

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 27.04.2022

Date of decision: 24 .11.2022

+ W.P.(C) 8202/2013

BHARAT KUMAR

..... Petitioners

Through: Mr. A.K. Bhardwaj, Mr. Yashpal
Ranghi, Ms. Jagriti Singh & Mr.
Karan Gautam, Advocates.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Suman Chauhan & Ms.
Samiksha, Advocates for R-1/UOI.
Mr. Ghanshyam Joshi & Mr. Chirag
Joshi, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner Bharat Kumar, vide the present petition, seeks the setting aside of the following:-

- impugned charge memo dated 02.02.2011;
- the punishment order dated 07.06.2012 passed by the Disciplinary Authority;
- order dated 29.05.2013 of the Appellate Authority;
- and order dated 21.10.2013 of the Reviewing Authority;

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and seeks directions to the respondents to reinstate the petitioner in service with all consequential benefits.

2. The respondents arrayed to the petition are the Secretary, Ministry of Agriculture, Krishi Bhavan, New Delhi and the Chairman-cum-Managing Director of State Farms of India Ltd., New Delhi, arrayed as respondent No.1 and respondent No.2 respectively.

3. The Statement of Articles of Charge framed against the Petitioner was in relation to Article of Charge No.1, which was in relation to the petitioner having unauthorizedly absented himself from duty from 27.12.2010 whilst working as an Administrative Officer at the Central State Farm, Bahraich. It has further been stated in the Articles of Charge that it had been reported that the petitioner left the farm on his own will from 27.12.2010 without getting any leave sanctioned from his Competent Authority, and a memorandum dated 14.01.2011 was also issued to the petitioner by the Director, Central State Farm, Bahraich to explain the reason as to why he deliberately left the farm without prior permission and without getting the leave sanctioned, but no reply was received from him till the date of the Memorandum of the Articles of Charge dated 02.02.2011. The said action of the petitioner, as per the Articles of Charge, was in violation of rules and regulations of the Corporation, with it having been stated therein that the petitioner had violated the provisions of Regulation 123 B(1), (b), (c), (d) & (2) and 123 C, (5), (7), (8), (18) and (20) of the Staff Regulations of the Corporation.

4. The Article of Charge No.2 against the petitioner was to the effect that it had been reported that he, the Administrative Officer,

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Central State Farm, Bahraich, did not take any interest in his work and responsibilities entrusted to him, and that the Management had already taken a decision to close down the Central State Farm, Bahraich which was being opposed in an agitative manner by the farmers and local villagers and their leaders, but the petitioner was not present to protect the interest of Corporation and safety of its employees and property and thus exhibited lack of devotion to duty and also acted in a manner which was against the established norms of official procedures, which tantamount to grave misconduct, and the petitioner had thus, as per the Article of Charge No.2, violated the provision of Regulation No. 123 B(1), (b), (c), 2 and 123 C(5) (6) (9) (18) & 20 of the Staff Regulations of the Corporation.

5. Vide office order dated 07.06.2012 bearing No. PF-1142/2006-GA, in view of the findings of the Inquiry Officer of the petitioner under scrutiny of charges levelled and proved against him, in view of the serious nature of misconducts committed by the petitioner, the Competent Disciplinary Authority concluded to the effect that the petitioner had committed grave and serious nature of misconducts, exhibited lack of devotion to duty, committed flagrant violation of rules and regulations of the Corporation by acting in a deliberate and grossly negligent manner and that his actions were not in the interest of the Corporation. *Inter alia*, the said order stated that the petitioner kept himself absent from duty without sanctioned leave and without sufficient grounds, and during the period of 195 days (calculated upto January, 2011), the petitioner remained absent for as many as 132 days for one reason or another and was absenting during the crucial

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period of agitation by the farmers and other local political parties, and as a result of the same, the security and safety of the farm and its personnel was endangered. The Disciplinary Authority also concluded to the effect that during such agitation, the presence of the administrative head of the Farm was a must to ensure speedy administrative action and proper liaison with the police and the State administrative machinery, and his absence during that period exhibited a lack of devotion of duty and commitment on his part, which was quite unbecoming of a public servant. The Competent Disciplinary Authority also concluded that ample opportunity had been given by the Inquiry Officer to the petitioner to present his case and defend himself, and that a copy of the Inquiry Report was forwarded to him on 11.01.2012 at his last known address in order to give him a reasonable opportunity of making a representation on the findings of the Inquiry Officer, but the same was returned back undelivered, and it was further stated through the order of the Disciplinary Authority that though it was clear that the Charged Officer had himself managed to return the said official communication yet in order to give him a full opportunity, a copy of the Inquiry Report was handed over personally to him on 24.01.2012 when he visited the Corporate Office, but no reply was received from him till the date of the order i.e., 07.06.2012 despite a final reminder having been sent to him on 14.02.2012. The Competent Authority thus came to the conclusion that a major penalty of “removal from services which would not amount to disqualification for future employment under the Corporation” be imposed which was

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so imposed as stipulated in Rule 146(i) of the Staff Regulations applicable to him with immediate effect.

6. The petitioner challenged the order dated 07.06.2012 vide an appeal and vide office order dated 29.05.2013 bearing No. SFCI/PF-1142/2006-HR-I, the Appellate Authority i.e. the Board of Directors of the SFCI considered the contentions of the petitioner and concluded that the petitioner had availed of due opportunities in the enquiry proceedings and his absence in a few hearings was only due to an abandonment by himself when the major part of the proceedings was already over and the concluding of the inquiry proceedings after his abandonment and in spite of due opportunities did not result into violation of any principle of natural justice. The Appellate Authority also observed that the punishment of "removal" imposed by the Disciplinary Authority was fair and proportionate having regard to the gravity of the charges proved during Inquiry. The Appellate Authority thus held that the appeal was not only time barred but was also devoid of merits, and dismissed the same.

7. Vide communication dated 21.10.2013 bearing No. PF/1142/2006-GA, the petitioner was informed that his review appeal had been examined by the Competent Authority and he was informed that the contents of the his Review Appeal dated 16.08.2013 were almost the same which were the contents of his earlier Appeal dated nil (received on 11.09.2012), which had been duly considered by the Appellate Authority i.e., the Board of Directors of the SFCI in their meeting held on 29.04.2013 and that there were no new facts or developments that had taken place after the decision of the

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Disciplinary Authority/Appellate Authority, and furthermore, on merits also, it was held that there was no case for any reconsideration/review by the Board of Directors/Reviewing Authority, and thus, it was held that the Review Appeal did not call for any re-consideration/review by the Board of Directors.

8. The petitioner vide this petition submits that in the year 2006, he was appointed to the post of Special Assistant (hereinafter referred to as SA) to Chairman-cum-Managing Director, and that in the Selection Committee proceedings, it was specifically mentioned that the individual selected on SA to CMD will remain posted at Head Office/place of CMD only.

9. *Inter alia*, the petitioner submits that he remained posted at the Headquarters with the CMD and discharged his duty with sincerity and devotion, and worked to the entire satisfaction of the authorities and in the interest of corporation.

