportionate.

14. On the other hand, it is submitted on behalf of the respondents that the impugned orders, as passed by the respondent, have been passed in accordance with law after affording due opportunity to the petitioner and complying with all the norms of justice and fair play. It is submitted that the petitioner was the custodian of the stock of rice and was responsible for any unjustified loss due to pilferage from the storage godown during the period of his posting in the depot. It is submitted on behalf of the respondent that average abnormal storage losses to the tune of 4.86% was observed in the rice stocks of the month of November 1997, September 1998, November 1998, December 1998 and January 1999, at the Kasganj Depot. The petitioner being the AG II(D), was the custodian of stocks at the relevant time for a considerable period of stay, i.e., from May 1994 to January 1999. He was, thus, found responsible for such heavy loss to the corporation in the form of storage loss along with other officials namely Late Sh. Shyam Lal, Ex. AG II (D) and Sh. S.M. Haider, AG-I(D). The disciplinary authority after considering the matter, issued chargesheet to the petitioner and others, under minor penalty, i.e., under Regulation 60 of the Regulations. The disciplinary authority after considering natural losses occurred during storage, i.e., shortage

of weight due to dryness of moisture, period of storage as per formula evaluated and the representation of the petitioner, imposed the penalty of censure and recovery of Rs.64,756/- upon the petitioner.

15. Ld. Counsel for the respondent further submits that the petitioner himself had not insisted for checking weight of stocks to find out the position/trend of storage losses at the time of taking over physical charge of stocks from Sh. S.M. Haider, AG I-(D). Petitioner failed to conduct himself in the manner it was required in terms of Chapter 16 and particularly point no. 16.6 of the storage manual of FCI. Petitioner was duty bound to take charge of the stocks after satisfying himself of the available stocks.

16. It is further submitted on behalf of the respondent that as per para No. 2.1.8 of Chapter II of Depot Staff Job Description, the petitioner was required to control storage loss and transit loss, which was found on higher side and that the petitioner has rightly been held responsible for the loss by the competent authority. It is submitted that the petitioner failed to control the storage loss, which is with reference to loss of moisture that was on the higher side as per the norms which only provide 0.7% against 1% moisture loss. However in the present case the storage loss was to the tune of 4.86%.

17. It is further submitted that the petitioner was exonerated vide order dated 08.10.2004 in respect of the memorandum dated 13.04.2004 for different stocks of rice in the month of March 1998, taking lenient view because lesser quantity of unjustified losses was found by the disciplinary authority. It is further submitted on behalf of the respondent that the penalty of recovery of Rs.64,756/- is half of

the actual unjustified losses suffered by the Corporation after giving advantage of censure for the quantity and the amount of justified losses. The petitioner has been penalised only for 50% of the total unjustified loss, which should not be considered as highly disproportionate. Petitioner was the custodian of the stocks and he failed to check/control storage losses, as such he has been penalised for his failure. Other officials were not the custodian of the stocks. Thus, the position and gravity of charge of petitioner is serious and different from other officials.

18. It is further submitted that recovery of loss was also effected from Mr. S.M. Haider, AG I (D) and from late Mr. Shyam Lal, Ex. AG-II (D) also. There was no down-gradation in the stocks, as such the quality control staff was not responsible for storage loss. Every case has different merits and the disciplinary authority decided the case after considering all the factors independently in every case, hence, the recovery in one case cannot be compared with the other.

