IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 31366 of 2017

Chandra Sekhar Barua
-Vs-
The Food Corporation of India & Ors.

For the Petitioner	: Md. Sarwar Jahan Mr. Maidul Islam Kayal Ms. Tapati Sardar
For the F.C.I.	: Mr. Pratick Dhar Mr. Aniruddha Bagchi
Heard on	: 04.07.2024, 17.09.2024
Judgment on	: 16.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, an Assistant Grade-I (Depot) and DEO, was periodically tasked in dealing with the computerized weighbridge at FSD, OJM, from 2011 and again in October 2012 due to lack of trained personnel. Following a Zonal Vigilance report in December 2011, a massive shortfall in rice and wheat stock was uncovered, leading to suspicions of fraud and depot mismanagement. Though multiple officials were implicated, the petitioner's role was not distinctly outlined.

2. The petitioner was transferred as shed in-charge in January 2013, and was issued a charge sheet citing negligence and connivance. Dismissed from service with forfeiture of benefits, he appealed under Regulation 68(ii) of the FCI (Staff) Regulation 1971, but the appellate authority

upheld the charges, emphasizing dereliction of duty and failure to report shortages.

3. Despite a statutory review and a direction from the High Court to expedite its disposal, the Secretary reaffirmed the termination in July 2017. The petitioner sought judicial recourse, asserting that neither clear rationale nor specific culpability was established in reports, and challenging the proportionality of the punishment meted out against him, a mere weighbridge in-charge, amid systemic depot-level failures.
4. The Learned Advocate representing the petitioner, advanced a multifaceted defense rooted in procedural lapses, evidentiary infirmities, and the disproportionate nature of the penalty. It was asserted that the petitioner had taken charge of Sheds 4 and 5 post-verification, when no legacy stock was present, thereby absolving him of liability for any historical discrepancies. A significant plank of the petitioner's case was the lack of direct or cogent evidence linking him to the alleged misappropriation. The charge sheet was critiqued for its vagueness and for drawing speculative inferences, particularly the unsubstantiated allegation of "connivance" – a term neither defined in the FCI Staff Regulations, 1971, nor substantiated through material proof or the presence of crucial witnesses such as Sri Bijay Kumar, E.D. (Vig.).
5. It was further submitted that the petitioner's duties at the computerized weighbridge were limited to data entry during vehicular weighments, with no opportunity for manipulation, corroborated by certification from the Department of Legal Metrology and daily oversight by the District Controller's inspectors. The prosecution's reliance on internal reports, which were repetitive or untested through cross-examination, further

undermined their probative value. Moreover, the inquiry was alleged to be tainted by procedural irregularities including non-supply of documents, joint proceedings without consent, and improper recording of statements – violations of Regulation 58, 59 and 62 and principles of natural justice, as enshrined under Article 311(2) of the Constitution.

6. Significantly, reference was made to FMA Nos. 4509–4513 of 2016, where similarly charge-sheeted officials, including Head Watchmen, were found not directly culpable by the Enquiry Officer. The Hon'ble Division Bench presided by Justice I.P. Mukerji had observed the absence of temporal specifics in the charges and held that dismissal was disproportionate. Drawing a parallel, it was contended that the petitioner's culpability was lesser, given his limited operational scope and absence of supervisory control.

7. It was further stressed the underscored administrative lapses at various tiers of the FCI and the presence of unauthorized occupants in the depot, which were overlooked by the authorities who, it was argued, pursued the matter with a predetermined bias. It was further claimed that the review order passed by the Secretary of the Board lacked jurisdiction under Regulation 74 of the Food Corporation of India (Staff) Regulation, 1971 as only the Board of Directors or its designated member could exercise such powers.

8. It was concluded that the entire disciplinary process was marred by procedural and substantive infirmities, an unreasoned penalty order, and reliance on extraneous material, thereby rendering the punishment arbitrary and unsustainable under service jurisprudence.

