IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1447 of 2018
In
Civil Writ Jurisdiction Case No.9256 of 2014

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Umesh Kumar Tiwary Son of Shri Damodar Tiwary resident of village Pratappur, P.O. Pratappur, Police Station Awatar Nagar, District - Saran at Chapra.

... ... Appellant/s

Versus

1. The Food Corporation Of India, through the Chairman, 16-20 Barakhambha Lane, New Delhi
2. The Chairman, Food Corporation of India 16-20 Barakhambha Lane, New Delhi.
3. The Managing Director, Food Corporation of India, Head Quarters 16-20, Bara Khambha Lane, New Delhi
4. The Executive Director, East Zone, Food Corporation of India, 10A Middleton Row, Kolkata.
5. The General Manager, Region, Food Corporation of India, Arunachal Building, Exhibition Road, Patn null null
6. The Area Manager, Food Corporation of India, Firdaus Building, Exhibition Road, Patna.
7. Mr. B.S. Chahal Retd. Dy. General Manager, F.C.I., Enquiry Officer, House No. 117, Phase IV, Sasnagar, Mohali (Punjab), Pin-160059.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Hare Krishna Prasad, Advocate
		Mr. Siyaram Shahi, Advocate
		Mr. Phulena Rai, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, Sr. Advocate
		Mr. Suman Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 01-02-2023

Instant L.P.A. is filed by Umesh Kumar Tiwary, feeling aggrieved and dis-satisfied with the order of the learned Single Judge dated 30.08.2018 passed in CWJC. No. 9256 of

2014.

02. The appellant and ten others, who were working in the Food Corporation of India were stated to have committed alleged misdeeds and which has resulted in alleged loss of a sum of Rs. 3,15,05,529/- (three crore fifteen lakhs five thousand five hundred twenty nine rupees only), towards storage shortage to the extent of 103.74.030 quintals of wheat, 2417.63.728 quintals of rice common and 11805.29.875 quintals of rice Grade-A during the month of February, 2011. Common proceedings were initiated against all the eleven persons in the light of Regulation 62 of Food Corporation of India (Staff) Regulations, 1971 (for short 'Regulations, 1971') read with Regulation 58-Procedure for imposing major penalties, of Regulations, 1971. Article of charge and Statement of imputation reads as under:

"ANNEXURE-1

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST S/SHRI UMESH KUMAR TIWARY, MANAGER(D), SUMAN BHAI PATEL, MANAGER (QC), MD. SAUKAT ALI, MANAGER(D), KEDAR NATH TIWARY, AG.I(D), MOTI LAL RAM, AG.II(D), RABINDRA NATH PATHAK, AG.II(D), JAGNARAYAN SINGH, AG.II(D), KRISHNA B. MISHRA, AG.II(D), MANAGER RAM, AG.III(D), BIR BAHADUR SINGH, AG.II(D) AND HIRDAYANAND GOND, AG.III(D), FSD-BUXAR UNDER AREA OFFICE, PATNA.

S/Shri Umesh Kumar Tiwary, Manager(D),

Suman Bhai Patel, Manager (QC), Md. Saukat Ali, Manager (D) Kedar Nath tiwary, AG.I(D), Moti Lal Ram, AGII(D), Rabindra Nath Pathak, AG.II (D), Jagnarayan Singh, AG.II(D), Krishna B. Mishra, AG.II(D), Manager Ram, functioning in their respective capacity at FSD, Buxar during the yer 2009-11 have committed misconduct so much so that by virtue of their negligent discharge of duties, the Corporation has suffered loss of Rs. 3,15,05,529.00 (Rupees Three Crore Fifteen Lakhs Five Thousand Five Hundred Twenty Nine) only by way of storage shortage 103.74.030 Quintals Wheat, 2417.63.728 Quintals Rice common and 11805.29.875 Quintals rice Grade-A during the month of Feb-2011.

S/Shri Umesh Kumar Tiwary, Manager(D), Suman Bhai Patel, Manager (QC), Md. Saukat Ali, Manager(D), Kedar Nath Tiwary, AG.I(D), Moti Lal Ram, AG.II(D), Rabindra Nath Pathak, AG.II(D), Jagnarayan Singh, AG.II(D), Krishna B. Mishra, AG.II(D), Manager Ram, AG.III(D), Bir Bahadur Singh, AG.II(D) and Hirdayanand Gond, AG.III(D), FSD-Buxar has failed to maintain absolute integrity and devotion to duties thereby made themselves liable for disciplinary proceeding for contravening Regulations 31, 32 and 32A of the FCI(Staff) Regulations, 1971.