19. I have heard both the parties and have perused the record.

20. Scrutiny of the documents on record discloses that the stocks in question, were neither accepted by the petitioner nor were accepted under his supervision. The stocks in question were accepted in the year 1991-1992, whereas the charge was handed over to the petitioner only on 05.10.1994 on the book balance, without any physical verification. The petitioner has filed on record the details of the receipt/issue and name of persons who received/issued the stock of rice in question. The table as filed along with the present petition is reproduced hereinbelow:

Details of Receipt/Issue and Name of Person who Supervised Receipt Issue

Sl. No N	Commodity	Stock No	Date of storage	Qty. Receipt	Physical Custodianat at the time of receipt	T.A. at the time of receipt	Name of the AM(D) and AM(QC) at the time of receipt	Charge handed over to with date	Date of issue	Qty issued	Name of Custodian at the time of issue	Name of T.A. at the time of issue	Name of AM (D) and AM (QC) at the time time of issue	Stg. loss	Remark
1.	COMMON	A/4	4-2-93 to 20-2-93	1644-30	Sh. S.M.Haider AGI(D)	Sh. Bhoodev Singh T.A. I	Shri. S.P.Singh Sharma AM(D) Sh. C.P. Sharma AM(QC)	Sh. Tej. Singh AGII (D) 5/10/94	30-12-93 30-4-98 to 22-12-98	23-70 1563-85 1587-55	Sh. S.M. Haider AGI(D) Sh. Tej Singh AGII (D)	Sh.Bhoodev Singh TA I Sh. S.K.Saxena TAII	Sh.S.P.Sharma AM(D) Sh. T.P. Singh AM(QC)	76-55	
2.		A/6	11-2-94 to 14-2-94	1641-10	Sh.S.M.Haider AGI(D)	Sh.S.K.Saxena TA II	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	Sh. Tej. Singh AGII (D) 5/10/94	9-12-98 22-12-98	1566-60	Sh. Tej Singh AGII (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. T.P. Singh AM(QC)	75-00	
3.	RICE — PB	A/7	22-12-93 to 7-1-94	1641-10	Sh.S.M.Haider AGI(D)	Sh.S.K.Saxena TA II	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma	Sh. Tej. Singh AGII (D) 5/10/94	9-11-98 to 22-12-98	1565-85	Sh. Tej Singh AG II (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D Sh. T.P. Singh AM(QC)	75-25	
4.		A/9	7-1-94 to 10-1-94	1641-30	Sh.S.M.Haider AGI(D)	Sh.S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	Sh. Tej. Singh AGII(D) 5/10/94	10-12-98 to 22-12-98	1565-05	Sh. Tej Singh AGII(D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. T.P. Singh AM(QC)	76-25	
5.		B/1	24-12-91 to 31-12-91	1652-45	Sh.Shayamlal AGII (D)	Sh.R.S.Agrawal TA II	Sh. R.R.Sharma AM(D) Sh. J.S.Chauhan AM(QC)	Sh. S.M. Haider AGII(D) (3/92 to 4-10-94) Sh. Tej Singh AGII(D) 5-10-94	21-3-93 and 16-12-93 6-11-97	13-76 1560-70 1574-46	Sh. S.M.Haider AGI(D) Sh. Tej Singh AGII(D)	Sh.Bhoodev Singh TA I Sh. S.K. Saxena T.A. II	Sh. R.R. Sharma AM(D) Sh. C.P.Sharma AM(QC)	77-99	
6.		B/2	26-11-92 to 9-2-93	1647-35	Sh.S.M.Haider AGI(D)	Sh.Bhoodev Singh TA I	Sh.S.P.Singh Sharma AM(D) Sh. C.P.Sharma AM(QC)	Sh. Tej Singh AGII (D) 5-10-94	26-11-93 and 5-11-97	6-40 1565-90 1572-30	Sh. S.M.Haider AGI(D) Sh. Tej Singh AGII(D)	Sh.S.K.Saxena TAII	Sh. R.R. Sharma AM(D) Sh. C.P.Sharma AM(QC)	75-05	

