

2025:PHHC:033421



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-659-1999 (O&M)
Date of Decision: 05.03.2025**

R.G. VERMA

... Petitioner

VERSUS

THE FOOD CORPORATION OF INDIA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Veer Imaan Singh Gill, Advocate
for the petitioner.

Mr. Ish Puneet Singh, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

CM-1128-1999

Allowed as prayed for.

MAIN CASE

Challenge in the present petition is to the order dated 07.12.1998 whereby penalty of stoppage of three annual increments without cumulative effect alongwith recovery of one year's basic pay imposed by the Appellate Authority has been enhanced to that of reduction of rank from Technical Assistant Grade-II to Technical Assistant- III for a period of five years in the minimum scale of pay of Technical Assistant- III.

Learned Sr. Counsel appearing on behalf of the petitioner contends that the petitioner had joined service with Food Corporation of India on 31.05.1976 as Technical Assistant- III and he had an unblemished career. The

petitioner was unfortunately served with a charge sheet on 14.06.1994 under Regulation-58 of the Food Corporation of India (Staff) Regulations 1991 on the allegations that during his stay at Kurali during Kharif 1993-94, he failed to maintain absolute integrity and due devotion to duty and also conspired with V.K. Puri, Assistant Manager and accepted the stocks of rice from the Rice Millers, which was not up to the mark i.e. Beyond Rejection Limit (BRL), and thereby causing pecuniary loss to the Corporation. An inquiry into the said charge was conducted and the Inquiry Officer reported as under:

“OPINION OF THE INQUIRY OFFICER.

CHARGE AGAINST SHRI R.G. VERMA, TA-II.

During the period from 27.1.1994 to 11.3.1994, Shri R.G. Verma, TA-II, while working as such at FCI, Kurali accepted certain rice stock. On the report of Shri V. K. Puri, AM(UC), FSD Kurali on 7.3.94 to DM. FCI, Chandigarh that Shri R.G. Verma, TA-II was accepting certain BRL Consignments of Rice, SRM/DM, FCI, Chandigarh deputed Shri Pawan Singh, DN(QC) to check the stocks so accepted by him alongwith a committee of three AMs (QC) as under: -

- a) Shri S. C. Upasani, AM (QC).
- b) Shri Avtar Singh, AM(QC).
- c) Shri V. K. Puri, AM(QC).

The Committee headed by Shri Pawan Singh, DM (QC) visited FSD Kurali and drew samples from 24 stacks of rice on 3/4.5.1994 accepted at the centre and the same were analysed by the committee on 5/6.5.94 in the District Lab. FCI, Chandigarh. Shri R. G. Verma, TA-II did not associate with the Committee wilfully in drawing and analysis of the samples. (Ex. P-1/4/1).

On analysis of the samples of rice so drawn, pertaining to Shri R.G. Verma, TA-II, the following variations were found:

Sr. No.	Stack	No. of Bags	Refractions Broken			Damaged
			Small	Big	Total	
1.	1/A/5	1750	3.00	21.00	24.00	3.50
1.	1/C/5 Except contract No.251).	749	2.50	23.00	25.50	3.75
2.	1/d/B(1/d/B)	1750	2.50	24.00	26.50	3.75
3.	FSD/M/1	1750	3.50	27.00	30.50	3.50
4.	M/5	750	4.50	26.00	30.50	3.80
5.	M/2	1750	3.00	26.00	29.00	4.30
6.	Markfed	1499	3.00	23.00	26.00	4.00
7.	Markfed/2	1750	3.00	23.50	26.50	3.50
8.	Markfed/3	750	3.25	23.75	27.00	4.00
9.	SWC/IV/7	1753	3.00	23.00	26.00	4.00

All the above analysis results exceed the acceptable limit of 23% in respect of broken and results in respect of stack No.M/2 exceed the laid down limit of 4% in case of damaged.