9. The learned advocates representing the respondents contended that the writ petition was both misconceived and legally unsustainable. It was emphasized that the disciplinary proceedings against the petitioner had been initiated in strict adherence to the FCI (Staff) Regulations, 1971. A charge-sheet dated 22.04.2013 had been issued under major penalty clauses. The petitioner was duly served and given an opportunity to respond, but he failed to submit a written representation or participate during the personal hearing. The petitioner was complicit in a broader conspiracy involving stock misappropriation amounting to ₹8.37 crore, which was unearthed during a Special Physical Verification and liquidation process. Documentary and oral evidence revealed collusion between weighbridge staff and truck drivers, and the petitioner; posted at Weighbridge A, a sensitive location, had facilitated unrecorded truck movements and failed to maintain mandatory logs.

10. Reliance was placed on ***Lalit Popli v. Canara Bank (2003) 3 SCC 583*** to underscore that disciplinary proceedings function on the "preponderance of probabilities" standard, unlike the "beyond reasonable doubt" threshold in criminal trials. Though no direct theft was attributed to the petitioner, his connivance and dereliction of duty were well established.

11. As to the plea of parity with co-delinquents, the respondents relied on ***Lucknow Kshetriya Gramin Bank v. Rajendra Singh (2013) 12 SCC 372***, and ***Naresh Chandra Bharadwaj v. Bank of India (2019) 15 SCC 786*** to argue that complete parity, both in charges and post-charge conduct, is a prerequisite for equal treatment. Here, such parity was

lacking, especially as co-delinquents had shown remorse or admitted guilt, unlike the petitioner.

12. On the issue of proportionality in punishment, the respondents cited ***Union of India v. Mongobinda Samantaray (2022) SCC Online SC 284*** and ***Anil Kumar Upadhyay v. Director General, SSB (2022) SCC Online SC 478*** to assert that punishment lies within the exclusive discretion of the disciplinary authority, and judicial interference was warranted only when the penalty is shockingly disproportionate or perverse. They further argued that the punishment underwent due review by the Board of Directors, and the final order was issued by the duly authorized Secretary.

13. The case of Babun Raha v. Union of India was distinguished on facts, as in that case, direct involvement was unproven, whereas here, connivance was positively established. In conclusion, the learned advocate for the respondents defended the disciplinary action and penalty imposed, asserting that the petitioner's role, position, and conduct warranted no leniency

14. The petitioner, formerly employed as Assistant Grade-I (Depot) and Data Entry Operator with the Food Corporation of India, had been intermittently entrusted with operations at the computerized weighbridge at FSD, OJM. A Zonal Vigilance inspection in July 2012 exposed substantial shortages of food grains at the depot, triggering allegations of large-scale misappropriation. Though the petitioner's precise involvement was not immediately delineated, he was later posted as shed in-charge and subsequently issued a charge sheet in February 2015 citing negligence and alleged connivance. Following an inquiry, he was

dismissed from service and his appeal under Regulation 68(ii) was rejected, with the appellate authority emphasizing failure in supervisory duties. A statutory review too culminated in the Secretary affirming his dismissal, prompting the petitioner to approach this Court.

15. Learned counsel for the petitioner, submitted the petitioner to have challenged the disciplinary proceedings which sought to be vitiated by procedural and substantive irregularities. It was contended that the petitioner had assumed charge of Sheds 4 and 5 only after verification and that the discrepancies predated his tenure. No direct evidence was adduced to establish his complicity in the alleged fraud. The charge of "connivance" was neither clearly defined under the FCI (Staff) Regulations, 1971, nor proved by any cogent material. The petitioner's responsibilities, as per the defense, were restricted to data entry during weighments, an area subject to continuous external oversight and regulatory compliance, further limiting the possibility of manipulation.

16. The learned Advocates representing the petitioner criticized the inquiry process for breach of natural justice since documents were not supplied, joint proceedings were conducted without consent, and statements were improperly recorded. Internal vigilance reports, relied upon by the disciplinary authority, lacked evidentiary rigour as they were neither tested in cross-examination nor independently verified. Reference was made to FMA Nos. 4509–4513 of 2016, wherein similarly placed personnel were exonerated by the Enquiry Officer due to vague charges and lack of proof. It was urged that the petitioner's liability, if any, was far less serious, and the penalty of dismissal was grossly disproportionate in light of systemic administrative failures.