Details of Receipt/Issue and Name of Person who Supervised Receipt Issue

Sl. No	Commodity	Stock No	Date of storage	Qty. Receipt	Physical Custodian at the time of receipt	T.A. at the time of receipt	Name of the AM(D) and AM(QC) at the time of receipt	Charge handed over to with date	Date of issue	Qty issued	Name of Custodian at the time of issue	Name of T.A. at the time of issue	Name of AM (D) and AM (QC) at the time time of issue	Stg. loss	Remark
7.	Common	B/5	8-2-91 to 15-2-91	1639-95	Sh.R.C.Singh AGI(D)	Sh. Bhoodev Singh, T.A. I	Shri. N.S.Pal AM(D) and AM(QC)	Sh. K.K.Gaur AG I (D) (4/91 to 6/9/91 Sh. Shyam Lal AG II (D) (7/9/91 to 3/92) Sh.S.M.Haider AGI(D) (3/92 to 4/10/94) Sh Tej Singh AG II (D) (5/10/94)	18-9-91 21-7-92 16-12-93 5-12-97	5-57 1560-00 1565-57	Sh.Shyam Lal AGII (D) Sh. S.M.Haider AG I (D) Sh. Tej Singh AG II (D)	Sh.Bhoodev Singh TA I Sh. S.K.Saxena TAII	Sh.R.R.Sharma AM(D) Sh. C.P.Sharma AM(QC)	74-38	
8.	PB	B/6	28-1-91 to 5-2-91	1641-10	Sh.R.C.Singh AG I (D)	Sh.Bhoodev Singh TA I	Sh.N.S.PAI AM(D) and AM(QC)	Sh. K.K.Gaur AGI (D) (4/91 to 6/9/91 Sh. Shyam Lal AG II (D) (7/9/91 to 3/92) Sh.S.M.Haider AGI(D) (3/92 to 4/10/94) Sh Tej Singh AG II (D) (5/10/94)	16-12-93 6-11-97 18-1-99	0-90 1257-00 304-20 1562-10	Sh. S.M.Haider AG I (D) Sh Tej Singh AG II (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P. Sharma AM (QC) Sh. R.C. Sharma AM (QC) Sh C.P. Sharma AM (QC) Sh S.P.Sharma AM(D) Sh.T.P.Singh AM(QC)	79-00	
9.		B/7	18-12-90 to 22-12-90	1640-60	Sh.R.C.Singh AG I (D)	Sh.Bhoodev Singh TA I	Sh.N.S.PAI AM(D) and AM(QC)	Sh. K.K.Gaur AGII (D) (4/91 to 6/9/91 Sh. Shyam Lal AG II (D) (7/9/91 Sh.S.M.Haider AGI(D) (3/92 to 4/10/94) Sh Tej Singh AG II (D) (5/10/94)	23-1-91 24-8-91 4-11-97	2-82 1560-70 1563-52	Sh. R.C.Singh AG I (D) ShK.K.Gaur AG I (D) Sh. Tej Singh AG II(D)	Sh.Bhoodev Singh TAI Sh. S.K.Saxena TA II	Sh.R.R.Sharma AM(D) Sh C.P.Sharma AM (QC)	77-08	
10	Rice.	B/8	10-2-94 to 11-2-94	1654-80	Sh.S.M.Haider AG I (D)	Sh.S.K.Saxena TA II	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	Sh. Tej. Singh AGII(D) 5/10/94	5-11-97 to 13-1-98 26-5-98 to 14-10-98 7-11-98 to 28-11-98	294-10 1097-10 189-20 1580-40	Sh. Tej Singh AGII(D)	Sh. S.K.Saxena TAII	Sh.R.R..SharmaAM(D) Sh.C.P..SharmaAM(QC) Sh.S.P..SharmaAM(D) Sh.C.P..SharmaAM(QC) Sh.S.P...SharmaAM(D) Sh.T.P. Singh AM (QC)	74-40	

Cont..... 3

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Details of Receipt/Issue and Name of Person who Supervised Receipt Issue