Coding of samples drawn is not considered necessary as the committee itself drew the samples and analysed them. However, the competent authority may take note of the undermentioned facts before finally disposing of the case against Shri R.G. Verma, TA-II: -

- a) As requested by the committee vide Exhibit P-1/4, no fresh directions were issued by the DM, FCI Chandigarh to Shri R.G. Verma, TA-II to attend FSD Kurali for joint sampling/analysis nor any date was fixed for drawing analyzing the samples and intimated to all concerned.
- b) Whereas, vide Exhibit D/2, DM, FCI, Chandigarh had instructed the members of the committee to draw the samples in duplicate and analysed, but only one sample each had been drawn from the rice stacks and analysed.

- c) There is wide variation in results, particularly in case of broken of rice samples, drawn and analysed by Shri V. K. Puri, AM(QC) (Stack Nos.1/A/5 and Mini/1). DM, FCI, Chandigarh (Stack Nos.Markfed/3 and Mini/5) and those analysed by the committee (Exhibit P-4/3).”

Referring to the above, learned Sr. Counsel contends that the Inquiry Officer did not give any conclusive finding with respect to the charge having been proved or disproved against the petitioner and also recorded that the sampling had not been done as per the established procedure and the second samples had not been drawn. A huge disparity in the analysis result of two different samples taken by different Committees was also noticed by the Inquiry Officer. He further submits that be that as it may, the punishing authority passed an order bearing No.Vig.219Chandigarh-1385/94 dated 22.05.1995 whereby punishment of removal from service had been imposed upon the petitioner.

Aggrieved thereof, a statutory appeal was preferred by the petitioner before the Appellate Authority.

Vide order dated 16.01.1996, the Appellate Authority accepted the arguments of the petitioner and modified the order modifying the penalty of removal from service to an order directing stoppage of three annual increments without cumulative effect alongwith recovery of one year's basic pay in 36 equated installments. The operative part of the order reads thus: -

“6. I have gone through the contents of the charge-sheet Inquiry report, Penalty Order, the appeal and other related record in a careful manner and have also afforded personal hearing to the appellant and his recorded statement has been placed on record. The punishing authority in its order has ek observed that the Inquiry Officer has held that the charges levelled against the

charged official stood proved. It appears the punishing authority has not perused the Inquiry Report in a careful manner. In fact the Inquiry officers has no where given a categorical conclusion to the extent that charges levelled in in the charge-sheet were fully established except for a statement to the extent that analysis results exceeded the acceptable limit of 23% in respect of broken and results in respect of stack No.M/2 exceeded the laid down limit of @% in case of damaged. A perusal of the Inquiry Report further reveals that virtually common proceedings were conducted by the Inquiry officer in respect of enquiries pertaining to the appellant as well as one Shri D. P. Gupta T.A I. The Inquiry Officer has by and large accepted the basic contradictions in the procedure adopted by the committee regarding drawing of the samples and the subsequent analysis. It transpires that initially one Shri V.K. Puri AM (QC) had complained about the bad quality of rice being accepted by the T.As at Kurali during the period from 27.1.1994 to 11.3.1994. On his representation, the Distt. Manager, Chandigarh had constituted a committee comprising of s/Shri V.K. Puri, AM (QC) Avtar Singh AM(QC) and Shri S. C. Upasni AM(QC) for conducting checking of the rice at Kurali during the period from 27.1.94 to 11.3.94 with the directions that whenever it was felt that the stock were BRL samples should be drawn in duplicate in association with the concerned TAs who had accepted such stocks and sealed samples were to be brought to the Distt. Lab for joint analysis. The Distt. Manager had further advised the committee to start inspect-ion of the stocks from 6.4.1994 and complete the works in the shortest the possible time (Ex. D. 2). Task This committee visited Kurali Godown and submitted report Ex. P-1/4 dated 25.4.1994 in which they had mentioned that the appellant gave in writing that he would not associate in the joint sampling/analysis unless all stocks available at Kurali are not checked. They had also closed a copy of the letter, given by the appellant. A perusal of the statement of the Appellant, Ex. P/1/4/1