17. The Learned Advocate for the petitioner also questioned the legality of the review order passed by the Secretary, contending that under Regulation 74, such powers could be exercised only by the Board of Directors or their designated delegate. It was submitted that the impugned orders were not reasoned and were influenced by bias, rendering them unsustainable in law.

18. Per contra, learned counsel for the respondents justified the disciplinary proceedings as lawful and procedurally sound. It was alleged that the petitioner failed to respond to the charge sheet and absented himself from the personal hearing. Evidence, both oral and documentary, indicated that the petitioner, stationed at the sensitive Weighbridge A, facilitated unauthorized truck movements and neglected to maintain essential records, thereby aiding a misappropriation estimated at □8.37 crore. It was further emphasised emphasized that the standard of proof in disciplinary inquiries was one of preponderance of probabilities, which was satisfied in this case. Judicial precedents were cited to affirm that courts must not interfere with punishment unless it was shockingly disproportionate. It was contended that the penalty had undergone due review and was endorsed by the competent authority.

19. While parity with co-delinquents was invoked by the petitioner, the respondents distinguished his conduct, highlighting that others had shown contrition or accepted culpability, which the petitioner did not. Hence, a plea for similar treatment was untenable. Ultimately, the respondents asserted that the petitioner’s dereliction of duty and connivance in the grave lapses warranted stringent disciplinary action and did not merit judicial interference.

20. In view of the judgment delivered by the Division Bench of this Court in FMA 4509 of 2016, 4510 of 2016, 4511 of 2016, 4512 of 2016 and 4513 of 2016, the appellate authority had reviewed the case afresh and reduced the penalty imposed upon each of the appellants by an order dated 11.04.2019. Pertinently the appellants had been the charge-sheeted officers being CO-9, CO-10, CO-11, Co-17 and CO-18 as per the memorandum of charge dated 22.04.2013. The present petitioner had been CO-16 as per the aforesaid memorandum dated 22.04.2013. The Enquiry Officer in the report submitted on 05.12.2024 delineating the following charges against the charged officer with respect of the articles of charge as follows:-

> *"(a) Charge under Article-I, in respect of the CO-1, CO-2, CO-3, CO-4, CO-5, CO-6 & CO-8 are partly proved. In respect of the CO-9, CO-10, CO-11, CO-16, CO-17 & CO-18, misappropriation of stocks are not proved. But, regarding connivance, charges are proved in respect of the CO-16, CO-17 & CO-18 and in respect of the CO-9, CO-10 & CO-11, partially proved. In respect of the CO-12, CO-13, CO-14 & CO-15, misappropriation not proved but suppression of facts has been proved that led to connivance.*
> *(b) Charge under Article-II, in respect of the CO-1, CO-2, CO-3, CO-4, CO-5, CO-6, CO-7 & CO-8, are proved and charges are not proved in respect of the others Cos.*
> *(c) Charge under Article-III, proved in respect of the CO-16, CO-17 & CO-18."*

21. The present petitioner being similarly positioned vis-à-vis the charge-sheeted officers as aforesaid can be granted similar relief by the appellate authority exercising its power to review punishment imposed upon CO-16 which has already been observed by the Hon'ble Division Bench of this Court had been harsh and disproportionate.

22. This Court is not inclined to interfere with the observation of the disciplinary authority as well as the appellate authority in terms of the misconduct which has been proved against the petitioner through the articles of charge. The case of the instant petitioner is remanded to the appellate authority to review the same in similar terms of the charge-sheeted officers mentioned above vide order dated 27.05.2019 for ensuring parity, equality and ensuring the principles of natural justice since this Court is also of the opinion that an order of dismissal and/or removal from service had been harsh and disproportionate in view of the nature and gravity of the charges brought against the present petitioner.
23. The appellate authority is to review the case of the petitioner and is at liberty to impose any kind of punishment distinct from that of a punishment imposing dismissal and/or removal from service.
24. In view of the above discussions, the instant writ petition being WPA 31366 of 2017 is disposed of. Connected application, if any, also stands disposed of.
25. There is no order as to costs.
26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)