Sl. No	Commodity	Stack No.	Date of storage	Qty. Receipt	Physical Custodianat at the time of receipt	T.A. at the time of receipt	Name of the AM(D) and AM(QC) at the time of receipt	Charge handed over to with date	Date of issue	Qty issued	Name of Custodian at the time of issue	Name of T.A. at the time of issue	Name of AM (D) and AM (QC) at the time of issue	Stg. loss	Remark
11.	Common	B/9	5-2-91 to 16-2-91	1640-45	Sh. R.C.Singh AGI (D)	Sh. Bhoodev Singh. T.A. I	Shri. N.S.Pal AM(D) & AM (QC)	Sh.K.K.Gaur AGI (D) (4/91 to 6/9/91) Sh. Shyam Lal AG II (D) (2-9-91 to 3/92) Sh. S.M.Haider AGI (D) (3/92 to 4/10/94) Sh.Tej Singh AG II (D) (5/10/94)	4-11-97 to 5-11-97	1564-80	Sh. Tej Singh AG II (D)	Sh. S.K.Saxena TA II	Sh.R..R.Sharma AM (D) Sh.C.P.Sharam AM (QC)	75-65	
12		T.A/3	14-2-94 to 17-2-94	1643-40	Sh.S.M.Haider AG I (D)	Sh.S.K.Saxena TA II	Sh. S.P.Sharma AM (D) Sh. C.P.Sharma AM (QC)	Sh. Tej. Singh AGII (D) 5/10/94	16-10-98 to 28-11-98	1564-40	Sh. Tej Singh AGII (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	78-90	
13.	PB	TA/7	29-1-92 to 3-2-92	1641-10	Sh.Shyam Lal AG II (D)	Sh.R.S.Agarwal TA II	Sh. R.R.Sharma AM (D) Sh. J.S.Chauhan AM(QC)	Sh.S.M.haider AG I (D) (3/92 to 4-10-94) Sh. Tej Singh AG II (D) (5/10/94)	15-9-95 21-9-98 to 8-10-98	1574-48	Sh. Tej Singh AG II (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	66-62	
14		TB/4	17-2-94 to 11-3-94	1552-50	Sh.S.M.Haider AG I (D)	Sh.S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P.Sharma AM(QC)	Sh. Tej. Singh AGII(D)	23-5-98 to 31-10-98 7-11-98 to 28-11-98	744-45 733-55 1478-00	Sh. Tej Singh AG II (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh. C.P.Sharam AM(QC) Sh S.P.Sharam AM(D) Sh T.P.Singh AM (QC)	74-50	
15.	Rice.	TB/6	9-3-92 to 24-3-92	1640-90	Sh.Shyam Lal AG II (D)	Sh.R.S.Agarwal TAII	Sh. R.R.Sharma AM (D) Sh.J.S.Chauhan AM(QC)	Sh.S.M.Haider AG I (D) (3/92 to 4/10/94) Sh Tej Singh AG II (D) (5/10/94)	21-9-98 to 23-9-98	1561-16	Sh. Tej Singh AG II (D)	Sh. S.K.Saxena TAII	Sh. S.P.Sharma AM(D) Sh.C.P.Sharma AM(QC)	79-74	

21. The documents on record also show that during the storage period, the stocks in question were subjected to physical verification and no discrepancy was pointed out by any physical verification team.

22. The petitioner in his capacity as AG II (D) was only the custodian of stocks at the time of liquidation of the stocks. There is no document on record to suggest that the petitioner had any role to play with regard to storage loss. As seen from the documents, the moisture percentage was being recorded by the then Technical Assistant.

Recording the moisture content was not within the job description of the petitioner, as the petitioner was AG II (D) at that time.

23. It is to be noted that rice is a perishable commodity and it cannot be stored for an indefinite period. As pointed out by ld. Counsel for petitioner, the quality of rice deteriorates over time on account of change in climatic condition in as much as the temperature goes high to the extent of 47 degree Celsius with very low humidity and such variation in temperature and humidity results in deterioration of stock which ultimately results in storage loss on high side.

