



2024:DHC:7545-DB



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

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Judgment Pronounced on: 01.10.2024+ **LPA 204/2014**

RAM NARESH (DECEASED THR LRS)

..... Appellant

Versus

FOOD CORPORATION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr K.C. Mittal, Mr Yugansh
Mittal and Mr Keshav Poonia, Advocates

For the Respondents : Mr Anil K. Sharma, Advocate

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGMENT****TARA VITASTA GANJU, J.:**

1. The present Appeal impugns a judgment dated 06.11.2023 passed by the learned Single Judge of this Court in W.P.(C) 1516/1999 [hereinafter referred to as the "Impugned Judgment"]. The Impugned Judgment upheld a departmental enquiry by which the disciplinary authority imposed the penalty of dismissal from service on one Ram Naresh who was employed with the Respondent/Corporation as Assistant Manager (Quality Control).



1.1 An enquiry officer was appointed who gave his report dated 09.03.1997 on the enquiry proceedings conducted [hereinafter referred to as “Enquiry Findings”]. The Enquiry Findings thereafter was forwarded to the Managing Director, Food Corporation of India who submitted an Enquiry Report dated 12.08.1998 [hereinafter referred to as the “Enquiry Report”] which was upheld by the Appellate Authority on 19.12.1998 [hereinafter referred to as the “Appellate Authority Order”].

2. During the pendency of proceedings before the learned Single Judge, the said Ram Naresh passed away and the proceedings are being, thereafter, contested by his legal representatives. For ease of reference, Ram Naresh as well as his legal representatives, contesting the present case, are inter changeably being referred to as Appellant or Ram Naresh as required.

3. Briefly the facts are that the said Ram Naresh was employed as an Assistant Manager, Quality Control with the Respondent No.1 [hereinafter referred to as the “FCI”] for the period from 03.04.1996 onwards. On 16.07.1996, Ram Naresh was issued a charge-sheet alleging misconduct in his official duties in as much as it was alleged that he accepted sub-standard/beyond rejection limit [hereinafter referred to as “BRL Rice”] in connivance with some Technical Assistants and dispatched the sub-standard product to two different destinations Sagar, Madhya Pradesh and Avadi, Tamil Nadu. The dispatch was sent from Safidon, Haryana. Ram Naresh was charged with connivance with other officials causing loss of crores of rupees to the Respondents.

3.1 The statement of charges dated 16.07.1996 set out that during a joint



analysis of remnant stocks at Safidon on 19/20.06.1996 found that the Rice was found broken, dehusked, chalky, damaged, and discoloured and beyond rejection limits. Subsequent joint sampling done at Sagar also revealed that all 29 samples drawn, were beyond rejection limits for broken and dehusked grains. Additionally, a quality complaint was received from Avadi regarding rice dispatched from Safidon on 6/7.06.1996 as well.

4. Common proceedings were initiated against Ram Naresh and eleven other officials of the Department at the FCI. All charged officials, including the Appellant, participated in the enquiry proceedings. Evidence was led by both parties. On 09.03.1997, the Enquiry Officer submitted a detailed combined report, concluding that the charges against all officials, including Ram Naresh, stood proved.

5. Based on this report, the Disciplinary Authority imposed the penalty of dismissal from service on Ram Naresh vide order dated 12.08.1998. Ram Naresh challenged this order before the Appellate Authority, which rejected his appeal on 19.12.1998.

6. Aggrieved by these orders, challenging his dismissal from service, Ram Naresh filed a writ petition before this Court.

7. In the Petition filed, it was contended by Ram Naresh, *inter alia*, that there were violations of the FCI (Staff) Regulations, 1971 [hereinafter referred to as “FCI Regulations”], particularly Regulation 62 with regard to common proceedings. He also argued that as per an FCI Circular dated 21.11.1995 [hereinafter referred to as “FCI Circular”], he was not



responsible for issuing quality certificates. In addition, Ram Naresh claimed violation of principles of natural justice, citing non-examination of a crucial witness and lack of personal hearing by the Disciplinary Authority.

7.1 Ram Naresh further contended that as far as consignment to Avadi is concerned, he already stood exonerated by the Enquiry Report. Additionally, it was contended that material evidence sought to be placed on record by Ram Naresh was not examined by the officials of FCI. Reliance was placed on a telegram sent by Ram Naresh on 06.04.1996 to DO Rohtak, wherein he lodged a complaint against the Technical Assistants at Safidon with respect to their committing negligence by accepting sub-standard rice. It was, thus, submitted that since no action was taken against these Technical Assistants by FCI, the Appellant cannot be held to be guilty. Ram Naresh, thus, sought re-instatement along with all consequential benefits.

