

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3436 of 2020

Yogendra Singh, S/o- Vishwanath Singh, Resident of Ward No.- 10, Virkuwar Singh Colony, P.S.- Bhagwan Bazar, Distt.- Chapra, Saran.

... .. Petitioner/s

Versus

1. The Food Corporation of India through the Chairman cum Managing Director, 16-20 Barakhambha Lane New Delhi.
2. The Chairman-cum Managing Director, Food Corporation of India, 16-20 Barakhambha Lane New Delhi.
3. Executive Director (East Zone), Food Corporation of India, 10-A Middleton Row Kolkata- 71.
4. General Manager (Region), Food Corporation of India, Regional Office Arunachal Building Patna.
5. The Area Manager, Food Corporation of India, District Office Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar No.1, Advocate
For the Respondent/s : Mr. Saket Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 10-02-2025

Heard Mr. Mukesh Kumar No.1, learned Advocate for the petitioner and Mr. Saket Tiwary, learned Advocate for the Food Corporation of India.

2. The petitioner is aggrieved with the order dated 28.07.2015, as contained in Letter No. Vig.3(Misc)/3/2012-13 passed by respondent no.4, whereby the petitioner has been inflicted with the penalty of reduction to the lower post of AG-III(D) with initial pay of reduced post. The petitioner also



assailed the order dated 31.12.2018 vide Reference no. Vig.5(157)/2018/Bihar/02 passed by the respondent no.3 whereby the appeal preferred by the petitioner also came to be rejected confirming the order of the disciplinary authority.

3. The brief facts of the case are that while the petitioner along with one Hansraj Singh was serving as AG-II(D) at Bihar State Warehousing Corporation, Chapra (hereinafter referred to as 'the BSWC'), a Memo a Charge dated 15.01.2014 was issued against them. The Memo of Charge under Ref. No. Vig4(1478)/3/2012 was containing of article of charge, statement of imputation of misconduct, a list of supporting documents and list of witnesses by whom Article of charge were proposed to be sustained. In response to the Memo of Charge, the petitioner submitted his reply refuting the allegations made against him. However, on being found the reply unsatisfactory, regular departmental proceeding was initiated. After enquiry, the conducting officer had submitted enquiry report holding the charges levelled against the petitioner were proved. The enquiry report dated 09.03.2015 was placed before the disciplinary authority, who in turn issued second show-cause notice along with the enquiry report. The petitioner submitted a detailed show-cause reply challenging the validity



of the inquiry report and contended that the report was perverse and flawed, failing to demonstrate how the prosecution had convincingly established the charges. The show-cause reply of the petitioner, however, did not find any favour, resultantly the impugned order of penalty of reduction to lower post of AG-III(D) with initial pay of reduced post was awarded.

4. Aggrieved with the order of the disciplinary authority, the petitioner preferred a statutory appeal on 06.11.2015, inter alia, stating therein that the disciplinary authority has not taken into consideration the show-cause vis-a-vis the written defence statement, qua the charges, apart from the contention that the enquiry report was perverse and based upon no finding. On being found no favour, the Appellate Authority also rejected the statutory appeal of the petitioner by order dated 31.12.2018.

5. It would be worthwhile to mention here that the petitioner on being dissatisfied with the order of the Appellate Authority unsuccessfully preferred Review application before the Reviewing Authority. The order of the Reviewing Authority rejecting the review petition dated 10.08.2020 also put to challenge by filing an interlocutory application, bearing I.A. No. 1 of 2024.



6. Learned Advocate for the petitioner while assailing the aforementioned impugned orders has contended that the charges against the petitioner was only to the extent that quality control paper was not prepared, as such, procurement on 25.03.2013 and 26.03.2013 and issue of food-grains on 29.03.2013 and 30.03.2013 was fictitious, which led to departmental proceeding.

7. It is the contention of the petitioner that for the same charges one Hansraj Singh was also subjected to departmental proceeding and inflicted identical punishment based on the same enquiry report. Said Hansraj Singh challenged the order of penalty before the Central Government Industrial Tribunal No.1, Dhanbad (hereinafter referred to as 'the CGIT') in Complaint Case No. 10 of 2015. On notice, the respondents entered their appearance and filed written statement and several witnesses were examined from both sides. Ultimately, the Tribunal held the enquiry report illegal, unjustified and thus set aside the same vide Award dated 25.10.2017 and further directed to restore the employee, Hansraj Singh to his original post. Since the same charges and penalty was imposed against the petitioner, he claims that identical relief ought to be granted in his favour.



8. Referring to the enquiry report and the impugned orders, further contention has been made that apart from the impugned orders are perverse, the enquiry report of the conducting officer is based upon no legal evidence, inasmuch as, there is no discussion and deliberation of the defence statement/explanation of the petitioner, hence unsustainable in law as well as on facts.