24. There is no denying the fact that in the present case, rice stocks were stored for a long period, i.e., about 5-7 years. Preservation of the stocks are the duty of the Technical Staff (quality control), and such responsibility cannot be saddled in the manner as done in the present case, upon the petitioner, as the petitioner was only the custodian of the stocks and not directly concerned with the quality control. During the course of hearing, learned counsel for petitioner has handed over the list of duties of the Depot staff of the Food Corporation of India, as issued by the Head Quarter of the Food Corporation of India, 15-20, Barakhamba lane, New Delhi-110001. The said chart of duties gives in detail the routine work of the Depot staff, which does not include any duty with respect to maintenance or checking of the moisture content of the stored grains. It goes without saying that maintenance or checking of the moisture content of the stored grains involves expertise in the said field and would be duty of experts from the technical department having knowledge and know-how in the said field. Thus, staff having general duties cannot be held responsible for

specialized aspect of storage of grains involving maintenance or checking of moisture content.

25. Another important point to be noted is that recommendations were made through monthly inspection report by the Assistant Manager (Quality Control) and inspection notes of the Deputy Manager (Quality Control) for early disposal of the stocks of rice since 1994-1995. However, no action was taken by the respondents in this regard. The stocks were disposed of only in the year 1997-1998 after about 5 to 7 years. The squad inspection report dated 02.03.1995 is relevant in this regard, which is reproduced for ready reference herein below:

"SQUAD INSPECTION REPORT

1. Name and designation of Inspection officer	*Shri. R.K. Sharma, Dy. Manager (QC)FCI, Bulandshahr*
2. Date of inspection	*2.3.95*
3. Depot inspected	*F.S.D. Kasganj*
4. (a) Storage capacity of the the Depot.	*Covered Cap Nature Total Owned Hired thereof* *9160 - 9160MT*

4.(b) Commodity wise/Category wise

Classifications stocks held in the depot as per latest inspection by the local QC staff

COMMODITY	***C***	***F***	***H***	***TOTAL***	***A***	***B***	***C***	***D***	***TOTAL***
Wheat	*-*	*-*	*-*	*Nil*	*-*	*-*	*-*	*-*	*Nil*

Rice common Raw

Boiled	*7809*	*-*	*-*	*7809*	*-*	*7809*	*-*	*-*	*7809*
Fine Rice Raw									
Boiled	*31*	*-*	*-*	*31*	*-*	*31*	*-*	*-*	*31*
X x x x x x									
			7840	*7840*		*7840*			*7840*

5. Strength of QC staff and adequacy there of as per norms.

	Sanctioned	Inposition
ASSTT. MANAGER (QC)		*-*
TECH.ASSTT.GR.I		*-*
TECH. ASSTT. GR.II.		*1*
TECH.ASSTT.GR.III		*-*
DUSTING OPERATORS		*3+1 Picker*

6. Condition of godown with to check birds entrance in specific reference to repairs the she windows, ventilator if any to be carried out :- should be repaired immediately.

20. Date of last, inspection of this depot and the general improvement noticed on QC aspects.

21. <u>MISCELLANEOUS</u>

The visiting officer is required to mention here the list of instructions given by him in the depots inspection for compliance.

(1) Brushing on stacks may be carried out regularly.

(2) Looze Rice was lying in Tin B shed in mixing position of birds excreta. lt should be cleaned & filled in bags immediately.

(3) The godowns should be brushed & cleaned and particular in tin sheds. Cob-webs should be removed from stack & wall

<u>(4) In Rice stocks of the year 91-92 encrustration & discolourisation has started. It should be liquidated at an early date.</u> *(emphasis provided)*

(5) The cleaning of sheds is not being done since two months for want of casual labours. AM(D) informed that H.T.C is not supplying the casual labours. The casual labours should engaged either from the risk & cost or from contingency but cleaning should not be suffered at any cost

(6) The huge quantity of loose grain was noticed beneath the crates in tin shed. It should be collected & cleaned.