8. The FCI, in its counter-affidavit filed before the learned Single Judge, refuted these contentions, arguing that Ram Naresh had failed in his supervisory duties as per the relevant circulars and regulations, and that the disciplinary proceedings were conducted in accordance with the rules and principles of natural justice. It was further contended that action was also taken against the Technical Assistants as well.

9. By the Impugned Judgement, the learned Single Judge, rejected Ram Naresh's argument regarding the violation of Regulation 62 of FCI Regulations with regard to holding of common enquiry proceedings for multiple employees. Relying on the decision of the Supreme Court



decision in *Food Corporation of India & Ors. Vs. Satish Kumar*¹, the learned Single Judge held that an order for taking disciplinary action as a result of common proceedings has to be made by the highest of the authorities with the consent of others and that this consent is only required at the stage of passing of the order of punishment, not at the commencement of the enquiry.

9.1 The learned Single Judge also dismissed Ram Naresh's claim that he was not responsible for issuing quality control certificates. Upon examination of the FCI Circular, particularly paragraph 20, the learned Single Judge concluded that while Technical Assistants had primary responsibility, Ram Naresh, as Assistant Manager (Quality Control), had a continuing duty to check a specified percentage of stocks. With regard to the Avadi consignment, the learned Single Judge, relying on the Enquiry Findings filed by FCI found that Ram Naresh's claim of complete exoneration was not sustainable even though some charges were dropped.

9.2 On the issue of violation of principles of natural justice, the learned Single Judge found no merit in the contention that lack of personal hearing by the disciplinary authority constituted a violation. In the absence of any specific rule mandating such a hearing, and considering that written representations were allowed, no violation was established. Similarly, the non-examination of the third witness (Mr. N.P.S. Rana) was not found to be a violation of natural justice, as Ram Naresh failed to substantiate how this omission materially prejudiced his case.

¹ Order dated 07.07.1997 passed by Supreme Court in Civil Appeal No.4379/1997



9.3 The argument of Ram Naresh that he had reported two Technical Assistants for negligence in April 1996, was found to be unpersuasive. The learned Single Judge held that even if the Technical Assistants were at fault, it did not absolve Ram Naresh of his supervisory responsibilities. The learned Single Judge held that the non-production of the telegram containing this complaint did not materially prejudice Ram Naresh's case or affect the charges against him.

9.4 The learned Single also rejected Ram Naresh's argument that he could not be held responsible for dispatches made during his leave or tour, holding that such short absences did not absolve him of his overall supervisory responsibilities. Upon an examination of the disciplinary proceedings, the learned Single Judge found no perversity in the findings of the departmental authorities so as to interfere. It was emphasized that in exercising jurisdiction under Article 226, the High Court does not function as an appellate authority to re-appreciate evidence. Thus, the Petition filed by Ram Naresh was dismissed.

Contentions on behalf of Appellant

10. Learned Counsel for Appellant at the outset contends that Ram Naresh pointed out the wrong doings of his colleagues, but instead of taking action against those persons, he was made a scapegoat for those wrong doings.

11. Learned Counsel for the Appellant contends that the learned Single Judge erred in not examining the specific charges levelled against him and failed to appreciate that there was no evidence to support these charges. It is argued that FCI did not lead any evidence to prove that Ram Naresh



gave a free hand to the technical staff to accept BRL Rice, or that he did so against monetary consideration. The Appellant further asserts that the charge that he was an active and effective member in the acceptance of large-scale BRL Rice was without basis and evidence.

12. It was further submitted that the learned Single Judge focused on issues external to the charges framed against Ram Naresh, rather than examining the actual allegations made in the chargesheet. It is contended that the charge of failure to issue quality certificates was baseless, as it was the admitted position that Quality Certificates were to be issued by Technical Assistants, which were final and binding.

13. Furthermore, learned Counsel for the Appellant argues that he had made a written complaint by sending a telegram dated 06.04.1996 regarding the negligence of subordinate staff in accepting sub-standard BRL rice, which was a material piece of evidence not produced during the enquiry proceedings despite directions by the enquiry officer. The non-examination of a material defence witness, who was functioning as Deputy Manager (QC), Rohtak, at the relevant time, is also a major irregularity.

14. Learned Counsel for the Appellant points out that at the relevant time, he was either on official tour or on leave, and there were no instructions requiring post-receipt inspection of rice stocks already received and certified by Technical Assistants. It is also contended that the Appellate Authority's refusal to grant a personal hearing, as requested by the Appellant, violated the principles of natural justice.



15. It was further contended that initiation of common proceedings against officers of different ranks is in violation of the FCI Regulations since, the consent from disciplinary authorities was not obtained.