10. It is further submitted by the petitioner that in April 2010, the Competent Authority decided to close down the Central State Farm, Bahraich (UP), and in view of the closure of the Farm, the employees serving in the said Farm were offered voluntarily retirement or else they were to be transferred to other Farms.

11. *Inter alia*, the petitioner submits that he had been appointed by the then CMD Brig. (Retd.) S.P. Mehla, and due to his hard work, the petitioner was in the good books of the CMD, but after retirement of Brig. Mehla, a group of persons who were jealous of the petitioner's bright service career persuaded the new CMD against the petitioner, and the new CMD, under the influence of said group, within 2-3

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weeks of his joining transferred the petitioner from the Head Office to the CSF Bahraich, and whilst doing so, according to the petitioner, the then CMD ignored the specific condition mentioned in the proceedings of the Selection Committee constituted for appointment of the petitioner as SA to CMD 'that the individual selected on SA to CMD will remain posted at the Head Office/place of CMD only.

12. The petitioner submits that he challenged his transfer by way of W.P.(C) No. 5171/2010 before this Court, but during the pendency of said petition, the respondents passed an order dated 29.07.2010 in his appeal, and thus the earlier writ petition was withdrawn with liberty to file a fresh writ petition, and that a fresh W.P.(C) No. 5304/2010 was filed impugning the order dated 29.07.2010, but though notice of the petition was issued, no stay of the transfer order was granted, and thus the petitioner joined the place of his transfer i.e CSF Bahraich in August, 2010, and that the petitioner also filed an LPA, but in the same too no stay was granted and the LPA was dismissed, and Rule was issued on 19.01.2010, and as the Farm, where the petitioner was transferred to, was about to close, the petitioner withdrew the writ petition on 22.03.2011 with the permission of the Court.

13. *Inter alia*, the petitioner submits that his father was not well, and on personal grounds, the petitioner sought leave from the Concerned Authority, and his leaves were sanctioned from time to time, with his last leave sanctioned from 13.12.2010 to 31.12.2010.

14. It is submitted by the petitioner that whilst he was on leave, Dr. S.P.S Tomar (Director In-charge) called him to join duties, as there was an apprehension of agitation in the Farm, and in the interest of the

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Corporation, the petitioner joined his duties immediately on 20.12.2010, and the agitation started on 22.12.2010 and ended on 25.12.2010, and that the petitioner played an important role in calming down the agitation, and after the agitation was over, the petitioner again requested for leave from 27.12.2010 to 03.01.2011, and as Dr. S.P.S Tomar was not there at the Farm, therefore the petitioner informed him telephonically, and on the instructions of Dr. Tomar, the petitioner left his application for leave with the Security Officer of the Farm.

15. *Inter alia*, the petitioner submits that during the leave period, he suffered from viral hepatitis and could not resume his duties on the expiry of leave period, and he was advised bed rest by doctors up to 21.03.2011, and he resumed his duties on 23.03.2011.

16. *Inter alia*, the petitioner submits that vide memo dated 02.02.2011, the respondents proposed to initiate departmental inquiry against the petitioner, and vide letter dated 09.03.2011, the petitioner informed the respondents that he was still suffering from illness, and therefore, could not join his duties and prayed that an ex-parte decision be not taken in the inquiry proceedings, and enclosed his medical certificates with the letter.

17. The petitioner submits that the respondents initiated the departmental enquiry against the petitioner and appointed an Inquiry Officer and Presenting Officer on 24.03.2011, and in the Inquiry, the Corporation examined four witnesses and the petitioner examined two witnesses.

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18. The petitioner submits that during the pendency of the Inquiry for the two charges framed against him, i.e., (i) Petitioner remained unauthorizedly absent from duty since 27.12.2010 and (ii) Petitioner did not take interest in his work and responsibilities entrusted to him, vide letter dated 06.07.2011, the Director in-Charge of CSF, Bahraich provided the details of leave of the petitioner to Company Secretary of SFCL, and it was specifically mentioned in the said letter that the petitioner's leaves were sanctioned and regularized by the Competent Authority for the period involved in the Inquiry, and thus the petitioner submits that if the period was regularized by Competent Authority, there was no question of framing of the charges.

19. *Inter alia*, the petitioner submits that in August 2011, he was not feeling well, and thus he requested for an adjournment of the hearing on 17.08.2011, and the Inquiry was adjourned to 07.09.2011, which was conducted ex-parte on that date, and on 26.12.2011, the Inquiry was concluded with it having been held by the Inquiry Officer that the charges levelled against the petitioner stand established.

20. It is submitted by the petitioner that the reasons given by the Inquiry Officer to prove the charges levelled against the petitioner are themselves sufficient to disprove the charges, if the reasons given to prove the first charge would be read as the reply to the second charge and reasons given to prove the second charge be read as the reply to the first charge.

21. *Inter alia*, it was submitted by the petitioner that the Inquiry Officer had completely ignored the statement of the defence witnesses.

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22. *Inter alia*, the petitioner submits that he received the copy of the inquiry report in February, 2012, but as he was not keeping well, he could not respond thereto till 17th April 2012, and vide letter dated 18.04.2012, he requested the respondents to re-open the inquiry as the inquiry was held ex-parte, but the Disciplinary Authority was biased against the petitioner, and without considering the plea and defence of the petitioner, imposed the major penalty of "removal from service" on the petitioner vide order dated 07.06.2012.

23. *Inter alia*, the petitioner submits that the punishment order was signed and communicated by the subordinate officer of the Disciplinary Authority, and the same is against government instructions, as per which, the Disciplinary Authority cannot delegate its power to the subordinate authority being a quasi-judicial authority. *Inter alia*, the petitioner submits that he preferred an appeal against the said order, whereby he tried to draw the attention of the Appellate Authority to the fact that all his leaves were sanctioned and regularized by the Competent Authority, and thus he could not be held guilty for the charge of unauthorized absence, and that the petitioner also drew the attention of the Appellate Authority to the statement of Dr. S.P.S Tomar (DW-1), the then Director In-charge, under whose supervision the petitioner was working, to the effect that the petitioner performed his duty diligently, but when nothing was heard for more than three months, the petitioner sent a reminder to the Appellate Authority, and that the Appellate Authority did not appreciate the submissions of the petitioner and rather rejected his appeal vide order

dated 29.05.2013, and the Review Appeal filed by the petitioner on 16.08.2013 was rejected vide order dated 21.10.2013.

24. The petitioner submits that there is no evidence on the record to prove the allegations levelled against him in the departmental inquiry; that the Disciplinary Authority was wholly biased, and that the impugned order of removal from service has been passed with the predetermined notion, with it having been submitted by the petitioner that all those persons who were in the good books of Brig. S.P. Mehla, the previous CMD, were targeted by persons who were kept away from achieving their personal interests during the tenure of the previous CMD and thus all these other persons who were in the good books of the previous CMD were harassed and all such persons, i.e. Sh. Vinod Kumar (Administrative Officer) was removed from service, Sh. Rajnish (Marketing Manager) was terminated from service, to Smt. Deepika Rani (Rajbhasha Adikari), a memo was issued against her and her probation was not cleared for more than 4 years, Sh. Tejbir Singh (Accounts Officer) was chargesheeted for a major penalty and Sh. Manoj Singh (Security Officer) was chargesheeted for a major penalty, and that the inquiry against the petitioner is also a sequel to the said harassment though there was nothing against him in the inquiry.