clearly indicates that the Appellant had been insisting that stocks accepted by him and other TAS should be checked by the committee for the period mentioned above plus before the after that period otherwise he would got associate for joint sampling analysis. This clearly establishes that the appellant had been insisting for inspection of the entire any quantity of stocks accepted during the season fearing some kind of victimization. There was nothing wrong in this insistence of the Appellant. The Squad of Als (GC) had also suggested that DM(QC) may also personally visited and see the stocks and guide the committee for further necessary action. It was requested by the committee members that the District Manager, Chandigarh my may give directions to s/Shri Balram Kumar T.-I Sushil Kumar, TA-II Sudesh Kumar T.A.-I and the Appellant for attending Kurali for joint sampling and subsequent analysis and the date so fixed may be intimated to committee members for taking further necessary action. A copy of this report was also endorsed to DM(QC). The Distt. Manager Chandigarh did not pass any orders of this report and it appears Shri Pawan Singh H.M. (GC) alongwith other AMS (QC) visited FSD Kurali and did the sampling of rice on 3/4.5.94. The appellant has raised basic objections against not associating e him for joint sampling and the subsequent analysis of the samples in the Distt. Lab Chandigarh. These objections have also been confirmed by the Inquiry Officer in his report to the extent that no written notice was issued to the Appellant for associating with the joint sampling. Instead of drawing duplicate sample only one sample for each stack was drawn. The analysis in the Laboratory was conducted by the Committee members themselves without associating the analyser of the lab and no coding and decoding of the samples was undertaken. For calculating the percentage of broken the average length of principal grain has not been indicated. Even during the proceedings of the enquiry, the DM (QC) had mentioned that it was not necessary to mention the average length of the grain in the

analysis length on the basis of which he had made the calculations particularly when the entire team was consisting of Quality Control People. It is strange that the committee members did not consider it necessary to issue a written directive to the appellant particularly in view of the earlier directives of the Distt. Manager that joint sampling would be conducted and samples for joint analysis would be arranged in duplicate and the fact that the appellant had been deputed at Ropar for wheat inspection. In fact the associated with the joint sampling analysis, there was no necessity of associating the appellant, is something farfetched. In view of the above, I am of the considered opinion that the conclusions drawn by the Punishing Authority in its order are illogical and do not stand to reasons. I, thus find it difficult to sustain the penalty of removal from service imposed by the Punishing Authority, Though the analysis results of the committee headed by DH (AC) are highly objectionable, still keeping in view the overall nature of the case. I am of the considered opinion that ends of justice would be act by the imposition of a penalty of stoppage of three increments without cumulative effect along recover of one year's pay in 36 equal instalments.

7. Now, therefore, L.P. Ram, Zonal Manager (N) as the Appellate Authority in exercise of power conferred under Regulation -72 of FCI (Staff) Regulation, 1971 hereby modify the impugned penalty of removal from service to that to stoppage of three increments, without cumulative effect alongwith recovery of one year's basic pay in 36 equal instalment His period of absence shall be treated as leave of the kind due.”

Learned Senior Counsel further contends that the petitioner was, however, served with a show cause notice by the Reviewing Authority, in exercise of the power under Regulation No.74 (4) of the Food Corporation of India (Staff) Regulations 1974, conveying the proposal to enhance the penalty

upon the petitioner. The petitioner submitted his objections thereto. Vide order dated 07.12.1998, the Reviewing Authority increased the penalty and modified the same to that of reduction of rank from Technical Assistant Grade-II to Technical Assistant- III for a period of five years in the minimum of the scale of pay of Technical Assistant- III w.e.f. 22.05.1995. The operative part of the order reads thus:

“I have carefully gone through the contentions of the petitioner about the limitation period. Any reasonable time limit for Suo-Moto review by the Employer can comments only from the point of time when such a consideration takes place on noticing certain infirmity etc. As such no specific limitation period can be put for Suo-Moto Review. Taking into the totality of the circumstances of the case, I feel that the modified penalty imposed by the 2M(N) does not commensurate with gravity of the proven guilt against Shri R. G. Verma. The penalty of reduction in rank from TA Gr.II to TA Gr.III will be the rightful penalty considering the gravity of the case.