9. Mr. Saket Tiwary, learned Advocate for the Food Corporation of India (hereinafter referred to as 'the FCI') dispelling the contention of the learned Advocate for the petitioner has contended that the grounds taken by the petitioner is wholly misconceived. Apart from the orders passed by the CGIT is not binding on the High Court; the award of CGIT dated 25.10.2017 in Complaint Case No. 10 of 2015 cited by the petitioner has already been quashed by the High Court of Jharkhand vide order dated 01.07.2024 passed in W.P.(L) No. 2703 of 2018, the copy of which is placed on record as AnnexureR1-B.

10. Referring to the facts and materials available on record, it is contended that while the petitioner was posted as procurement in-charge at BSWC, Chapra failed to maintain the issuance of acceptance notes, quality certificates, analysis slips



and purchase-cum-payment vouchers. The petitioner fraudulently recorded the acceptance of Custom Milled Rice (CMR) and subsequently issued out the same stock; the entire transactions were on paper and in fact the stocks were never received at the depot. The order of the disciplinary authority as well as appellate authority and reviewing authority are based upon the enquiry report wherein all the imputations levelled against the petitioner stood proved. Accordingly, the petitioner has been accorded the punishment proportionate to the charges inflicting reduction to the lower post of AG-III(D) with initial pay of reduced post. The appellate authority also reviewed all documents and rejected the appeal preferred by the petitioner. The review of the petitioner also did not find merit. There is a concurrent finding of the disciplinary authority as well as appellate and reviewing authority; moreover, there is no procedural error in the disciplinary proceeding nor any violation of the principles of natural justice, as the petitioner was given full opportunity to present his case.

11. In the aforesaid premise, learned Advocate for the FCI urged before this Court that the penalty imposed upon the petitioner is justified and does not warrant any interference by this Court.



12. This Court has meticulously heard the learned Advocate for the respective parties and also perused the materials available on record. Before parting with the case in hand, it would be worthwhile to observe that while exercising the power of judicial review under Article 226 of the Constitution of India, the role of the Court is confined to see the procedural irregularity, which led to patent illegality and make the order of punishment vulnerable. The High Court in the proceeding under Article 226 of the Constitution does not act as an appellate authority, but exercise within the limit of judicial review to correct errors of law or procedural errors leading to manifest injustice and violation of principles of natural justice.

13. It would be apt to encapsulate the relevant paragraph of the decision of the Hon'ble Supreme Court in the case of *Union of India & Ors v. P. Gunasekaran*, reported in **(2015) 2 SCC 610** wherein the Hon'ble Supreme Court strenuously enunciated the guidelines where the court while exercising the power under Articles 226/227 of the Constitution of India may or may not interfere in a disciplinary proceeding:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even



the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible



and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

14. In the light of the aforesaid settled legal position, now this Court examine the order of penalty, enquiry report as well as Appellate and the order passed by Reviewing Authority. The Memo of charge contains the list of documents, 59 in numbers, and a list of witnesses, who were duly examined and cross-examined during the course of enquiry. The petitioner has also been given opportunity to place his defence witnesses and accordingly he has also placed defence witnesses and finally the enquiry officer concluded that the Article of charges, the prosecution documents, deposition of PWs. and Dws., the defence documents, finding recorded in prosecution clearly reflects that the charges levelled against the delinquent petitioner are proved.

15. Based upon such detailed enquiry report, the disciplinary authority has inflicted punishment after giving a second show-cause notice. The impugned order of penalty has also taken into consideration the cause shown in reply offered by the petitioner, before inflicting the punishment. What is



expected from a disciplinary authority, once he agrees with the finding of the enquiry officer, is a brief consideration of the show-cause reply filed by the delinquent officer, which is also present herein. This Court also does not find any procedural irregularity, leading to manifest illegality in the impugned order of disciplinary authority and appellate authority as well as reviewing authority.

16. Learned Advocate for the petitioner also failed to point out any cogent irregularity, which warrants interference in the impugned orders. Moreover, the very contention of the petitioner based upon the ground that the order of penalty issued in favoaur of the identically situated employee, namely, Hansraj Singh, was set aside by the CGIT is no more available to the petitioner, as is apparent on the fact of the order of the High Court of Jharkhand at Ranchi in W.P.(L) No. 2703 of 2018, as the order of the CGIT, now stands quashed, although on the point of maintainability giving liberty to the said employee to avail the remedy of appeal.

17. In view of the discussions made hereinabove and the position obtaining in law this Court does not find any merit in the writ petition. Accordingly, the same stands dismissed.



18. Pending application, if any, stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.02.2025
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