25. The petitioner submits that the first allegation against him is that he was unauthorizedly absent from duty from 27.12.2010, for which period, his leave already stood sanctioned by the Competent Authority, as communicated vide letter dated 06.07.2011, and once the

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leave period was sanctioned, there was no need to continue the inquiry.

26. *Inter alia*, the petitioner submitted that in cases of unauthorized absence of other employees, the Corporation had either not taken any action or imposed minor punishments, whereas in his case, a major penalty of 'removal from service' had been imposed. *Inter alia*, the petitioner submits that documents that he sought from the Corporation were not given to him and thus he could not put forth his defence effectively.

27. The petitioner further submits that when Brig. S.P. Mehla retired, the Corporation called a Senior Administrative Officer from the CSF Bahraich, when his experience was most required there and sent the petitioner, a new person, to the said place, which transfer was done just to harass him.

28. *Inter alia*, the petitioner submits that the Inquiry Officer had concluded that there was no evidence led by the Presenting Officer to the effect that the leave taken by the charged officer from time to time from his posting in CSF, Bahraich from July, 2010 to December, 2010 was ever adversely commented upon by his superiors in the CSF, Bahraich or Headquarters, SFCI, and thus, no hindsight adverse conclusion could have been drawn against the charged officer for the leave taken by him, and he could not have been charged of being absent from the employee's place of work without permission or sufficient cause, and that this was sufficient to disprove the first charge against him, and rather it was held to be proved against him.

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29. *Inter alia*, the petitioner submits that the Inquiry Officer gave the findings beyond the terms of charges, and on the basis of the said findings, a major penalty of 'removal from service' was imposed on him, and that there was a violation of the principles of natural justice.

30. The respondent No.2 through the counter affidavit of its Company Secretary under authorization of the Chairman-cum-Managing Director of the SFCI has placed on record clauses 123(B)(1), (b), (c), (d), (2), 123(c), (5), (6), (7), (8), (9), (18), (20), 146, 148, 149, 151, 153, 159, 160, 161, 162, 163, 164, 165 and 166 of the Staff Regulations, which are as under:-

"123B(1) Every employee shall at all times:

(b) maintain devotion to duty;

(c) conform to and abide by the provision of the rules & regulations made by the Corporation.

(d) comply with and obey all lawful orders and directions which may from time to time be issued to him in the course of his official duties by any person or persons to whom he may be subordinate in the service of the Corporation;

(2) Every employee shall serve the Corporation honestly and faithfully and shall endeavor his utmost to promote the interest of the Corporation. He shall show courtesy and attention in all transaction and not do anything which is unbecoming of a Corporation employee.

123(c) Misconduct: Without prejudice to the generality of the term 'Misconduct' the following act of omission and commission shall be treated as misconduct:

5. Acting in a manner prejudicial to the interest of the Corporation/Company.

6. Willful insubordination or disobedience, whether or not in combination with others or any lawful and reasonable order of his superior.

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7. *Absence without leave or over-staying the sanctioned leave for more than four consecutive days without sufficient grounds or proper or satisfactory explanation.*

8. *Habitual late or irregular attendance.*

9. *Neglect of work or negligence in the performance of duty including maligining or slowing down of work.*

18. *Absence from employee's appointed place of work without permission or sufficient cause.*

20. *Commission of any act subversive of discipline or of good behavior.*

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

MINOR PENALTIES

(I) *Censure;*

(II) *With-holding of his promotion*

(III) *Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of order.*

(IV) *With-holding of increments of pay.*

MAJOR PENALTIES

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

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

(VII) *Compulsory retirement.*

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(VIII) Removal from service which shall not be a disqualification for future employment under the Corporation. (IX) Dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation.

(IX) Dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation.

EXPLANATION:

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

(a) discharge of an employee for failure to pass any examination or test or test or a medical test prescribed for appointment to any category of post.

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

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

(d) termination of service of an employee under regulation 45 or 66 or as measure of - retrenchment for want of a vacancy;

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

(f) reversion of an employee promoted from a lower post to a higher post, to such lower post for want of vacancy or on the ground that he is unsuitable for such higher post or on any administrative ground unconnected with his conducts;

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

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

(i) Stoppage of an employee at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar.

AUTHORITY TO INSTITUTE PROCEEDINGS:

148(1) The Board or any other authority empowered by it general or special order may-

(a) Institute disciplinary proceedings against any employee;

(aa) Continuation of disciplinary proceedings after the retirement of the employee if the same was initiated before the retirement (approved by the Board in meeting held on 20.06.2000).

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(aaa) "May initiate disciplinary proceeding against any employee within a period of two years after the normal retirement, or cessation of service due to other reasons, of such employees." (Approved by the Board in 173rd meeting held on 25.01.2001).

(b) Direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in regulation 146;

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of regulation 146 may institute disciplinary proceedings against any employee of the Corporation for the imposition of any of the penalties specified in clauses (v) to (ix) of regulation 146 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties.

PROCEDURE FOR IMPOSING MAJOR PENALTIES:

149(1) No order imposing any of the penalties specified in clauses (v) to (ix) of regulation 146 shall be made except after an enquiry held, as far as may be, in the manner provided in this regulation and regulation 148, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into, or appoint any public servant (hereinafter called the inquiring authority) to inquire into the truth thereof

Explanation: Where the disciplinary authority itself holds the inquiry any reference in sub regulation (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an enquiry against an employee under regulation and regulation 151, the disciplinary authority shall draw up or cause be drawn up-

(i) the substance of imputations misconduct or misbehavior into indefinite and district articles of charge.

(ii) a statement of the imputations of misconduct or misbehavior in support of each article of charge which shall contain.

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(a) a statement of all relevant facts including any admission or confession made by the employee;

(b) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the article of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee of the Corporation to submit, within such time as may be specified a written statement of his defense and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint, under sub-regulation (2), an inquiring authority for the purpose and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge as it may think fit and shall act in the manner laid down in regulation 151.

(b) if no written statement of defence is submitted by the employee, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub regulation (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any articles of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a public servant or a legal practitioner to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority:

(i) a copy of the articles of charge and the statement of the imputations of mis conduct or misbehavior.

(ii) a copy of the written statement of defence, if any submitted by the employee of the Corporation;

(iii) a copy of the statements of witness, if any referred, to in sub-regulation(3);

(iv) evidence proving the delivery of the documents referred to in sub-regulation (3) to employee; and

(v) a copy of the order appointing the "Presenting Officer".