Therefore, I S.S. Dawra, in max exercise of powers conferred under Regulation 74(4) read with Sub-Regulation (1) of Regulation 74 of the FCI (Staff) Regulation, 1971 hereby modify the penalty of stoppage of 3 increments without cumulative effect alongwith recovery an of one year's basic pay in 36 equal instalments to that of reduction in rank from T.A. Gr. II to T.A. Gr. III for a period of 5 years in the minimum of the scale of pay of TA. Gr. III with effect from 22.5.1995 upon Shri R. G.1 Verma, TA Gr. II. On completion of the penalty period he may be considered for promotion subject to fitness/suitability.”

Learned Sr. Counsel for the petitioner contends that the said order suffers from blatant illegality. There is gap of more than three year between the show cause notice and the final order passed. He contends that no reasons have

been assigned by the Reviewing Authority as to why the penalty already imposed upon the petitioner needs to be enhanced considering that a well reasoned and speaking order had been passed by the Appellate Authority after noticing numerous discrepancies and shortcomings in the inquiry report as well as the order passed by the Punishing Authority.

Referring to the above, he contends that the order enhancing punishment is bad in law and is liable to be set aside.

Learned Sr. Counsel further contends that even though a plain reading of Food Corporation of India (Staff) Regulations 1974 does not prescribe any period for filing or entertaining a Review Application, however, the High Court of Andhra Pradesh interpreted the said clause in the matter of ***Khaja Mohiuddin Versus Food Corporation of India*** in ***Writ Petition No.2348 of 1991*** reported as ***(1994) 6 SLR 292*** to contend that the said period has to be reasonable and that a period 90 days has been perceived as a reasonable period for the Reviewing Authority. A Review Application received after more than one year was held to be beyond prescribed time. The order under challenge was accordingly set aside by the Hon'ble Andhra Pradesh High Court.

Responding to the above, counsel for the respondent-FCI contends that Section 74 of the Food Corporation of India (Staff) Regulations 1974 empowers the Reviewing Authority to undertake such review/revision either by taking *suo-motu* cognizance or otherwise; and it has the powers to confirm, reduce or enhance the punishment already imposed. He submits that the only rider to enhancement is prescribed under Section 74 (1) Sub Clause (d) and as per the same, an employee concerned has to be given a reasonable opportunity of making a representation against the proposed penalty. He contends that such

an opportunity was duly extended to the petitioner and he also submitted his reply to the show cause notice. Hence, the procedure prescribed under the Regulations of 1974 has been fully complied with and there has been no violation of principles of natural justice. The Reviewing Authority considered all the objections/submissions made by the petitioner. He further submits that not only is the Reviewing Authority conferred with the power to enhance or decrease the punishment but also there is no period prescribed within which a review jurisdiction is to be exercised. Hence, the mere occurrence of certain delay in passing an order would not vitiate such order.

Learned counsel for the respondents-FCI refers to a Division Bench judgment of Madras High Court in the matter of ***Food Corporation of India Versus S. Nayagam and P. Vijay Amaldoss*** passed in ***Writ Appeal No.980 of 2007*** decided on ***15.04.2008***. The relevant extract of the same is reproduced hereinafter below: -

“5. The Enquiry Officer, by his report dated 22.01.2001, found that except charges 2 and 4, the other five charges were proved. After furnishing a copy of the report and getting his representation, the third appellant, being the disciplinary authority, agreed with the conclusions reached by the Enquiry Officer. Since the loss caused to the FCI was to the tune of Rs. 35,274.15, by an order dated 29.02.2001, a penalty of recovery of Rs. 15,000/- was imposed on the first respondent and the same was to be given effect to in 15 instalments. The said penalty was also given effect to and the first respondent did not prefer any appeal against the said penalty.

6. The Executive Director, Vigilance and the Chief Vigilance Officer of the FCI Headquarters reviewed all the vigilance cases during their visit to Chennai during July / August 2001 and during that period, it was decided to review the aforesaid penalty in

exercise of the power conferred in terms of Regulation 74(4) of the FCI Staff Regulations, 1971. In exercise of that power, it was found that the recovery of loss of Rs. 15,000/- made against the first respondent was considered inadequate considering the gravity of the charges proved against him.”