Sd/-
(D.K. GAUTAM)
GENERAL MANAGER(R)

<u>**ANNEXURE-II**</u>

STATEMENT OF IMPUTATION OF MISCONDUCT/MISBEHAVIOUR FRAMED IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST S/SHRI UMESH KUMAR TIWARY, MANAGER(D), SUMAN BHAI PATEL, MANAGER (QC), MD. SAUKAT ALI, MANAGER(D), KEDAR NATH TIWARY, AG.I(D), MOTI LAL RAM, AG.II(D), RABINDRA NATH PATHAK, AG.II(D), JAGNARAYAN SINGH, AG.II(D), KRISHNA B. MISHRA, AG.II(D),

MANAGER RAM, AG.III(D), BIR BAHADUR SINGH, AG.II(D) AND HIRDAYANAND GOND, AG.III(D), FSD-BUXAR UNDER AREA OFFICE, PATNA.

S/Shri Umesh Kumar Tiwary, Manager(D), Suman Bhai Patel, Manager (QC), Md. Saukat Ali, Manager(D), Kedar Nath Tiwary, AG.I(D), Moti Lal Ram, AG.II(D), Rabindra Nath Pathak, AG.II(D), Jagnarayan Singh, AG.II(D), Krishna B. Mishra, AG.II(D), Manager Ram, AG.III(D), Bir Bahadur Singh, AG.II(D) and Hirdayanand Gond, AG.III(D), FSD-Buxar while functioning in their respective capacity at FSD-Buxar during the said period and abnormal shortage in Wheat/Rice commodity has been found during the month of Feb-2011 which is evident from the stock account of FSD-Buxar for the month of Feb-2011 as appended here below:-

Month	**Commodity**	**Shortage Qty**	**Rate per Qtls**	**Value of loss**
Feb-2011	Wheat	103.74.030	Rs. 1526.00	1,58,307.00
Feb-2011	Rice Common	2417.63.728	Rs. 2160.00	52,22,096.00
Feb-2011	Rice Grade-A	11805.29.875	Rs. 2213.00	2,61,25,126.00
Total	----	---	---	3,15,05,529.00

The above shortage gives the valid ground of evidence that they were indulged in corrupt practices along with others at FSD-Buxar and misappropriated the stocks in a well planned manner in connivance with each-other which caused colossal losses to the tune of Rs.3,15,05,529.00 (Rupees Three Crore Fifteen Lakhs Five Thousand Five Hundred Twenty Nine) only to the Corporation on account of shortage of above mentioned quantity of valuable foodgrain.

S/Shri Umesh Kumar Tiwary, Manager(D), Suman Bhai Patel, Manager (QC), Md. Saukat Ali, Manager(D), Kedar Nath Tiwary, AG.I(D), Moti Lal Ram, AG.II(D), Rabindra Nath Pathak, AG.II(D), Jagnarayan Singh, AG.II(D), Krishna B. Mishra, AG.II(D), Manager Ram, AG.III(D), Bir Bahadur Singh, AG.II(D) and Hirdayanand Gond, AG.III(D), FSD-Buxar are therefore squarely responsible for illegal

> conduct in discharging their duties under inducement of unlawful personal gain alongwith others as abnormal shortage in Rice commodities with reflection of abnormal quantities of gunnies as saved without proper justification gives clear account of commitment of embezzlement of stocks at FSD-Buxar. The stocks were also killed in the month of Feb-2011 without any operation to cover up the misdeed carried out at FSD-Buxar. They did never brought the attention to higher authority for the shortage which were running in the FSD-Buxar. So, they were apparently involved in nefarious activities, which brought the Corporation to a avoidable loss as above.
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> Thus by their above acts S/Shri Umesh Kumar Tiwary, Manager(D), Suman Bhai Patel, Manager (QC), Md. Saukat Ali, Manager(D), Kedar Nath Tiwary, AG.I(D), Moti Lal Ram, AG.II(D), Rabindra Nath Pathak, AG.II(D), Jagnarayan Singh, AG.II(D), Krishna B. Mishra, AG.II(D), Manager Ram, AG.III(D), Bir Bahadur Singh, AG.II(D) and Hirdayanand Gond, AG.III(D), FSD-Buxar have acted in a manner prejudicial to the interest of the Corporation and thereby made themselves liable for disciplinary proceeding for violation of Regulation 31, 32 and 32A of the FCI(Staff) Regulations, 1971.
>
> Sd/-
> (D.K. GAUTAM)
> GENERAL MANAGER(R)"

03. The common proceedings were concluded in imposition of penalty on each of the person while invoking Regulation 56 of Regulations, 1971 (as amended) read with Regulation 54. Extract of the penalty order reads as under:-

> ***"1. Sri Umesh Kumar Tiwary, Manager (Depot)…… A penalty of dismissal from services of the Corporation with forfeiture of gratuity and all other***

terminal benefits (viz. Leave encashment).

