2025:PHHC:004426

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210

CWP-11613-2018
Date of decision: 13.01.2025

KULDIP KUMAR SHARMA ......Petitioner

VERSUS

FOOD CORPORATION OF INDIA AND OTHERS ....Respondents

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

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Present: - Ms. Deepali Puri, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for the respondent-FCI.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

Challenge in the present petition is to order dated 29.01.2015 passed by the General Manager, Food Corporation of India, imposing penalty of dismissal from service alongwith full forfeiture of gratuity as well as to the order dated 26/29.09.2016 passed by the Executive Director, Food Corporation of India, partly allowing the appeal preferred by the petitioner and modifying the penalty to that of dismissal from service alongwith 75% forfeiture of gratuity and as also to the order of 25.01.2018 passed by the Managing Director, Food Corporation of India dismissing the review petition filed by the petitioner.

2. Counsel for the petitioner contends that the petitioner joined the service of respondent-Food Corporation of India as an Assistant Grade-III (Depot) on 13.11.1978 and was promoted as Assistant Grade-I (Depot) on 31.12.2007. He was thereafter, transferred from Patran Centre, FCI District Bathinda and was issued an office order dated 20.05.2013, by the then Manager, to take over the charge of the wheat stocks. It is contended that in view of the huge quantity of 448667 bags in storage, it was practically impossible for the petitioner to count and weigh the entire stock. The charge of the wheat stocks was taken over by the petitioner on 28.06.2013, by a peripheral counting of bags stored in about 140 stacks and he submitted an affidavit to the effect that since he was not present at the time of receipt of stocks and the possession of stocks was taken over by a peripheral counting of both open and covered stocks, he shall not be responsible for any loss caused. The erstwhile Manager was later transferred and one Desh Raj joined as the new Manager on 15.07.2013. She contends that the petitioner suffered from a cardiac problem and proceeded on a medical leave from 06.01.2014 to 09.01.2014 which was duly approved by the competent authority. The petitioner remained admitted at the Hospital for the period from 25.01.2014 to 31.01.2014. She contends that while the petitioner was in Hospital at Nabha on 24.01.2014, a Committee was constituted at the level of respondent No.5 at the instance of Desh Raj, Manager which checked the wheat stocks on the basis of 100% stock verification by dismantling of the stocks and it reported shortage of stock. She contends that the petitioner had taken over the possession of stock only on a peripheral counting and without 100% physical verification and that the reported

shortage was for the reason that the short stacks had been stored in the core by the concerned staff, prior to joining of the petitioner at the Center and that it was not possible for him to detect such shortage solely by a peripheral counting of bags and that the wheat stocks checked by the Committee were not received during the incumbency period of the petitioner but already stood received much prior to his joining at the Center on 20.05.2013. She further contends that even on a quarterly physical verification as on 31.12.2013, there was no shortage. On 06.01.2014, when the petitioner was in Hospital, the movement of wheat stocks in a special was made by the Manager-Desh Raj and even the Memorandum dated 30/31.01.2014 was served upon the petitioner under Regulation 58 for imposition of major penalty. She contends that no entry however was made regarding the dispatch of wheat sent on 06.01.2014. Even the Manager-Desh Raj was also served with memorandum dated 28.07.2014, on the same set of charges, and that even though an identical defence had been taken, however, while the petitioner has been awarded a harsh penalty of dismissal from service alongwith a forfeiture of 75% of the gratuity, the Manager-Desh Raj has been let off with a minor penalty of reduction in time scale by two stages for a period of two years with cumulative effect. She contends that there has thus been arbitrariness on the part of the respondents in imposition of major penalty against the petitioner. Reliance is placed by her on the judgment of the Hon'ble Supreme Court of India in the matter of ***"State of U.P. versus Raj Pal Singh"***, reported as 2010 (5) SCC 783 to contend that where the employees are served with a set of charges arising out of the same incident, a separate treatment would amount to discrimination. The operative part of the judgment reads thus:-

> *"This appeal is directed against the judgment of the High Court of Allahabad interfering with an order of punishment inflicted upon the respondent in a disciplinary proceedings. Admittedly, the respondent was an Assistant Warder and the allegation against him was that he along with four other Assistant Warders beat one Shivdan Singh, and even though the senior officers dissuaded them, they never listened to that. These allegations were proved in a departmental proceeding and the disciplinary authority passed the order of dismissal so far as the present respondent is concerned, though in respect of some others, he passed the order of stoppage of five increments. The respondent assailed the legality of the order by approaching the Public Service Tribunal. The Tribunal having refused to interfere, he approached the High Court. The High Court came to the conclusion that the charges and the delinquency being same and identical, and all the employees having been served with a set of charges out of the same incident, there was no justifiable reason to pass different orders of punishment, and, therefore, the order of dismissal cannot be sustained. The High Court consequently set aside the order of dismissal and directed stoppage of five Increments in case of the respondent as was the order in case of some other Assistant Warders. The High Court further directed that the delinquent respondent would be paid only 50% of backwages. It is this order of the High Court which is the subject matter of challenge in this appeal. It is contended on behalf of the appellants that once the charges have been held to be established, it was*