DEPUTY MANAGER (QC)

F.C.I, BULANDSHAHR

DISTRIBUTION

1. The Senior Regional Manager, FCI, R.O, Lucknow.

2. The Zonal Manager (N) FCI, Z.O, New Delhi

3. The Manager (QC) FCI. Head Office, New Delhi."

26. It is also pertinent to note here as pointed at by Ld counsel for petitioner, that all the works in the food storage depot are done under the supervision of Assistant Manager (D) and all works regarding preservation, recording of moisture and maintenance of quality of stocks are done by the technical staff under the supervision of Assistant Manager (Quality Control). All the works with regard to quality control, i.e., recording of moisture, ascertaining the quality of stocks and preservation are done by technical assistants under the supervision of Assistant Manager (Quality Control). Hence, it is clear that petitioner being only the custodian of the stocks and discharging

general duties with respect thereto, cannot be held responsible for the allegations made in the statement of imputation of misconduct.

27. Another aspect which needs consideration is the fact that the order dated 10.08.2004 issued by the Disciplinary Authority does not give specific findings with respect to each imputation against the petitioner herein. This is against the Regulations of the respondent Food Corporation of India, wherein in Regulation 60(d), it has been stipulated that recording of finding on each imputation of misconduct or misbehaviour is mandatory before imposing any of the penalties (minor) specified in clauses (i) to (iv) of Regulation 54. The relevant Regulation 60(d) of the Regulations is reproduced as below:-

> "*FOOD CORPORATION OF INDIA (STAFF) REGULATION, 1971*
>
> ***60. Procedure for imposing minor penalties***:
> *(1) Subject to the provisions of Sub-Regulation 59, no order imposing on an employee any of the penalties specified in clauses (i) to (iv) of Regulation 54 shall be made except after:*
> *(a) ....*
> *(b) ....*
> *(c) ....*
> *(d) recording a finding on each imputation of misconduct or misbehaviour*
> *............"*

28. Similarly, the Appellate Authority while rejecting the appeal did not consider the import of Regulation 72(a), as per which the Appellate Authority is enjoined to consider whether the procedure laid down in the Regulations has been complied with or not. Thus, the Appellate Authority had to consider the fact that the Disciplinary

Authority has failed to return a finding on each of the imputations as levied against the petitioner herein.

29. Another fact which is germane to the adjudication in the present proceedings is that another memorandum dated 13.04.2004 was issued against the petitioner herein with same allegation of storage loss during the same period, but for different stock of rice. The storage loss in the subsequent memorandum dated 13.04.2004 was shown to the extent of 4.98%. The memorandum dated 13.04.2004 containing the statement of imputation of misconduct against the petitioner herein is reproduced as below:-

> *" **STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON THE BASIS OF WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST Shri. Tej Singh AG. II (D)/PP***
>
> *Shri. Tej Singh Asst. Grade-II (Depot) while posted and functioning as such at FSD Kashganj, Etah during the period February 96 to March 98. failed to maintain absolute intergrity and devotion to duty and committed following irregularities:-*
>
> *Shri. Tej Singh Asst. Grade-II (Depot) was entrusted with the work of storage and maintenance of foodgrains in the following cases of storage loss of Rice has been reported in respect of FSD Kashganj for the month indicated below:*

Commo Dity	*Stock No.*	*Storage Loss*	*Percen tage*	*Moisture at the time of*		*Period of Storage*	*Value of loses @Rs. 572/-*
				Receipt	*Issue*		
Rice PB	*A/1*	*81.51.000*	*4.97%*	*14.00%*	*12.00%*	*63 months*	

Common						
”	*A/2*	*81.03.000*	*4.93%*	*15.00%*	*12.30%*	*51 months*
”	*A/3b*	*22.50.000*	*4.00%*	*14.20%*	*12.00%*	*60 months*
”	*A/5*	*81.02.000*	*4.94%*	*14.70%*	*12.10%*	*74 months*
”	*B/4*	*81.75.000*	*4.98%*	*14.80%*	*12.20%*	*75*
Total: 347.81.000						*1,98,947.30*

Shri. Tej Singh AG. II (D) was working at Unit I/C is responsible for aforesaid losses.