2. ………"

04. Feeling aggrieved by the imposition of penalty of dismissal on the appellant, appellant preferred appeal before the Appellate Authority. Appeal was rejected while confirming the order of the penalty of dismissal from service on 01.05.2013 by the Appellate Authority.

05. In this backdrop, appellant has invoked remedy under Article 226 of Constitution, in challenging the Disciplinary and Appellate Authorities' order dated 24.07.2012 and 01.05.2013 respectively.

06. CWJC No. 9256 of 2014 was decided on 30.08.2018 while affirming the action of the official respondents in so far as imposition of penalty of dismissal from service and its confirmation by the Appellate Authority, hence the present L.P.A.

07. Learned counsel for the appellant submitted that article of charges are not in consonance with Regulation-58 of Regulations, 1971, relating to procedure for imposing major penalties. He has specifically pointed out Sub-Regulation (3) (i) of Regulation 58, which provides that Disciplinary Authority is required to frame article of charge 'the substance of the

imputations of misconduct or misbehaviour into definite and distinct articles of charge'. It is submitted that reading of article of charge read with statement of imputation, one cannot come to the conclusion that definite and distinct article of charges have been framed. In other words, there is dearth of ingredients constituting article of charge/misconduct.

08. It is further submitted that Disciplinary Authority has not apprised the evidence with reference to factual aspects of the matter that at what point of time the appellant is stated to have allegedly committed misconduct/misdeed. It is further submitted that Appellate Authority has not considered the appellant's appeal in the light of the Regulation No. 72 of Regulations, 1971 and it relates to consideration of appeal. In other words, there is no consideration of Sub-Regulation (2)-(a), (b) and (c) of Regulation 72. These are the legal issues, which have not been considered by the learned Single Judge and it can be raised at appeal stage also.

09. *Per-contra,* learned counsel for the Respondents resisted the aforesaid contentions and submitted that reading of article of charge read with statement of imputation suffice that charges have been framed in accordance with Regulation 58 (3) read with Regulation 62-Common Proceedings, of Regulations,

1971. It is submitted that in a common proceeding, article of charges need not be specific when the alleged misconduct or misdeed is common, in other words, misdeed/alleged misdeed is common by all the eleven persons, therefore, there is no infirmity in the article of charge and statement of imputation. Similarly, there is no infirmity in the order of the Disciplinary and Appellate Authorities. He supported the order of the learned Single Judge dated 30.08.2018 that there is no infirmity, so as to interfere with the order of the learned Single Judge.

10. Heard learned counsels for the respective parties.

11. Undisputed facts are that appellant and ten others were subjected to common proceedings under Regulation 62 of Regulations, 1971. It was concluded in imposition of penalty among others cited supra, in so far as appellant is concerned, penalty of dismissal has been imposed. He has exhausted the remedy of appeal before the Appellate Authority and suffered an order before the Appellate Authority. Similarly, he has suffered order before the learned Single Judge in CWJC No. 9256 of 2014 on 30.08.2018, hence the present LPA.

12. Learned counsel for the appellant submitted that article of charge read with statement of imputation do not constitute ingredient of article of charge. Particularly, in a

common proceeding undertaken by the official respondents under Regulation 62 of Regulations, 1971, it was bounden duty of the Disciplinary Authority to specify what is the role played by each of the officials/employees of the Food Corporation of India and in what manner each of the employee is alleged to have committed misconduct/misdeeds as stated in the article of charge read with statement of imputation. The aforementioned contention of the appellant that article of charge read with statement of imputation do not constitute article of charge, is supported by Apex Court decision in the case of ***Anant R. Kulkarni Vs. Y.P. Education Society and Ors.***, reported in, ***(2013) 6 SCC 515***. Para-16 reads as under:-

> *"**16.** Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or*

make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454 : 1986 SCC (L&S) 662 : AIR 1986 SC 995] , U.P. SRTC v. Ram Chandra Yadav [(2000) 9 SCC 327 : 2001 SCC (L&S) 79 : AIR 2000 SC 3596] , Union of India v. Gyan Chand Chattar [(2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] and Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank [(2011) 14 SCC 379 : (2012) 2 SCC (L&S) 926] .)"