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(7) *The employee of the Corporation shall appear in person before the inquiring authority on such day and at such time within the working days from the date of receipt by him of the articles of charge and the statement of the imputations of mis-conduct or misbehavior, as the inquiry authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the enquiry authority may allow.*

(8) *The employee may take the assistance of any other employee working in the particular unit where the employee is working was working at the time of happening of alleged charge(s) to which the enquiry relates or where the enquiry is being conducted to present the case on his behalf but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is legal practitioner or the disciplinary authority having regard to the circumstances of the case.*

(9) *If the employee who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty to any of the articles of charge. The inquiring authority shall record the plea, sign the record and obtain the signature of the employee thereon.*

(10) *The inquiring authority shall return a finding of guilty in respect of those articles of charge to which the employee pleads guilty.*

(11) *The inquiring authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence:*

(i) inspect within five day of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred in sub-regulation (3);

(ii) submit a list of witnesses to be examined on his behalf
Note: If the employee applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-regulation (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the

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examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Corporation but not mentioned in the list referred to in sub-regulation (3);

Note: The employee shall indicate the relevance of the documents required by him to be discovered or produced by the Corporation.

(12) The inquiring authority shall, on receipt of the notice for the discovery for production of document, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition.

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion not relevant to the case.

(13) On receipt of the requisition referred to in sub-regulation (12), every authority in the Corporation having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority.

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all many of such document would be against the interest of the Corporation or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the employee and withdraw the requisition made by it for the production or discovery of such document.

(14) On the date fixed for the enquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer who may be entitled to re-examined but not any now matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in

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its discretion, allow the Presenting Officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examine any witness and in such case the employee of the Corporation shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the employee opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note: new evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally. The witnesses on any points on which they have been cross-examined.

(16) When the case for the disciplinary authority is closed, the employee shall be required to state his defence, orally or in writing as he may prefer. If the defence is made orally, it shall be recorded and the employee shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer- if any appointed.

(17) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross examination re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any,

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appointed and the employee or permit them to file written briefs of their respective case, if they so desire.

(20) If the employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this regulation, the inquiring authority may hold the inquiry exparte.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of regulation 146 but not competent to impose any of the penalties specified in clauses (v) to (ix) of regulation 146 has itself inquired into or cause to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clause (v) to (ix) of regulation 146 should be imposed on the employee that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record of may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these regulations.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction thereon, and is succeeded by another inquiring authority which has, and which exercises. Such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(23)(1) After the conclusion of the inquiry, a report shall be prepared and it shall contain:

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- (a) the articles of charge and the statement of the imputations of misconduct or misbehavior.*
- (b) the defence of the employee in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and the reasons therefore.*

Explanations: If in the opinion inquiring authority the proceedings of the inquiry establish any article of charge different from original the articles of charge, it may record its findings on such article of charge.

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such articles of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(II) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

- (a) The report prepared by it under clause (I).*
- (b) The written statement of defence, if any submitted by the employee;*
- (c) the oral and documentary evidence produced in the course of the inquiry.*
- (d) Written briefs, if any, filed by the Presenting Officer or the employee or both during the course of the inquiry; and*
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.*

ACTION ON THE INQUIRY REPORT:

151(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 149 as far as may be.

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

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 146 should be

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imposed on the employee, it shall, notwithstanding anything contained in regulation 152, make an order imposing such penalty.

(4) if the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Regulation 146 should be imposed on the employee, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty. "Proposed to be imposed."

153. Orders made by the disciplinary authority shall be communicated to the employee who shall also be supplied with a copy of the report of the enquiry, if any, held by the disciplinary authority and copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority and a statement of the findings of disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him).

APPEALS:

159. Notwithstanding anything contained in these regulation no appeal shall lie against:

- (i) any order made by the Board.*
- (ii) any order of an interlocutory nature or of the nature of step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;*
- (iii) any order passed by an inquiring authority in the course of an inquiry under regulation 149.*

160. Subject to the provisions of regulation 159 an employee may prefer an appeal against all or any of the following orders, namely:

- (i) an order of suspension made or deemed to have been made under Regulation 158;*
- (ii) An order imposing any of the penalties specified in Regulation 146 whether made by the disciplinary authority or by any appellate or reviewing authority;*
- (iii) an order enhancing any penalty, imposed under Regulation 146;*
- (iv) An order which:*
 - (a) denied or varies to his disadvantage his pay, allowance, retirement benefits or other conditions of service as regulated by regulations or by agreement; or*

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- (b) interprets to his disadvantage the provisions of any such regulation or agreement;
- (v) an order:
- (a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
 - (b) reverting him while officiating in a higher grade or post to a lower grade or post, otherwise than a penalty;
 - (c) reducing or withholding the terminal benefits or denying the maximum terminal benefits admissible to him under the regulation;
 - (d) determining the subsistence and other allowance to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
 - (e) determining his pay and allowance:
 - (i) for the period of suspension, or
 - (ii) for the period from the date of his dismissal, removal, or compulsory retirement from service or from the date of his reduction to a lower grade post, time-scale or stage in a time scale of pay, to the date of his reinstatement or restoration to his grade or post, or
 - (f) determining whether or not the period from the date of suspension, or from the date of his dismissal, removal compulsory retirement or reduction to lower grade, post, time scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his grade or post shall be treated as a period spent on duty.

Explanation:

- (i) the expression "employee" includes a person who has ceased to be in the service of the Corporation.
- (ii) the expression "terminal benefits" include **Illegible** and any other retirement benefits.

161. An appeal against an order imposing any of the penalties made by the disciplinary authority shall lie to the appellate authority indicated in regulation 147. In other cases, an appeal lies to the authority next higher to the authority passing the order.

PERIOD OR LIMITATION FOR APPEALS:

162. No appeal preferred under these regulations shall be entertained unless such appeal is made within forty five days from the date on which a copy of the order appealed against is delivered to the appellant;

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Provided that the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant has sufficient cause for not preferring the appeal in time.

FORM AND CONTENTS OF APPEAL:

163. every person preferring an appeal shall do so separately and in his own name.

(a) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(b) the authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

CONSIDERATION OF APPEAL:

164(1) In the case of an appeal against an order or suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 158 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 146 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider:

(i) where the procedure laid down in these Regulations has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions under these regulations or in the failure of justice;

(ii) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(iii) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass order:

(a) confirming, enhancing, reducing or setting aside the penalty; or

(b) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

IMPLEMENTATION OF ORDERS IN APPEAL

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165. The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

166(1) Notwithstanding anything contained in these regulation, the Corporation may, at any time, either on its own motion or otherwise, call for the records of any inquiry and review made under these regulations, and

- (i) confirm, modify or set aside the order; or*
- (ii) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*
- (iii) remit the case to the authority which the order or to any other authority directing such authority to made such further inquiry as it may consider proper in the circumstances of the case; or*
- (iv) pass such other orders as it may deem fit; provided that no order imposing or enhancing any penalty shall made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of regulation 146 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in regulation and after giving a reasonable opportunity to the employee concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry.*

(2) No proceeding for review shall be commenced until after:

- (i) the expiry of the period of limitation for an appeal, or*
- (ii) the disposal of the appeal, where any such appeal has been preferred.*

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these regulations.

(4) Powers similar to these specified in sub regulation.

(1) above may be exercised by the Managing Director/General Manager and the Director of a Farm in respect of orders passed by authorities subordinate to them."