16. The Appellant further submitted that the Impugned Judgment and enquiry proceedings are perverse and in violation of principles of natural justice, as there is no evidence against him.

17. Lastly, the learned Counsel for the Appellant contends that in any event, the Department has handed out disproportionate punishment of dismissal of service with no retiral benefits when examined in the view of the charges. Reliance in this regard is placed on the judgment of the Supreme Court in *Girish Bhushan Goyal v. BHEL & Anr.*².

Contentions of the Respondents

18. Learned Counsel for FCI contends that Ram Naresh, while serving as Assistant Manager in the Quality Control department of the FCI, was responsible for supervising and checking consignments. It is alleged that sub-standard rice was received under his supervision, leading to charges of supervisory failure. As per existing instructions, Ram Naresh was required to inspect 25% of stocks accepted by subordinate staff, even if not present during initial acceptance. It was argued that signing of quality certificates by Technical Assistants did not absolve Ram Naresh of his supervisory responsibilities.

19. It was further submitted that disciplinary action was taken against all involved employees through a common proceeding, in accordance with

² (2014) 1 SCC 82



rules and with the consent of the disciplinary authority. It was contended that Ram Naresh's request regarding production of a telegram for an earlier incident is an afterthought and inadmissible at this stage. The FCI maintained that the Enquiry Officer's decision not to consider certain evidence was justified, and that while there is no provision for personal hearing before disciplinary proceedings, Ram Naresh's representation dated 08.08.1997 was duly considered while imposing the penalty.

20. The FCI disputed Ram Naresh's claim of absence during dispatches on 17.06.1996, asserting that he returned to the depot in the evening and dispatches continued until late hours. The FCI also contended that rejecting a small quantity accepted earlier does not absolve Ram Naresh of responsibility in the present case. Lastly, it is submitted that the Appellant was present in Sagar for the sample analysis and has signed the joint analysis report along with other Technical Assistants.

21. It was thus argued that the disciplinary authority and learned Single Judge duly considered and appreciated the Enquiry Report and other aspects while imposing the penalty on Ram Naresh.

Analysis & Findings

22. To better appreciate the contentions of Ram Naresh, it is necessary to set out the sequence of events in seriatim that took place. The memorandum of charges that was served on Ram Naresh on 16.07.1996, sets out that he was in violation of Regulation 50 of the FCI Regulations and that enquiry proceedings have been initiated against him. The statement of charge sets out that Ram Naresh had violated Regulation 31 and 32 of the FCI Regulations.



22.1 An enquiry officer was appointed on 05.08.1996 and the said officer, Mr. P.P. Singh, held common proceedings against 12 officers, including Ram Naresh. The findings were released on 09.03.1997.

22.2 Based on these Enquiry Findings, a report of the Disciplinary Authority (Managing Director of Respondents) being the Enquiry Report was given on 12.08.1998, which held that Ram Naresh was guilty of misconduct under Regulation 56 read with Regulations 54 and 62 of FCI Regulations, the penalty of dismissal was imposed on Ram Naresh. The Enquiry Report sets out an extract of the statement of charges as well as an extract of the written representation of Ram Naresh dated 08.08.1997, to give a finding of dismissal from service. However, the findings in the Enquiry Report are cryptic and bereft of any reasons and reads as follows:

“4. AND WHEREAS, having gone through the relevant records of the case, the representation of Ram Naresh dated 08.08.1997 and attenuating circumstances of the case, leading to a pecuniary loss of over Rs.1.86 crores incurred by FCI and gravity of the charge framed against the said Shri Ram Naresh, the then Assistant Manager (QC), Safidon, the undersigned is of the view that a penalty of 'Dismissal' is inevitably warranted

5. NOW, THEREFORE, the undersigned in exercise of the powers conferred under Regulation 56 read with Regulation 54 and 62 of the FCI (Staff) Regulations, 1971 imposes a penalty of 'Dismissal' upon the said Shri Ram Naresh, Assistant Manager (QC).”

22.3 A request for personal hearing was given by Ram Naresh on 14.08.1997. Subsequently, Ram Naresh also filed an Appeal on 04.09.1998 in which the request for personal hearing was reiterated.

23.4 The Appellate Authority by the order dated 19.12.1998 similarly dismissed the Appeal of Ram Naresh.



24. The primary contention raised by Ram Naresh before this Court was that the enquiry proceedings were not conducted in accordance with law and that Ram Naresh was not permitted to place his defence as he was disallowed to place on record documents which would have helped him with his case.

25. It is further contended that despite Ram Naresh having asked on 04.10.1996 for documents to be produced by the Respondents, the documents were not provided to him during these proceedings. It was further contended that Ram Naresh was not permitted to produce any witness during the enquiry proceedings. In addition, it was contended that a personal hearing was not provided to him during the enquiry proceedings, hence the principles of natural justice were not followed.