13. The Apex Court in the case of ***Transpor Commr. Vs. A. Radha Krishna Moorthy,*** reported in, ***[1995] 1 SLR 239***, in Para-9 held as under:-

*"**9.** Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4-6-1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out*

clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to GOMs 928 dated 25-4-1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf."

14. The Apex Court in the case of ***Union of India v. Gyan Chand Chattar,*** reported in, ***(2009) 12 SCC 78***, in Para-33 held as under:-

*"**33.** In a case where the charge-sheet is accompanied with the statement of facts and the allegation may not be specific in charge-sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may*

not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. (Vide State of A.P. v. S.Sree Rama Rao [AIR 1963 SC 1723] .) Thus, where a delinquent is served a charge-sheet without giving specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice."

15. The Apex Court in the case of ***Govt. of A.P. Vs. A. Venkata Raidu***, reported in, ***(2007) 1 SCC 338***, in Para-9 held as under:-

*"**9.** We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO, etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge 1 was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his*

predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged."

16. The Apex Court in the case of ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,*** reported in, ***(2001) 1 SCC 182***, in Para-22 held as under:-

> *22. The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved — what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records — unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it — can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a*

decision of the King's Bench Division in the case of Denby (William) and Sons Ltd. v. Minister of Health [(1936) 1 KB 337 : 105 LJKB 134 : 154 LT 180] may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

> *"I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in Sharp v. Wakefield [1891 AC 173 : 60 LJ MC 73 : 64 LT 180 (HL)] (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:*
>
> *' "Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: Rooke case [(1598) 5 Co Rep 99b, 100a] ; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.' "*

17. The Apex Court in the case of ***State of A.P. v. N. Radhakishan*****,** reported in, ***(1998) 4 SCC 154***, in Para-20 held as under:-

> *"**20.** In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and <u>without particularising the role played by each of the officers charged</u>. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years. The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at any stage tried to obstruct or delay the enquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth*

> *consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. The Tribunal rightly did not quash these two latter memos."*
>
> (Under line supplied)

18. Perusal of aforementioned decisions, it is crystal clear that if the charges are vague, in that event, Tribunal/Court can interfere in respect of disciplinary proceedings and even when the documents are not supplied. In the present case, reading of article of charges and statement of imputation cited supra, it is evident that charges are very vague, the ingredients of a charge are not forthcoming. List of documents do not reveal relevant ledgers or Stock Registers and during which period all the eleven officials/employees alleged to have involved in shortage of stock resulted in loss of material stocks in account. In other words, randomly during the preliminary hearing, amount of loss is stated to have been determined to the extent of to the tune of Rs. 3,15,05,529/- (three crore fifteen lakhs five thousand five hundred twenty nine rupees only). In this regard, if all the officials/employees are involved, to what extent each one is responsible, is not determined in the preliminary inquiry and so also there is no specific charge against each of the

officials/employees. Therefore, there is a dearth of document to analyze role played by each individual with reference to alleged loss amount determined in the preliminary inquiry. Moreover, in a common proceeding like the present where eleven officials/employees were involved, in such matter disciplinary authority was required to frame charge relating to each individual role played by officers or employees and to what extent he was liable for loss caused to the Food Corporation of India. These are the legal lacunae which are forthcoming from the records. On this count, the appellant has made out a *prima facie* case to interfere with the impugned actions as well as to interfere with the learned Single Judge order.

19. The Apex Court in the case of ***State of Jharkhand and Ors. Vs. Ambay Cements and Another***, reported in, ***(2005) 1 SCC 368,*** has specifically laid down the Principle that a statute is required to be implemented or given effect in the manner made known in the statute, para-26 of which reads as under:-

> *"**26.** Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in*

> *the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."*

20. In the present case, Regulation 58 is relating to Procedure for imposition of major penalty. Sub-Regulation (3)(i) is very specific that the Disciplinary Authority is required to frame article of charge "the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charge". In the light of the aforesaid provision, it was bounden duty of the Disciplinary Authority to frame definite and distinct article of charge and its ingredients against each of the employee/officer. Assuming that article of charge do not reveal the dates and events constituting article of charge, at the best it should have been reflected in the statement of imputation. Perusal of the article of charge and statement of imputation cited supra, it is crystal clear that there is no definite and distinct article of charge against each of the eleven persons including the appellant. Here, it is to be noted that if any misconduct/misdeed is committed by more than one person or an employee, in that

event, it was bounden duty of the Disciplinary Authority to highlight each individual's role played in the alleged misdeed or misconduct. Perusal of article of charge and statement of imputation, it is evident that the aforesaid ingredients are not forthcoming and so also there is non-compliance to Sub-Regulation (3)(i) of Regulation 58 of Regulations, 1971.