31. *Inter alia*, the respondent No.2 submits that it has terminated the service of the petitioner as per Rules governing his services, and

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that the petitioner is not entitled to any relief claimed in the petition, and that he is not entitled to reinstatement.

32. The respondent No.2 further submits that the petitioner was selected for the post of Special Assistant to Chairman-cum-Managing Director, who sits at New Delhi, but in terms of clause 2(xi) of the offer of appointment, it was made clear to the petitioner that at present, he would be posted at the Corporate Office but his services were liable to be transferred to any place in India, and a copy of the offer of appointment has been annexed as Annexure-R-2/1 with the counter affidavit, in which vide clause xi, it had been stated to the effect:-

“xi. You are posted at present to work at the Corporate Office i.e. Farm Bhawan, 14-15, Nehru Place, New Delhi-110 019, but you are liable to be transferred to any place in India as and when it is found necessary to do so in the interest of work of the Corporation.”

Inter alia, the respondent No.2 denies that the petitioner discharged his duties with sincerity and devotion.

33. It was further submitted through the counter affidavit on behalf of the respondent No.2 that in view of the proposed closure of the Bahraich Branch and there being no Officer of the Administration Department in the said Farm, the petitioner was transferred to the CSF, Bahraich for Assisting the Director In-charge, CSF, Bahraich in Administration, and that the respondent No.2 had an acute shortage of Administrative Officers at the farms and the posts of Special Assistant to CMD and Administrative Officer being in identical scales, in view of non-requirement of Special Assistant to CMD at the Head Office,

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the Board converted the post of Special Assistant to CMD to the Administrative Officer without changing pay scales, career prospects and terms and conditions of the appointment.

34. *Inter alia*, the respondent No.2 has submitted through the said counter affidavit that the petitioner had frequently applied for one day or a few days casual leaves, citing the reason as ‘unavoidable circumstance’ and remained absent for much longer duration than permitted/sanctioned, and afterwards, the petitioner had applied for regularization of absence by applying for earned leave/commuted leave, and had had never mentioned reasons for leave as his father's illness.

35. *Inter alia*, the respondent No.2 submits that when this Court did not grant a stay on his transfer from Delhi to Bahraich in Writ Petition (C) No. 5304/2010, the petitioner chose another way of remaining absent from the place of posting by going on unplanned leave frequently, and during the period of 558 days of his posting at the CSF, Bahraich, he remained absent from duty on one ground or the other for as long as 443 days in spite of the fact that his presence was required in the farm for administrative jobs including handling the ongoing agitation of the farmers against the proposed closure of the farm.

36. *Inter alia*, it has been submitted on behalf of the respondent No.2 that the contention of the petitioner that he was on sanctioned leave from 13.12.2010 to 31.12.2010 is factually incorrect as he had joined duties on 20.12.2010 and again went away from his place of duty from 27.12.2010 to 22.03.2011 without any prior

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permission/sanction of leave and further absented from duty from 26.03.2011 to 22.04.2011, and that this type of habitual absenteeism continued at the CSF, Bahraich, and even after transfer to Lucknow, the attendance of the petitioner was not found to be satisfactory.

37. *Inter alia*, the respondent No.2 has submitted that the petitioner was posted at CSF, Bahraich to look after various administrative activities at the Farm and the handling of the farmers agitation against the proposed closure of the Farm being one amongst them, and that the agitation by the farmers was almost on continuous basis and not an isolated incident, and thus the joining of duties by the petitioner at the Farm on specific directions cannot be treated as an act of sincerity towards duty on his part, and rather it was obligatory on his part as his duty, as he was being paid salary for performing duties, which he was avoiding by remaining absent very frequently due to one reason or the other thus remaining oblivious of his requirement.

38. *Inter alia*, the respondent No.2 has submitted that the petitioner was present on duties for 115 days only out of the total period of 558 days at his place of posting at erstwhile CSF, Bahraich, and there was no other Officer in the Administration Department to look after the concerned activities required in connection with the proposed closure of the Farm and the handling of on-going agitation of farmers.

39. *Inter alia*, the respondent no.2 submitted to the effect that there were no ex-parte proceedings held against the petitioner in respect of the Articles of Charge No.1 & 2 and that the Inquiry Officer had dealt with all issues raised by the petitioner in the Inquiry Report with it having been submitted by the respondent no.2 that the record of the

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inquiry showed that the petitioner participated in 10 hearings out of the total 13 hearings and participated in the Inquiry during examination-in-chief and cross examination of all Management witnesses as well as all defence witnesses and that the petitioner was given due opportunities to bring any other defence witness or additional defence documents but the petitioner failed to do so. Inter alia, the respondent no.2 has submitted that the petitioner misbehaved with the Inquiry Officer and Presenting Officer in the hearing held on 20.06.2011 and refused to sign the proceedings and that the petitioner again attended the subsequent hearings held on 07.07.2011 and on 20.07.2011 but he abandoned the proceedings of his own accord and thereafter did not attend the hearings fixed on 17.08.2011 and 07.09.2011. It has been submitted by the respondent no.2 that the leave application with the medical certificate sent to the Inquiry Officer by the petitioner informing that he was sick upto 18.08.2011 was not taken into cognizance by the Inquiry Officer for specific reasons recorded in the daily order sheet.

40. The proceedings dated 17.08.2011 before the Inquiry Officer read to the effect:-

“.....

RH in the case was fixed on 17.8.2011 at 11.00 hrs. The Charged Officer (CO) has sent an application for leave on medical ground, signed on 3.8.2011, addressed to the CMD and copy to CAO, Presenting Officer and Inquiry Officer, alongwith Medical Certificate without getting the same sanctioned by the Competent Authority, expressing his inability to attend the RH on the fixed date. He is reportedly sick upto 18.8.2011. Strictly speaking his application dated 3.8.2011 as sent does not merit cognizance.

Still considering that one Defence Witness (DW-2) has been recalled for further evidence, and also the fact that the

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C.O. has asked for certain additional information/documents through RTI, which he wants to introduce in his defence, the I.O. is constrained to provide another opportunity to the CO for recording further evidence of DW-2 and submission of additional information/documents by the CO in his defence.

After ensuring the availability of the PO, the IO has decided to hold the RH on 7.9.2011 at 11.00 hrs. in SFCI Conference Hall, Hqrs., New Delhi for further evidence of DW-2 and submission of information / documents, if any, by the CO in his defence. Notice to DW-2 has been issued. The C.O. who has opted to become a witness in his defence will also be examined on 7.9.2011.

A copy of the Daily Order Sheet of the proceedings held today has been sent to the CO for participating in the inquiry on 7.9.2011. No further adjournment will be granted to the C.O./P.O. The RH will stand concluded on 7.9.2011 for submission of written briefs by the P.O. and the C.O.”,

41. The said proceedings held on 17.08.2011 indicated that the Inquiry Officer gave a final opportunity to the petitioner to present the additional documents, if any, on the next final hearing fixed for 07.09.2011 and it was clearly informed to the petitioner that the hearing would stand concluded on 07.09.2011 but despite the same, the petitioner did not attend the said hearing also, without any intimation after which the Inquiry officer concluded the proceedings and directed the parties to submit their written briefs, if any and after which the Presenting Officer submitted the written brief and the Inquiry Officer again sent a letter to the petitioner for submitting his written brief but he did not do so.