26. On the merits of the case, it was contended that the actual physical checking of the food stock was the duty of the Technical Assistants. Ram Naresh had earlier made a complaint against the Technical Assistants on 06.04.1996 *via* telegram alleging that the sub-standard product BRL Rice was being received. However, despite his request, he was not allowed to produce the telegram during the enquiry proceedings.

27. In addition, it was contended that on various relevant dates, when the checking of the food stock was supposed to be done, Ram Naresh was on leave and in one case, he returned only the same evening, however the enquiry officer held that since he had returned from his tour on the evening of 17.06.1996, he would have required to check in the evening itself and the non-checking of such food stocks in the evening would amount to misconduct.



28. It was further contended that the statement of charges that were framed held that a loss of more than Rs. 1 Crore was caused to FCI. However. No documents evidencing such loss were ever produced. Neither was the loss proved nor was it proved that Ram Naresh was directly responsible for such loss. The enquiry was held against 12 Officers of FCI at the same time. In these circumstances, it is contended that the punishment imposed was disproportionate to the charges framed against Ram Naresh. Thus, it was contended by the Appellant that there were material irregularities in the enquiry and the orders dismissing Ram Naresh should be revoked by this Court. The above contentions were raised by Ram Naresh before the learned Single Judge as well.

No Common enquiry

29. A contention was raised by the Appellants that the common enquiry proceedings were held for multiple officers which was in contravention in Regulation 62 of the FCI Regulations. The learned Single Judge found that the Supreme Court in another matter titled as ***Food Corporation*** case had held that Regulation 62 permits the holding of such common enquiry proceedings for conducting disciplinary proceedings against two or more employees of the FCI.

29.1 A Coordinate Bench of this Court in a matter titled as ***Ved Prakash & O.S. Gautam v. Food Corporation of India***³ has also upheld the validity of Regulation 62 of the FCI Regulations. The relevant extract of the ***Ved Prakash*** case is below:

“14. We do not think that there is any merit in the contention raised by the

³ 2005 (84) DRJ 532 (DB)



*petitioners that there could not be a common departmental proceedings. **Clause 62 of the Regulations permits and allows holding of common disciplinary proceedings.** It is also not difficult to comprehend the logic and the object behind the Regulation 62. **There can be cases in which two or more officers may be involved in a matter and therefore it may be desirable and necessary to have common departmental proceedings.** Common disciplinary proceedings will not only save time, effort and energy but it will also ensure just and fair decision, so that the guilty officer can be identified and officers are not able to escape by throwing blame on others. It may also be noted that it has not been argued before us that conditions specified in Regulation 62 have not been complied with.”*

[Emphasis is ours]

29.2 In any event, it is not disputed that the consent for initiating the common enquiry proceedings was given in terms of the communication dated 16.09.1996. Once the conditions specified in Regulation 62 have been complied with, the holding of the common enquiry cannot be said to be vitiated.

29.3 Thus, the issue with regard to not holding a common enquiry need not detain this Court further.

Loss Assessment Statement (LAS)

30. The Enquiry Report found that Ram Naresh had given a free hand to technical staff to accept BRL Rice against monetary consideration but failed to set out when monetary consideration was received. No details with respect thereto have been set out.

30.1 The Enquiry Report, relying on the Enquiry Findings so far as concerns the loss caused, sets out that, in view of quality complaints received followed by receipt of the Loss Assessment Statement [hereinafter referred to as “LAS”] for Rs. 1.86 Crores from Sagar alone,



the loss has been conclusively proved in the report of the Enquiry Findings, and that the attenuating circumstances of the case have led to pecuniary loss. The Appellate Authority order sets out that LAS is not hypothetical and states that sub-standard/BLR Rice stocks were accepted by Ram Naresh. However, at no stage was any quantification or assessment of the loss done. Neither the Enquiry Findings/Enquiry Report nor does the Appellate Authority Order set this out.

31. Ram Naresh was charged with failure to issue quality certificates in respect of any consignment of rice procured at Safidon, which were to be issued on a daily basis. The relevant extract of the Enquiry Report is extracted below:

“From above incidences it is very obvious that Shri Ram Naresh had given free hand to Technical Staff to accept BRL rice stocks from Rice Millers against monetary [sic. monetary] consideration and he had been an active member of entire episode of acceptance of large scale BRL rice at Safidon for which destination have sent LAS amount to crores of rupees.

Sh. Ram Naresh, Asst. Manager (QC) also failed to issue quality certificates in respect of any consignment of rice, procured at Safidon during his stay at the centre, though such certificates were required to be issued on day to day basis.