It is hence submitted that where the Reviewing Authority feels that an undue leniency has been shown, the punishment can be enhanced.

He further submits that there was no delay in invocation of the review jurisdiction and the delay was only in taking of the decision by the Reviewing Authority.

No other argument has been raised nor any other judgment cited.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

So far as the facts are concerned, there is not much dispute regarding the same. A perusal of the inquiry report as well as the order of the Appellate Authority shows that the Appellate Authority examined the report of the Inquiry Officer and recorded a specific finding that there had been numerous lapses in drawing of samples and carrying out of sample analysis by the Committees constituted by the District Manager. Hence, aspersions were cast about the mode and manner in which the samples had been drawn. Apart therefrom, the Appellate Authority also noticed that there were discrepancies in the analysis results and no second sample was drawn. Further, although it was noticed by the Appellate Authority that there was no clearcut finding with respect to the charge being proved or not proved by the Inquiry Officer against the petitioner. The Appellate Authority also noticed that the analysis in the

laboratory was conducted by the Committee members themselves and without associating the analyzer of the lab and without carrying out any coding and decoding of the samples. The average length of the principal grain was also not determined, in absence whereof the percentage of the broken rice could not be calculated. Hence, the fundamental flaws in the decision-making process were noticed by the Appellate Authority, on the basis whereof the penalty of removal was held to be illogical and unreasonable and imposed a lesser punishment.

The Appellate Authority, after considering all the facts and circumstances, passed a reasoned and balanced order whereby the penalty of stoppage of three increments without cumulative effect was imposed upon the petitioner besides the recovery of one year's basic pay in 36 equated installments. Even though a reading of Section 74 of Food Corporation of India (Staff) Regulations 1974 leaves no doubt that a power of review is vested with the Reviewing Authority, however, it inheres in such power that where a punishment is to be enhanced and/or a show cause notice is to be given, the reasons, on the basis whereof a revision in the punishment is required to be done, are recorded. The show cause notice served by the Reviewing Authority is extracted as under: -

“WHEREAS, disciplinary proceedings were initiated against Shri R. G. Verma Teh. Asstt. Grade-II, PCI, Punjab Region under regulation 58 of FCI, (Staff) Regulation. 1971 by the Sr. Regional Manager, FCI, Regional office. Punjab vide his Memorandum No.Vig.21 (CHD-1385494/265 dated 14.6.94.

2. AND WHEREAS, taking into account the gravity of the charges, the said shri R. G. Verma, Tech. Asstt. Gr. II was awarded the penalty of removal from service of the Corporation

with immediate effect vide SRM'S order 5.Giv.21 (CHD-1385)94 dated 22.5.1995.

3. *And whereas, said Shri R. G. Verma Ex.T.A.II preferred an appeal to the Zonal Manager (North) the appellate authority against the above penalty vide his appeal dated 2.6.1995.*

4. *AND WHEREAS, Zonal Manager (North) as appellate Authority/reduced/modified the penalty of removal from service to that of stoppage of 3 increments without cumulative effect alongwith recovery of one year's basic pay in 36 equal installments vide his order No. Vig.5(436)/95/N2/Pb/MJR dated 16/22.1.1996.*

5. *AND WHEREAS it has come to the notice of the undersigned a one suo moto review as Reviewing Authority under Regulation 74 (4) of FCI (Staff) Regulations that the case in which said Shri R. G. Verma was involved was of a very serious nature and that the reduced penalty awarded by Zonal Manager (North) did not commensurate with the charges levelled against the C.O.*

6. *AND WHEREAS, on view of the above facts, the undersigned, in pursuance of Regulation 74 (1) (b) & (d) and Regulation 74(3) read with Regulation 72(2) hereby proposed to ta enhance the penalty upon the said R. G. Verma.*

7. *NOW, THEREFORE, Shri R.G. Verma is hereby given an opportunity of making a representation if any, about the proposed enhancement of penalty. His representation should reach the undersigned within 15 days' time from the date of receipt of this show cat cause notice, failing which it shall be presumed that he has got nothing to say in the matter and final orders shall be passed without any further notice."*