42. It has been submitted by the respondent no.2 that after participating in all effective regular hearings, the petitioner himself abandoned the inquiry deliberately without any valid reasons only in order to delay the Inquiry Proceedings with it having been submitted on behalf of the respondent no.2 that no significant business was

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transacted on the dates of final hearings on 17.08.2011 and 07.09.2011 during the absence of the petitioner and thus, it cannot be said that the inquiry was concluded ex-parte.

43. Inter alia, the respondent no.2 has submitted that the petitioner has tried to create confusion by referring to the analysis of evidence by the Inquiry Officer in relation to the second charge which is not related to charge No. 1 and that the petitioner has misrepresented the facts before this Court by referring a part of the observations of the Inquiry Officer in relation to the Charge. The respondent no.2 has further submitted that the services of the petitioner were governed by the SFCI Employees (Conduct, Discipline and Appeal) Rules and not by the CCS Rules and even from the CCS Rules, it was clear that the final order could be authenticated by an officer who had been authorized to do so and that the final order based on the order passed by the Disciplinary Authority on file was issued by the General Manager (HR) under the orders and directions of the Disciplinary Authority and therefore, could not be held as invalid or non-speaking. It has thus been reiterated by the respondent no.2 that the principles of natural justice had not been violated at all as sought to be contended by the petitioner.

44. The respondent no.2 has submitted that though the appeal filed by the petitioner against the dispatch of the punishment order dated 07.06.2012 was received after expiry of 96 days and had not been filed within the stipulated period of 45 days in terms of Rule 52 (i) of SFCI Employees (CDA) Rules, nor did the petitioner put forth any explanation to fall within the exception to the said Clause to show

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sufficient cause for not preferring the appeal in time, nevertheless, the Appellate Authority in its meeting held on 29.04.2013, considered each and every averment made by the petitioner in his appeal and perused the relevant files and documents and thereafter came to the conclusion that the petitioner had availed due opportunities in the enquiry proceedings and had abandoned the proceedings himself and the major part of the proceedings were over, that there was no violation of the principles of natural justice, that the appeal was barred by time and was also devoid of merits and the appeal was thus dismissed on 29.05.2013.

45. The respondent no.2 has further submitted that in terms of Rule 56 of the SFCI Employee (Conduct, Discipline & Appeal) Rules, there is no provision for filing of the Review Appeal by an employee aggrieved against the order of the Appellate Authority, but the rule empowered the Board of Directors to call for the record of any case within six months of the date of the final order and after reviewing the case to pass such orders thereon as it deemed fit and that the contents of the Review Appeal dated 16.08.2013 were almost the same as in the earlier appeal, which was considered and rejected by the Board and that there were no new facts or developments were brought out in the said Review Application and thus, on merits, the review application did not deserve any reconsideration by the Board/Reviewing Authority and it was thus informed by the SFCI vide its office order dated 21.10.2013 that the review petition of the petitioner did not call for any reconsideration/review by the Board of Directors.

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46. It has been submitted further by the respondent no.2 that in the violation of the provision of Regulations 123B(1)(b), (c), (d) and 2 and 123C (5), (17), (18) and (20) stood established to the hilt against the petitioner, but that the violation of Regulation 123C(8) was not established against him and that the Inquiry Officer held that the violation of the provision of Regulations 123B(1)(b), (c) and 2 and 123 (5), (9) and (20) stood squarely established against the petitioner, but the violation of Regulation 123C(6) and (18) was not established.

47. The petitioner, vide its rejoinder affidavit to the affidavit filed on behalf of the respondent no.2, has reiterated the contents of the petition.

48. Through written submissions dated 05.03.2022, the petitioner has reiterated the submissions made in the petition and inter alia placed reliance on the verdict of this Court in CWP No. 4693/1997 titled as ***“Rama Tyagi Vs DDA” reported as 2000 (56) DRJ (Suppl) 602*** wherein, it was held that any punishment imposed by a subordinate officer of the appointing authority is void ab initio and against the provision of Article 311 (1) of the Constitution of India. Reliance was also placed on behalf of the petitioner on the judgment in ***“Union of India and Others vs P. Gunasekaran” (2015) 2 SCC 610*** to contend that the findings of the Inquiry Officer were perverse.

49. Through the brief synopsis submitted on behalf of the respondent no.2, the submissions made through the counter affidavit filed on behalf of the respondent no.2 were reiterated and it was submitted that the contentions raised by the petitioner are wholly erroneous and that the charge framed against the petitioner of having

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violated the Regulations 123B(1)(b), (c), (d) and 2 and 123C (5), (9) (17), (18) and (20) of the State Farms of India Limited (Staff) Regulations, stood established, in as much as, the petitioner had left his work place on 27.12.2010 without any prior approval or getting any leave sanctioned by the Competent Authority and that the charged officer was directed vide letter dated 14.01.2011 to report for duty within three days from the date of its receipt but the charged officer failed to so report for duty and that the charged officer did not fully co-operate in the Departmental Inquiry against him.

50. Inter alia, the respondent no.2 has submitted to the effect that the verdicts of the Hon'ble Supreme Court in "*Union of India and Others vs P. Gunasekaran*" (2015) 2 SCC 610, "*Vijay S. Sathaye vs Indian Airlines Limited and Others*" (2013) 10 SCC 253, "*Sukhdev Singh vs Delhi Development Authority*" (2011) 184 DLT 164, "*Syndicate Bank vs B. N. Pandey and Anr.*" (2010) 171 DLT 60, "*Regional Manager, Bank of Baroda vs Anita Nandrajog*" (2009) 9 SCC 462 to bring forth that exercise of powers under Article 226/227 of the Constitution of India, does not provide for scope to this Court to venture into re-appreciation of the evidence. The respondent no.2 has thus, sought the dismissal of the petition filed by the petitioner with costs.

ANALYSIS

51. On a consideration of the submissions made on behalf of either side, on a bare perusal of the inquiry report dated 26.12.2011 qua articles of charge framed against the petitioner i.e. Articles of Charge I & II in relation to the petitioner having unauthorizedly absented

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himself from the duty since 27.12.2020 and of having not taken interest in his work and responsibility entrusted to him whilst he was posted at the Central State Farm, Bahraich as an Administrative Officer, the contention of the petitioner that the principles of natural justice had been violated and that he had been proceeded ex-parte without providing an adequate opportunity to put forth his version, is wholly belied from the record of the inquiry proceedings through the daily order sheets of the said proceedings placed on record as Annexure-2/3 (Colly) by the respondent no.2. The said aspect is also clearly observed and taken into account by the Appellate Authority of the respondent no.2 vide order dated 29.05.2013.

52. The contention of the petitioner that despite the communication dated 06.07.2011 of the Director i/c, Mr. Siya Ram to the Company Secretary of the SFCI which depicted the periods of sanctioned leave to the petitioner and that he had never been on unauthorized leave has rightly been rejected by the Inquiry Officer as well as the Appellate Authority of the respondent no.2 vide its office order dated 29.05.2013 dismissing the appeal of the petitioner, in as much as, the Appellate Board has given its observations to the effect:-

“Point (v) of Appellant- Charge no.1 That I absented myself unauthorized from CSF Bahraich since 27.12.2010 without getting any leave sanctioned.