Thus, Shri Ram Naresh, Asstt. Manager (QC) Safidon functioned in a manner unbecoming of an officer of FCI in connivance with the Technical Staff posted under him as well as the millers of Safidon by putting FCI to incur huge losses. He thereby violated Regulation 31 & 32 of the FCI (Staff) Regulations, 1971.”

32. The record shows that the issue about quality of acceptance was raised by Ram Naresh even prior to the charges being framed against him in April, 1996 itself by way of a telegram and a written communication, the acceptance of poor quality of rice/BRL Rice was raised by him. These



complaints go to the root of the matter but were neither taken up nor was Ram Naresh permitted to lead any evidence in respect of the same. In the Appellate Authority order, in fact, the communications were dismissed in view of the fact that they were raised belatedly. This is not correct as the communication dated 04.10.1996 (at Annexure P-4 of the Appeal) reflects that these documents were placed by Ram Naresh on 04.10.1996 itself.

33. Paragraph 26 of the Enquiry Findings sets out that on various dates, when the samples were taken, Ram Naresh was absent from the depot and that it was the task of the TAs to sign the acceptance report as per the FCI Regulations. The Enquiry Report also found that Ram Naresh had recommended action against the TAs by way of a telegram and also telephonically to an officer in Rohtak, however, no action was taken pursuant to his complaint. In addition, in the Enquiry Report, it was set out that when the analysis of the samples was being conducted, Ram Naresh had lodged his protest that the chemical re-agent for proper analysis was not available, however, he was forced to sign the result without recording his protest under the threat of suspension.

34. Before the Appellate Authority, Ram Naresh raised the same contentions that he was not associated with the consignments received as he was on leave and that he had already previously raised a complaint by the telegram on 06.04.1996 and a complaint against TAs which was ignored. In any event, he was only required to check 25% of the stocks. The Appellate Authority while acknowledging these contentions upheld the dismissal of Ram Naresh taking into account the totality of the circumstances of the case in the following manner:



“(iv) As per the T.A. bill, the CO was on tour to D.O. Karnal on 17.6.96 and had come back to his headquarters i.e. Safidon on the same day. The CO was present on the 17th evening and 18th June, 1996 during which period the special was loaded for Sagar. Thus, the contention of the CO is not based on facts.

(v) It is not correct to say that the LAS is a hypothetical exercise. It is based on a technical assessment. The word LAS (Loss assessment statement) in itself stands for assessment, which can increase or decrease after the stocks are liquidated. Even though the quality complaint in respect of stocks despatched to Avadi was dropped the fact remains that the BRL stocks were accepted and despatched, which consequently led to the complaint. Merely, the dropping of quality complaint does not absolve the CO of his responsibility in accepting the substandard/BRL rice stocks. Therefore, the contention of the petitioner cannot be accepted.

(vi) The contention of the CO that he was not present, when the samples were drawn of the remnant stocks at Safidon and Sagar is true. The records indicate that Sh. Ram Naresh was present at the analysis of the samples drawn at Safidon and Sagar and had signed the joint analysis results alongwith the other Technical Assistants.”

[Emphasis is ours]

35. The issue with regards to the quality complaints telegram/communication and the chemical agent re-analysis was not dealt with. The Appellate Authority Order while acknowledging Ram Naresh's absence continued to hold him responsible for the BRL Rice.

Supervision by Technical Assistant

36. FCI also relied on FCI Circular which was prevalent in setting out the specifications of Paddy Rice and Kharif grains grant for the marketing season 1995-96. It was held by the FCI that in terms of Clause 20 of the FCI Circular, for proper supervision and checking, the Assistant Manager (Quality Control) was required to inspect 25% of the stock. Based on this, the learned Single Judge has rejected the argument that Ram Naresh was not in charge of quality control.



36.1 A review of the FCI Circular shows that the primary inspection at the Mill is required to be done by the Technical Assistant [hereinafter referred to as “TA”] who is required to complete records which should be checked by the Assistant Manager (Quality Control) from time to time. Clause 13 of the FCI Circular provides each TA, is to randomly select samples for analysis while Clause 14 of the FCI Circular states that acceptance by TA is final and binding and therefore, quality acceptance and analysis will be signed by the TA himself. The relevant clauses are extracted below:

“4. Preliminary inspection at the mill premises is to be done by the TA who will on request of the miller inspect the consignment in the mill premises and send necessary advice to the miller about the quality and for proper {-illegible-} of rice stocks before bagging. No stocks not conforming to the specifications should be allowed to be packed. The concerned TA should keep complete records of preliminary inspection which should also be checked by AM (QC) incharge from time to time, AM (QC) incharge should also ensure proper check on the working of TAs deployed for preliminary inspection work.