The stocks were received in his godown on 100% weighment in ‘B’ category and liquidated through weighbridge on 100%. Reasons for storage loss mentioned in the storage loss statement has been considered even then the losses are on higher side for which Shri. Tej Singh Asst. Grade-II (Depot) is responsible.

It is, thus, established from above the said Shri. Tej Singh AG. II (D) in connivance with other Depot staff made manipulation in records to justify the shortages and shown it as storage loss to hide his misconduct.

Shri. Tej Singh Asst. Grade II (Depot) thus contravened Regulation, 31 & 32-A of Food Corporation of India (Staff) Regulations, 1971.

(B.K. Agarwal)
Sr. Regional Manager
Disciplinary Authority”

30. The Disciplinary Authority vide its order dated 08.10.2004 exonerated the petitioner from the charges as levied by way of memorandum dated 13.04.2004, on the ground of considering longer storage period of stock. Copy of order dated 08.10.2004 issued by the Disciplinary Authority exonerating the petitioner herein qua the

memorandum dated 13.04.2004 is reproduced as below:-

" Food Corporation of India

5-6, Habibullah Estate, Hazratganj, Lucknow- 226001

No. Vig. 4(1655)/RO. LKO/STL/ALG/2003/2812

<u>ORDER</u>

Whereas disciplinary proceedings were initiated against Shri Tej Singh, AG.II (Depot) now AG.I (Depot) under Regulation, 60 of FCI (Staff) Regulations, 1971 vide memorandum number Vig. 4(1655)/RO. LKO/STL/ALG/2003 dated 13.04.2004 in the matterof storage loss of Rico 03/98 at FSD Koshi-kalan under Distt. Manager Aligarh.

And whereas Shri Tej Singh, AG.II (D) now AG.I (D) was given an opportunity to represent against the charges framed against him vide above mentioned memorandum dated 13.04.2004.

And whereas said Shri Tej Singh, AG.II(D) now AG. I (D) has submitted representation dated 15.05.2004 in his defence.

And whereas the undersigned after careful dispassionate examination of the chargesheet, representation and other related documents and circumstances associated with the case finally came to the conclusion that he is not guilty to the charges levelled against him. Considering longer storage period of stock.

Now, therefore, I, B.K. Agarwal, IAS. Senior Regional Manager being Disciplinary Authority in exercise of powers conferred under Regulation, 56 of FCI (Staff) Regulations, 1971 hereby "EXONERATE" said Shri Tej Singh, AGII now AGI(D) from the alleged charges.

(B.K. AGARWAL)
SENIOR REGIONAL MANAGER
DISCIPLINARY AUTHORITY "

31. It is pertinent to mention here that in the first memorandum

dated 09.01.2002, qua which the present petition has been filed, the storage loss was indicated by the respondent as 4.50% to 4.81% and the storage period was 56 to 83 months. In the second memorandum dated 13.04.2004, in which the petitioner was exonerated, the storage loss as indicated by the respondent was 4.00% to 4.98% and the storage period was 51-75 months. However, the same Disciplinary Authority exonerated the petitioner qua the second memorandum dated 13.04.2004, while holding the petitioner guilty with respect to first memorandum dated 09.01.2002, which is subject matter of the present writ petition. When the petitioner has been exonerated of similar charges on the ground of longer storage period with similar allegation of storage loss, holding the petitioner guilty in the present case shows non-application of mind and arbitrariness on the part of the respondent.