Board's Observation: "The Board noted that the Charged Officer is trying to confuse two different charges. Charge No. 1 is related to his unauthorized absence from 27.12.2010 onwards which had been proved by the Inquiry Officer on the basis of the documents and the prosecution

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evidence. The statement of defence witness namely Dr. S.P.S. Tomar had also been analysed and taken into consideration while proving the charge. In this para, he is referring to the leaves sanctioned to him prior to 27.12.2010 and not about the unauthorized absence from 27.12.2010 onwards for which he was charge-sheeted under charge No.1."

”

53. The unauthorized absence which the Inquiry Officer has held against the petitioner is in relation to Charge no.1 as analyzed to the effect:-

“Charge -1

The charge 1 consists of the following limbs:

The Charged Officer;

- unauthorisedly absents himself from duty w.e.f 27.12.2010***
- left the Farm on his own will on 27.12.2010 without getting the leave sanctioned from the Competent Authority, and***
- did not reply to the Memo dated 14.01.2011 of the Director, CSF, Baharaich.”***

and the assessment made thereon is to the effect:-

“Assessment of the Prosecution Evidence and Findings of the Inquiring Authority

Charge -1

PEx-1 is an application dated 26.12.2010, preferred by the Charged Officer seeking grant of leave to him upto 03.01.2011 for appearing at LLB examination. The leave was not sanctioned by the Director, CSF, Bahraich. The Charged Officer handed over his said application for leave to Sh. Ved Prakash, the Security Officer (PW-2) on 26.12.2010 which was Sunday and, left the Project without getting the leave sanctioned from the Director,

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CSF or in his absence from Sh. Siya Ram who took over from him as Director, CSF on 1.1.2011. The Charged Officer has not led any evidence to controvert the fact of his having left the CSF on 26.12.2010 unauthorisedly or getting any leave sanctioned by the Competent Authority. The event for which he had taken leave, namely, for appearing at LLB exam cannot be termed as a sudden development. And the Charged Officer has not produced any oral or documentary evidence indicating that it was known to the then

Director, CSF prior to 26.12.2010 that the Charged Officer was to appear at LLB Exam. The Charged Officer has also not produced permission of the Competent Authority to prosecute studies in LLB course. Nor there is any evidence to the effect that the then Director CSF was aware of it. The Charged Officer as an employee of the Company was not entitled to accord precedence to his appearing at LLB examination over his presence in the Farm. Hence, it stands established that the Charged Officer left his work place on 26.12.2010 nay on 27.12.2010 without the prior approval of the Competent Authority or getting any leave sanctioned by the Competent Authority.

A bare perusal of undisputed PEx-1, which is the leave application dated 26.12.2010 of the Charged Officer, given by him to Sh. Ved Prakash, the then Security Officer, (PW-2) for handing over to the Director, CSF reveals.

- that he assumed that the Director, CSF Baharaich was aware that the Charged Officer was appearing at LLB Exam;*
- that the Charged Officer had not mentioned the type of leave being applied by him, and*
- that the Charged Officer had mentioned in the PEx-1 the purpose of leave. It was to appear at LLB exam. But he wrongly imputed its knowledge with the Director.*

No such knowledge was existing with the Director (PW-1) as deposed by him. It stands established that the

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Charged Officer left the Farm by giving an application for leave to his co-employee, Sh. Ved Prakash, Security Officer (PW-2), and that he did not hand over the said application to his controlling officer, Dr. SPS Tomar, the then Director, C.S.F., Baharaich or in his absence to the new incumbent, Sh. Siya Ram. Neither of them has deposed during the enquiry that the Charged Officer had ever given them even inkling of his prosecuting studies in LLB course and about his appearing at the said Exams in December 2010. Evidently, the Charged Officer left the Farm abruptly and without the knowledge or permission of the Competent Authority.

There is, however, no evidence led by the Presenting Officer to establish that the Charged Officer had not mentioned the purpose of leave in his application dated 26.12.2010. The Charged Officer did indicate the purpose of leave was to appearing at LLB examination. Hence, it is incorrect to charge the Charged Officer that he did not mention the purpose of his leave in his application for leave dated 26.12.2010. However, this fact is inconsequential to the charge framed against the Charged Officer.

A perusal of PEx-1 further reveals that as per the application for leave dated 26.12.2010 (PEx-1) the Charged Officer had applied for leave upto 03.01.2011. PEx-2 reveals that the Charged Officer was directed vide letter dated 14.1.2011 to report for duty within 03 days from the date of its receipt but the Charged Officer failed to report for duty. The Charged Officer has not produced any evidence in his defence to controvert these facts. Hence, it stands unequivocally established against the Charged Officer.

- that he did not explain the reason for his deliberately leaving the Farm without permission of the Director, CSF Baharaich on 26.12.2010 or getting the leave sanctioned, and*
- that he did reply to the Memo dated 14.01.2011 issued to him by the Director, CSF, Baharaich.*

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The Staff Regulations pertaining to 'Leave and Joining Time' (PEx-06) inter-alia envisage the following General Conditions Covering Grant of Leave to the employees under Regulation 54:

- *Leave cannot be claimed as a matter of right.*
- *Leave shall not be availed of by the employee without obtaining the prior sanction of the Competent Authority.*
- *Application for sanction of leave shall be submitted by the employee to the Competent Authority sufficiently in advance which in the case of earned leave shall not be less than 15 days before the date on which the leave applied for is to commence excepting in unforeseen circumstances.*
- *An employee is expected to avail himself of the leave granted fully before resuming duty and may not return to duty before the expiry of such leave except with the permission of the Competent Authority.*

Here the charged officer submitted his application for leave (PEx-1) dated 26.12.2010 to his co-employee, Sh. Ved Prakash (PW-2) and not to his Controlling Officer, the Director, CSF, Baharaich for approval. And without obtaining the prior sanction of the competent authority, he left the place of his posting, namely CSF Baharaich on 26.12.2010 of his own will. Further, he was expected to ascertain whether the leave applied by him upto 3.01.2011 had been sanctioned or not. He failed to do so. Thus, he claimed leave as a matter of right in violation of Regulation 54(1) and 54 (4). Not only that, the Charged Officer failed to report for duty on 4.1.2011. And he continued to remain unauthorisedly absent from duty even after 03.01.2011. Thereby, the Charged Officer failed to maintain devotion to duty and also failed to conform to and abide by the provisions of Staff Regulations relating to Leave and Joining Time (PEx-6). The Charged Office left the Farm unauthorisedly and absented himself from duty w.e.f. 26.12.2010 without leave. He also failed to come up with proper or satisfactory explanation for his continued unauthorized

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absence in the Farm w.e.f. 26.12.2010. He also failed to comply with and obey the lawful order of his official superior contained in PEx-2 to report for duty. This amounted to willful insubordination and disobedience of the lawful and reasonable order of his superior. His leaving the Farm without permission or sufficient cause amounted to act subversive of discipline or good behaviour. Thereby, he acted in a manner prejudicial to the interest of the CSF, Baharaich. The above facts, however, do not exhibit the habitual late or irregular attendance of the Charged Officer.