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13. To have proper check of the rice stocks accepted by each TA, 5% of the samples selected at random from lots accepted by TAs will be collected by the Distt. Manager along with analysis results, through the Distt. Lab. for the analysis purposes as to compare the results of the concerned TA and taking future necessary action in this regard. Similarly, 2% samples selected at random should be collected by SRM/RM along with analysis results for analysis at Regional Lab. and for taking further necessary action.

14. Since the acceptance of the depot level by the TA is final and binding, therefore, quality certificate/acceptance note/analysis report will be signed by TA himself and payment will be made by the Distt. office only.

15. No on account adhoc payments would be released till the samples are analysed and accepted by issue of analysis reports by TA to the Distt. Office.”

[Emphasis is ours]



Leave/Tour Dates

37. It has not been disputed that Ram Naresh was on a tour to district office between the dates of 04.06.1996 and 07.06.1996 and was on leave till 11.06.1996 and even on 17.06.1996 he was on official tour. However, the enquiry proceedings have held that Ram Naresh was duty bound to have checked 25% of the stocks immediately upon return from tour/leave which he failed to do so. It was found that Ram Naresh being the supervising officer was bound to supervise all dispatches as it is his duty to supervise at least 25% of the stock. The learned Single Judge also found that the overall responsibility of Ram Naresh cannot be taken away in view of his tour/leave dates.

38. Ram Naresh in his representation dated 08.08.1997 had stated that he was available in Safidon only on 12.06.1996 and on that date, he had rejected 4 consignments of Rice. In addition, it was contended that there were nearly 60 lots rejected by him previously. The relevant extract is below:

“...Similarly rice consignments were received in ARDC and FSD Safidon during these dates as mentioned at page 33 of the Inquiry report. But I was available at Safidon only on 12th June, 1996 and on 12th June 1996 itself I rejected 4 consignments of rice during my inspection there. In addition to this the details of the rejected lots are available in Ext.P.38 which is nearly 60. This can be confirmed from the 8th line from bottom of page 33 of the inquiry report. On other dates I remain either on leave or on tour / meeting to other centres and mandis. This fact has also been confirmed by the Inquiry officer vide exhibit D6 (RN) P7 (RN) and DB (RN).”

[Emphasis is ours]

39. In addition, for the analysis at Sagar, Ram Naresh pointed out that he had observed a number of lapses in joint analysis which were pointed out by him through verbal and written protests. The relevant extract is



below:

“(6) As regards the results of joint analysis at Sagar I am inclined to mention that I associated the Joint analysis of rice at Sagar in the capacity of AM (QC) of Safidon centre as well as for complying the Head office order and not as a delinquent officer because I was not associated with any of the consignments which were received at Sagar ex-Safidon Centre as clarified in para 2 & 3 above. At Sagar also (in the capacity of AM (QC) I observed a number of lapses in joint analysis which were pointed out by me on spot daily through verbal and written protests (D- 23 and D-24) may be referred.”

[Emphasis is ours]

40. As stated above, the Appellant have also relied upon the telegram which was not produced however was extracted in his representation to show that he had alerted in writing the activities of TAs working under his supervision, but the superior authority did not look into his reports. The relevant extract is below:

“STOCKS OF RICE SHELLING INSPECTED BY ME IN AROC SAFIDON FOUND BRL. DETAIL REPORT FOLLOWS.”

41. Thus, an analysis of the record produced by the Appellant thus shows that Ram Naresh had in fact been alerting the authorities of the BRL Rice during the relevant period. This aspect has not been dealt with in either the Enquiry Report or the Appellate Authority Order.

42. The Supreme Court in ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant***⁴, has directed that there needs to be compliance with certain requirements in a departmental enquiry, that includes at an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his

⁴ (2001) 1 SCC 182



defence. The relevant extract reads as follows:

“21. Incidentally, Hidayatullah, C.J. in Channabasappa Basappa Happali v. State of Mysore [(1971) 1 SCC 1: AIR 1972 SC 32] recorded the need of compliance with certain requirements in a departmental enquiry — at an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence — on this state of law, a simple question arises in the contextual facts. Has this been complied with? The answer however on the factual score is an emphatic “no”.

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:

..... 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.” ’



[Emphasis is ours]

42.1 In the present case, the Enquiry Findings, the Enquiry Report, and the Appellate Authority have all failed to give due consideration to evidence led by Ram Naresh. Ram Naresh was also not afforded the opportunity to submit crucial additional documents on record. The enquiry proceedings appear to have operated under a preconceived notion of his guilt, ignoring material facts and contentions, and have superficially addressed these issues by either denying that the evidence was submitted in time or claiming that it would not have influenced the outcome of the proceedings.