The Reviewing Authority reproduces a narrative of the process that had been followed and records about order that had been passed by the Punishing Authority as well as the Appellate Authority; but does not record any reason as to how and under what circumstances, the order passed by the

Appellate Authority is improper or is not commensurate with the findings recorded by him. It did not even record *prima facie* reasons on the basis whereof the reasoning given by the Appellate Authority could be held to be bad in law or fact. It was after a further delay of nearly three years of the show cause and nearly two years of the representation having been submitted by the petitioner, that the impugned order has been passed by the Reviewing Authority; the operative part whereof has already been extracted above. Even in the said order, the Reviewing Authority does not make any mention of the submissions/objections raised by the petitioner in his representation. It does not even give any reasons as regards the compelling circumstances, which necessitated the enhancement of the punishment and as to what finding, recorded by the Appellate Authority for justifying reduction of punishment of removal to that stoppage of three annual increments without cumulative effect alongwith the recovery of one year's basic pay in 36 monthly equated installments was unacceptable or were unsustainable in law.

Insofar as the judgment cited by the counsel for the respondents-FCI is concerned, the same is only for establishing that a power of review is vested in the concerned Authority under the Food Corporation of India (Staff) Regulations 1974, however, the said issue is not under challenge herein.

Insofar as the argument of learned Senior Counsel for the petitioner that a decision in the Review Application is required to be taken within a reasonable time and in the present case the decision has been taken after an inordinate delay of nearly three years and therefore, the same is not sustainable is concerned, the argument about a reasonable period to be taken for reviewing of an order has been explained in the judgment of **Khaja Mohiuddin**

(supra) by the Andhra Pradesh High Court, is not to be interpreted in the context of a final order passed, rather the same has to be seen in the context of the invocation of the jurisdiction. The review jurisdiction in the present case has been invoked by the respondent-Authority on 23.08.1996 i.e. after a period of nearly seven months of the order dated 16.01.1996 passed by the Appellate Authority. The period of six months for initiation of review proceedings has been held to be an appropriate and reasonable period by the Division Bench of Madras High Court in the matter of *FCI Vs. S. Nayagam and P. Vijay Amaldoss (supra)*.

The reasonable period within which a Review Application is to be preferred, as interpreted by the Madras High Court has to be accepted in the context of invocation of the power and issuance of a show cause notice for review of an order passed and is not to be read in the context of the date on which the final order is passed thereupon.

In the given set of circumstances, issuance of a show cause notice within a period of seven months of the passing of order by the Appellate Authority cannot be accepted at this stage as being a case of inordinate delay especially when the concerned Regulations in the present case do not prescribe any specific time frame within which the power of review is to be invoked.

Be that as it may, I find that the order passed by the Reviewing Authority suffers from lack of reasoning and hence can't be termed as a lawful order.

The Reviewing Authority increased the punishment to reduction of rank but did not assign any reason and did not indicate any flaw in the order of the Appellate Authority. A mere vesting of power of review may not justify the

exercise of power of review and such power is required to be exercised to rectify a patent error of fact or law. If such justification is not reflected from the order, such order itself becomes arbitrary. Hence, the same cannot be said to be a reasoned and a speaking order. Consequently, the same is ordered to be set aside and the order of the Appellate Authority is restored.

Ordinarily, this Court would have remanded the case for a fresh adjudication by the Competent Authority, however, taking into consideration that the matter is nearly 26 years old as on date, and the dispute in question is nearly 30 years old and the petitioner has already superannuated from service, hence, no fruitful purpose would be served by remanding the case as it would only prolong the litigation.

Consequently, while setting aside the impugned order dated 07.12.1998 passed by the Reviewing Authority, it is further directed that the consequential benefits, as would accrue in favour of the petitioner, be calculated and disbursed by the respondents as expeditiously as possible and preferably within a period of four months of receipt of certified copy of this order, failing which, the petitioner shall be entitled to interest @ 6% per annum from the date of filing of the petition till its actual disbursement.

Petition stands allowed accordingly.

MARCH 05, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No