21. Learned counsel for the Respondent-Food Corporation of India could not apprise this Court as to whether there is any compliance to Regulation 58 of Regulations, 1971, relating to Procedure for imposing major penalties read with Regulation 72-Consideration of appeal by the Appellate Authority.

22. The Appellate Authority was required to consider various issues while considering the appeal filed by an aggrieved person who had preferred an appeal. In this regard, it is necessary to reproduce Regulation No. 72 of Regulations, 1971, relating to Consideration of Appeal. Regulation 72 of Regulations, 1971 reads as under:-

> *"72. **Consideration of appeal**:*
>
> *(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 66 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 54 or enhancing any penalty imposed under the said Regulation, the appellate authority shall consider –

(a) whether 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;

(b) whether the finding of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

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

(ii) 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;

**Provided that if the enhanced penalty which the appellate authority proposes to impose is a major penalty specified in clauses (v) to (ix) of Regulation 54 and an inquiry as provided in Regulation 58 has not already been held in the case, the appellate authority shall direct that such an enquiry be held in accordance with the provisions of Regulation 58 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the appellate* *authority decides to enhance the punishment but an enquiry has already been held as provided in Regulation 58, the appellate authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation, if any, submitted by the employee.*

(3) In an appeal against any other order specified in regulation 68, the appellate authority shall consider all the circumstances of the case and make such orders is it may deem just and equitable."

23. Reading of the aforesaid Regulation, it is crystal clear and it was bounden duty of the Appellate Authority to take note of Sub-Regulation (2)-(a) (b) (c) of Regulation 72. Reading of Appellate Authority's order, it is evident that there is non-compliance to aforesaid Sub-Regulation. In this backdrop, the appellant has made out a *prima facie* case, so as to interfere with the order of Disciplinary Authority dated 24.07.2012, Appellate Authority's order dated 01.05.2013 and order of the learned Single Judge passed in CWJC No. 9256 of 2014 dated 30.08.2018. Accordingly, they are set aside.

24. It is a case of remand to the Disciplinary Authority to initiate a fresh inquiry for the simple reason that alleged misconduct is relating to in not maintaining Stock Register by which FCI has put into loss of crores of rupees. If the penatly

order is set aside on technical ground, in that event, Courts/Tribunals have to remand the matter to the concerned authority in the light of Apex Court decision in the case of ***Managing Director, ECIL Vs. B Karunakar,*** reported in ***(1993) 4 SCC 727,*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others,*** reported in ***(2011) 5 SCC 142***, Paragraph Nos. 46 to 50 of which read as under:-

> *"46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of "no work-no pay". The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with*

law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC633], Punjab Dairy Development Corpn. Ltd. v. Kala Singh [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and Graphite India Ltd. vs. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126: AIR2009 SC 161], this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law *after the fresh enquiry is concluded.*

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006)7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC3018], Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC(L&S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be *entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."*

25. The Apex Court reiterated the Principle laid down in the case of ***Managing Director, ECIL Vs. B Karunakar*** (supra), in a recent decision in the case of ***The State Of Uttar Pradesh & Ors. Vs. Prabhat Kumar (Civil Appeal No. 1567 of 2019)*** decided on 01.09.2022. Accordingly, the matter is remanded back to the Disciplinary Authority to initiate a fresh inquiry in accordance with Regulations, 1971 and complete the inquiry proceedings within a period of six months from today. The concerned officials are hereby directed to cooperate in the disciplinary proceedings.

26. The intervening period is required to be decided by the concerned official respondents, depending upon the outcome of the disciplinary proceedings to be initiated afresh and its conclusion. In that regard, a separate speaking order shall

be passed as to how to regulate the intervening period from the date of dismissal till passing of fresh order, such order shall be passed within a period of three months from the date of final order to be passed in a disciplinary proceeding afresh.

27. The L.P.A. stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	08.02.2023
Transmission Date	