43. So far as concerns the issue of no personal hearing be given by the disciplinary authority and thus being violative of the principles of natural justice, the learned Single Judge found that the FCI Regulations did not require personal hearing by a disciplinary authority and thus it cannot be said that Ram Naresh was required to be given personal hearing by the Appellate Authority.

43.1 The Appellate Authority order contains reference to the fact that a personal hearing was granted to the Petitioner. This is however denied by the Petitioner. Be that as it may, the fact remains is that from the record it is apparent that the Petitioner was not allowed to defend himself adequately. The Supreme Court in the *Kumaon Mandal case* has held that this amounts to a miscarriage of justice.

44. No doubt, it is settled law that in proceedings under Article 226 of the Constitution of India, this Court is not required to sit in Appeal over findings of the disciplinary authority however, where such findings appear



to be perverse, the Court is duty bound to intervene. In ***High Court of A.P. v. Nirmala K.R. Dayavathi***⁵, the Supreme Court has reiterated that even though High Court jurisdiction available to it under Article 226 of the Constitution to interfere with an order of punishment passed after holding of a departmental proceeding is highly constricted, it has clarified that interference by the High Court is still permitted if findings of the enquiry officer and the conclusion of the disciplinary authority is *ex facie* erroneous or perverse. The relevant extract reads as follows:

“8. On a totality of these materials, the High Court in the exercise of writ jurisdiction had thought it proper to interfere with the punishment imposed. While doing so, the High Court was fully aware of highly constricted jurisdiction available to it under Article 226 of the Constitution to interfere with an order of punishment passed after holding of a departmental proceeding. Narrow and limited though it maybe it has to be acknowledged that the jurisdiction under Article 226 of the Constitution would permit interference by the High Court in respect of findings of the enquiry officer and the conclusions of the disciplinary authority arrived at on that basis in cases where the weight of the evidence is opposed to the conclusions recorded rendering the same ex facie erroneous or perverse. This is precisely what had happened in the present case.”

[Emphasis is ours]

Punishment not commensurate with the penalty

45. A major penalty under Regulation 54 of FCI Regulations of dismissal from service was imposed on Ram Naresh. Regulation 54 of FCI Regulations⁶ reads as under:

“54. Penalties

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, the following penalties (for good and sufficient reasons and as hereinafter provided) be

⁵ (2015) 15 SCC 681

⁶ As reproduced in *Ranjit Singh v. FCI and Others*, CWP No. 165 of 2010; judgment passed by Hon'ble Mr. Justice Surya Kant; 794 I.L.R. Punjab and Haryana 2011(1)



imposed on any employees of the Corporation.

MINOR PENALTIES:

- (i) *Censure;*
- (ii) *Withholding 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 or orders.*
- (iii) (a) *Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.*
- (iv) *withholding of increments of pay.*

MAJOR PENALTIES:

- (v) *Save provided for in Regulation (iii)(a) above, 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 of the Corporation will earn increments of pay during the period of 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-scales 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 of Corporation was reduced and his seniority and pay on such restoration to that post.*
- (vii) *Compulsory retirement;*
- (viii) *Removal from service which shall not be disqualification for future. Employment under the Corporation.*
- (ix) *Dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation.”*

45.1 As can be seen from above, the FCI Regulations provide for minor and major penalties which include withholding promotion, reduction of pay scale, withholding increments, as minor penalties and compulsory retirement, non-stigmatic removal and dismissal from service as major penalties. In the present case, the harshest punishment has been imposed on Ram Naresh, of dismissal from service.

45.2 The Counter-Affidavit filed by the Respondent before the learned Single Judge sets out that the penalty imposed on the Petitioner was “for



his supervisory lapse while functioning as AM (OC)”. It is this lapse for which the major penalty of dismissal was imposed on Ram Naresh.

46. As stated above, the penalty imposed on the Appellant was that of dismissal. The memorandum of charges set out that the substance of imputations were misconduct or misbehaviour which is a violation of the FCI Regulations and that in connivance with technical staff posted under Ram Naresh, as well as millers of Safidon, Ram Naresh caused huge losses to the FCI. Neither the Enquiry Report nor the Appellate Authority Order sets out the quantification of the losses caused nor that Ram Naresh himself caused losses to the tune of Rs. 1.86 crores or any details of thereof. In addition, as can be seen from the discussions above, the Enquiry Report and the Appellate Authority Order do not appear to have dealt with the defences raised by the Ram Naresh adequately.