32. It is also relevant to take note of the subsequent circular dated 12.02.2008 issued by the respondent, wherein it has been provided in clear terms that the quality and quantity losses of food grains during storage are obvious and unavoidable due to natural factors beyond the control of employees. Thus, it has been stipulated by way of the said circular that no recovery in respect of storage and transit losses should be effected without the theft/pilferage and malafide being proved. The circular dated 12.02.2008 issued by the respondent reads as under:-

*“ **FOOD CORPORATION OF INDIA***
HEADQUARTERS:NEWDELHI
16-10 BARAKHAMBALANE.NEWDELHI-110001
No.STK/35(3)/07/54 Date: 12th February, 2008

Executive Director(Zone) All General Manager(Region)
Food Corporation of India.ZO Food Corporation of India
Noida/Chennai/Mumbai Regional office.
Kolkata/Guwahati

Subject: Adherance of procedural formalities in storage & Transit Loss Cases-Fixation of responsibility-Regarding.

Reference: Hqr's Circular No.STK/23/l(7)/(NORMS/02)dated 7.06.2002

Sir,

Your attention is invited to Hqrs instructions issued vide Circular referred above wherein it was inter-alia emphasized that the existing procedure for fixing accountability for storage and transit mentioned in Hqrs' Circulars dated 6.11.1998 & 24.12.1999 would continue to be followed.

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

The whole matter was disclosed by FCI

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

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

The instructions issued vide Hqrs' Circular letter of even No. dated 31.01.2008/1.2.2008 are hereby withdrawn.

This issues with the approval of CMD.

Yours faithfully

(VPC Menon)
General Manager (Stocks)
For ED(Stocks)"

33. The aforesaid circular dated 12.02.2008, though has been issued subsequently, clearly reflects the intent of the respondent in holding the employees responsible in respect of storage and transit losses only if their involvement in theft and misappropriation is proved beyond doubt. There is no such allegation of theft or misappropriation against the petitioner in the present case. This factor is also of great significance for adjudication of the present matter. Even otherwise, the petitioner having no technical knowledge or experience on quality control, the recording of moisture content by the petitioner at any point of time, does not arise.

34. Another aspect that needs consideration is that the other Co-

delinquents i.e. Mr. Haider, AG (I), Depot and late Sh. Shyam Lal, Ex. AG(I), Depot, were imposed with much less recovery than the petitioner herein. The respondent has filed order dated 18.01.2003 passed by the Disciplinary Authority against Mr. S.M. Haider, AG (I), Depot along with their counter affidavit, which shows that along with penalty of censure, recovery of Rs. 12,235/- was directed against the said official. Recovery of Rs. 12,235/- from a higher official, in comparison to the recovery of Rs. 64,756/- against the petitioner who was junior to the said Mr. S.M. Haider, again shows arbitrariness and whimsicality on the part of the respondent.

35. Hon'ble Supreme Court in the case of ***Rajendra Yadav Vs State of Madhya Pradesh & Others.***, 2013 SCC OnLine SC 149 has held that parity among co-delinquents has to be maintained when punishment is being imposed. Thus, Supreme Court held as follows:-

> *"**9.** The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."*

36. The findings in the present case are clearly perverse, in view of the detailed discussion herein above. It is now well settled that courts

will interfere with the findings in disciplinary matters if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations or if principles of natural justice or statutory regulations have been violated. In the present matter, the findings by the Disciplinary Authorities are found to be perverse, arbitrary, unreasonable as well as unjustified.

37. Supreme Court in the case of ***Allahabad Bank & Others Vs Krishna Narayan Tewari***, (2017) 2 SCC 308, while summarising the principles of judicial review of findings by the Disciplinary Authority, has held as follows:

> *"**7.** We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and*

reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority."

38. Considering the aforesaid, I am of the considered opinion that the impugned order dated 18.01.2003 passed by the Disciplinary Authority; order dated 10.08.2004 passed by the Appellate Authority and order dated 02.03.2009 passed by the Reviewing Authority are not sustainable in the eyes of law and are liable to be quashed.

39. In view thereof, the present writ petition is allowed. The impugned orders are hereby quashed.

MINI PUSHKARNA, J

DECEMBER 6, 2022
PB/AV/c