Hence, violations of the Provisions of Regulation 123B(1), (b), (c), (d) and (2) and 123C(5), (7), (18) and (20) stand established to the hilt. The Violation of Regulation 123C(8) is not established against the Charged Officer.”,

which brings out clearly that the petitioner on 26.12.2010 unauthorizedly without getting any leave sanctioned from the Competent Authority for a non sudden development in as much as his leave application related to seeking to appear for an LLB examination had applied leave upto 03.01.2011 as rightly observed by the Inquiry Officer was not a sudden development with the charged officer having not produced any oral or documentary evidence that it was known to the then Director, CSF prior to 26.12.2010, that the petitioner was to appear in the LLB examination with the petitioner having not produced the permission of the Competent Authority to allow him to prosecute studies in the LLB Course with there being no evidence to show that the Director, CSF was aware of it, with the charged officer, the employee of the company not being entitled to accord precedence to his appearance at the LLB examination over the presence of the petitioner at his work place from 27.12.2010 without prior approval of

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the Competent Authority or getting any leave sanctioned by the Competent Authority,- has been rightly held to have been established against the petitioner.

54. The factum that the petitioner was also called upon to join on 14.01.2011 to report for duty but did not do so, also brings forth that the petitioner had remained unauthorizedly absent, in as much as, the leave cannot be claimed as a matter of right and an employee on conclusion of leave must resume his duties on availing of such leave. Furthermore, the petitioner who had applied for leave upto 03.01.2011 had failed to ascertain whether the said leave had been sanctioned and failed to report even on 04.01.2011 and continued to remain absent unauthorizedly from the date even after 03.01.2011. In these, circumstances, the communication dated 06.07.2011 placed on record as Annexure-A7 by the petitioner is of no avail to the petitioner despite his assertions that in paragraph 6 of the said communication, it was recorded to the effect:-

“6. E.L Application sanctioned by the Director i/c and convey thereof in two pages (w.e.f. 13.12.2010 to 31.12.2010) are enclosed.”,

in as much as, the averments in paragraph 3(viii) of the petition itself categorically state to the effect that whilst the petitioner was on sanctioned leave from 13/12/2010 to 31/12/2010, Dr. S.P.S Tomar (Director In-charge) called the petitioner to join duties, as there was an apprehension of agitation in the Farm and in the interest of the Corporation, the petitioner joined his duties immediately on 20/12/2010, that the agitation started on 22/12/2010 and ended on

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25/12/2010, that the petitioner played an important role in calming down the agitation and after the agitation was over, **the petitioner again requested for leave from 27/12/2012 to 3/1/2011 which is the period of leave in question which has not been sanctioned by the Competent Authority as brought forth through the report of the Inquiry Officer** and the contention of the petitioner that as Dr. S.P.S Tomar was not there at Farm, therefore the petitioner informed him on telephone and on the instructions of Dr. Tomar, the petitioner left his application for leave with the Security Officer of the Farm, is not borne out from the record to be correct as also depicted through the counter affidavit of the respondent no.2 vide paragraph 3(vii) to the effect that the petitioner had joined the duties on 20.12.2010 and again went away from his duty place from 27.12.2010 to 22.03.2011 without any prior permission / sanction of leave and further absented from duty from 26.03.2011 to 22.04.2011 which has not been specifically denied by the petitioner through the para-wise rejoinder and rather the petitioner states that the contents of these paras of the counter affidavit are denied for want of knowledge and the answering respondent be put to strict proof to prove the same.

55. The observations of the Appellate Authority vide its order dated 29.05.2013 and the submissions made on behalf of the respondent no.2 are thus, correct that the petitioner is only trying to confuse the issued in relation to his unauthorized absence from 27.12.2010 in view of the communication dated 06.07.2011 adverted to hereinabove through the record before the Inquiry Officer, the Appellate Authority and the Reviewing Authority order dated 21.10.2013, the charge of

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imputations of Article of Charge-I as per the memo dated 02.02.2011, stand wholly established.

56. As regards the charge no.II of dereliction of duty and not taking interest and responsibility entrusted to the petitioner and his not being present to protect the interest of the enterprise and safety of employees at the time of agitation at the place of posting at Central State, Farm Bahraich, the record put forth by the respondent no.2 and the Inquiry Report all establish that the Charge no.II analyzed by the Inquiry Officer is to the effect:-

“Charge - II

The Charged Officer :

- ***doesn't take interest in his work and responsibilities.***
- ***not present in the Farm to protect the interest of the Corporation and safety of employees and the property of the Farm.***
- ***exhibited lack of devotion to duty.***
- ***acted in a manner which is against the established norms of official procedure and tantamounts to grave misconduct.”,***

and as analyzed by the Inquiry Officer shows that after joining the CSF Baharaich pursuant to his transfer order dated 20.07.2010, the charged officer remained away from the Farm for 132 days out of 195 days of his posting in the CSF, Baharaich upto January, 2011 despite the position of the agitation of the local villagers being very grim as testified by Dr. S.P.S. Tomar, DW-1, the then Director i/c, CSF Baharaich and as brought forth through the testimony of Sh. Ashok Kumar, P.A. to Director (Incharge) CSF Baharaich (PW-3) who has stated that there was an agitation by the local people in which about

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15000 to 20000 agitators were involved and that the agitation for 15 to 20 days was controlled by contacting the DM, SP and SHO, Sujholi and that the agitations were during the tenure of the charged officer, that the agitators included women who stopped the supply of seeds and these agitations were commenced in June 2010 and stopped on 13.06.2010 and started again on 22.12.2010 by the local people who had tried to capture the land of the Farm and the agitation was over on 25.12.2010 through intervention of officials of CSF, Local Administration, SSB and PAC. As per the Inquiry Report, the then Director, CSF had deposed that the presence of the Administration Officer i.e. the petitioner herein was essential to liaison with the local police, District Administration and agitators but the petitioner failed to maintain devotion to duty and conform to and abide by the provision of the Staff Regulations relating to 'Leave and Joining Time', he being habitually on leave and thus, did not serve the CSF, Baharaich honestly and faithfully and failed to display endeavour to promote the interest of the Corporation and, thereby, he acted in a manner unbecoming of a Corporation employee and the petitioner i.e. the charged officer remained on leave very frequently and he remained oblivious of his requirement in the Farm. The Inquiry Report which holds that there had been a violation of Regulation 123 B(1), (b), (c), 2 and 123 (5), (9) and (20) has thus rightly held the Charge-II to have been established against the petitioner.

57. In these circumstances, this Court finds no infirmity in the imposition of penalty of removal of the petitioner from the services of the SFCI in terms of the punishment order dated 07.06.2012 upheld by

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the Appellate Authority of the respondent no.2 vide order dated 29.05.2013 and by the dismissal of the Review Appeal vide order dated 21.10.2013.

58. The petition is thus, dismissed.

ANU MALHOTRA, J.

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