47. We are, thus, unable to agree with this finding of the learned Single Judge. The enquiry proceedings being conducted against Ram Naresh were of a serious nature and the enquiry officer has rendered a finding of dismissal against Ram Naresh. In addition, the penalty imposed on Ram Naresh is that of dismissal without any benefits. Thus, given the nature of the penalty imposed, it was incumbent on the disciplinary authority/appellate authority to ensure that Ram Naresh was given adequate opportunity to defend himself.

47.1 As such, it was imperative upon the disciplinary authority to appropriately consider the gravity of the misconduct, along with the mitigating factors or defences advanced. The imposition of the severest penalty must be proportionate to the nature of the conduct, and any



extenuating circumstances must be appropriately weighed before arriving at a decision.

47.2 However, the enquiry proceedings do not in any manner affirm that these principle of natural justice and equity have been followed by the FCI. The Enquiry Report runs into two pages where it finds that the Appellant had given “a free hand” to technical staff to accept BRL Rice stocks and that he was an active member of the group of persons who caused losses to the FCI. The enquiry however does not give any “finding” against Ram Naresh in this regard other than a generalised one and stating that his conduct is unbecoming of an officer of FCI.

47.3 The disciplinary authority in the Enquiry Report has also held Ram Naresh liable for pecuniary loss of over Rs.1.86 crores incurred by FCI, and given a finding that, in view of gravity of the charge imposed, the penalty of dismissal is warranted. As stated above, it did not take into consideration the evidence that was sought to be placed. The loss caused by Ram Naresh was also neither quantified nor proved by FCI in these proceedings. The collusion and connivance were also not clear. This finding was reached despite the communications of Ram Naresh that BRL Rice was being accepted by the TA’s and other officials. In fact, except for a finding that loss was caused, no reasons are given. It merely sets out the following:

“4. AND WHEREAS, having gone through the relevant records of the case, the representation of Ram Naresh dated 08.08.1997 and attenuating circumstances of the case, leading to a pecuniary loss of over Rs.1.86 crores incurred by FCI and gravity of the charge framed against the said Shri Ram Naresh, the then Assistant Manager (QC), Safidon, the undersigned is of the view that a penalty of 'Dismissal' is inevitably warranted.”



48. The Appellate Authority Order also does not clearly elucidate as to how this loss was caused by Ram Naresh. Since, the penalty of dismissal was imposed on Ram Naresh based on quantification of huge losses caused, it was incumbent upon the authority to give a finding on how the loss was caused by Ram Naresh.

49. It is settled law that the punishment accorded should not be disproportionate to the gravity of the misconduct. The Supreme Court in the *Girish Bhushan* case found that where the Appellant was charged with negligence, the penalty of dismissal for negligence was not justified and the punishment of deduction of one year increment to the employee was meted out. The relevant extract reads as follows:

*“15. Therefore, in view of the principle laid down by this Court in the above referred case, we are of the opinion that dismissal order served on the appellant just 6 days prior to his retirement date is exorbitant and disproportionate to the gravity of misconduct particularly, because he was not involved in active collusion with the other employees of the Company who were involved in this incident, for causing financial loss to the respondent Company **but was negligent by an act of omission. We also should not lose sight of the fact that the** appellant took steps to retrieve the materials which were due against the bill from the suppliers which rectified the error. Accordingly, the order of dismissal served on him is liable to be quashed and is accordingly, quashed. However, we cannot lose sight of the fact that his negligence has caused financial loss to the respondent Company. Therefore, keeping on a par with the punishment awarded to **Shri B.S. Rana on ground of misconduct in terms of demotion to lower grade for 3 years as per letter dated 6-6-2011 from the Central Public Information Officer, we award the similar punishment of deduction of one year increment to the appellant as per Rule 23(b) of the BHEL Conduct Rules since the appellant already reached the age of superannuation when the order of dismissal was served on him.***

Accordingly, the civil appeals arising out of SLPs (C) Nos. 30883-84 of 2012 are allowed.”

[Emphasis is ours]

50. On an overall conspectus of the case, this Court finds that the



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conclusions recorded by the Enquiry Report are *ex facie* erroneous with reference to Ram Naresh and that the conclusion of dismissal is not commensurate with the punishment awarded to Ram Naresh, given the facts of the case.

51. In view of the foregoing, the Appeal is allowed, the Impugned Judgement is set aside. The dismissal of Ram Naresh for misconduct is also set aside. However, in view of the fact that Ram Naresh is no longer alive and a fresh enquiry can no longer be conducted, it is directed that the legal representatives of Ram Naresh be awarded his retiral benefits due, if any, within six weeks from today.

TARA VITASTA GANJU, J

VIBHU BAKHRU, J

OCTOBER 01, 2024/SA/r