not appropriate for the High Court to interfere with the quantum of punishment and judged from this standpoint, the order of the High Court cannot be sustained. In support of the said contention, reliance is placed on the decision of this Court in ***B.C. Chaturvedi v. UOI and others, 1996(1) SCT 617 (SC): JT 1995(8) SC 65 and Secretary to Govt., Home Deptt, and others v. Srivaikundathan, 1999(1) SCT 715 (SC): JT 1998(8) SC 470,*** *Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges levelled against the 5 employees who stood charged on account of the Incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established, to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution Though the High Court by the impugned judgment has directed that the delinquent would be paid 50% of the backwages, but having regard to the nature of charges against the respondent, we are not inclined to allow any backwage from the period of dismissal till the date of reinstatement.*

We are told that he has been reinstated on 5.11.1997. We make it clear that respondent will not be entitled to any backwages from the date of dismissal till 5.11.1997.

3. Reliance is also placed on the judgment in the matter of ***"Sadhu Ram versus Punjab State Co-op. Supply and Marketing Federation Ltd." reported as 1991 (2) S.C.T. 474***

5. After hearing the learned counsel for the parties and having gone through the inquiry report and the impugned order of dismissal passed thereon, I am of the considered view that the impugned order dated 26th August, 1988, Annexure P.9, is not sustainable in the eye of law. According to the opening para of the unpugned order, common charges against Jasminder Singh Sandhu, Sadhu Ram (petitioner) and Balwinder Singh had been levelled. Further, according to the report of the Inquiry Officer, all these officers had acted in a careless and irresponsible manner as all of them were responsible for maintaining the stocks. There is no separate role assigned to the petitioner (Sadhu Ram) either in the inquiry report or in the impugned order of dismissal from service. Rather, the learned Managing Director did not direct his mind to the finding arrived at by the Judicial Magistrate 1st Class, to the effect that "As far as Sadhu Ram accused is concerned, he was not incharge of the open godown and the wheat found short was not in his custody. Therefore, there was no entrustment to him. He has handed over the charge of this godown to accused Balwinder Singh and Jasminder Singh on 12.7.83 while the shortage was found in between 27.12.83 to 28.1.84." Otherwise also, when Balwinder Singh had been reinstated by the Labour Court, the petitioner, who was a

Field Officer, and could not avail of the remedy under the Industrial Disputes Act, being not a workman, was also entitled to be dealt with alike and he could not be singled out for imposing the punishment of dismissal from service. In the absence of any special and particular role assigned to the petitioner, who, at the most, according to the respondent, was a co-accused, he could not be subjected to any punishment when Field Assistant Balwinder Singh had been reinstated into service. The constitutional guarantee of Articles 14 and 16 is available to the citizens not only in the matter of equal treatment during the course of employment, but at the time of imposing the punishment in disciplinary proceedings also. The view finds support from the judgment of Hon'ble the Supreme Court in ***Sangara Singh v. State of Punjab, 1983(3) S.L.R. 68,*** *the relevant extract wherefrom is reproduced below:*

> *"……….the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution ……. Logically the appellants must receive the same benefit which those reinstated received, in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service.*

6. Accordingly, I allow this writ petition and quash the impugned order dated 26th August, 1988, Annexure P.9, by which the petitioner was dismissed from service of the MARKFED. The respondent MARKFED is directed to reinstate the petitioner with effect from the date he was

> *dismissed from service and on such reinstatement, he shall be entitled to all the arrears of salary and allowances along with benefit of seniority, length of service, etc. to which he would have been entitled, had he not been dismissed from service in pursuance of the impugned order. However, in the circumstances of the case, there shall be no order as to costs.*

4. She contends that the Enquiry Officer had recorded in departmental proceedings that the depot operations were undertaken during the absence of the petitioner, by the Manager himself and hence, the Manager could not have been let off by a small liability only for a supervisory lapse and that recovery of the actual shortage also ought to have been effected from the Manager. She further contends that the Manager carried out the operations but did not maintain any record of the specials that were dispatched and no explanation has also been furnished as to why the entry in the record about the dispatch of the special had not been made. Hence, the liability of Desh Raj-Manager was at par with that of the petitioner.

5. Responding to the above, Counsel for the respondent-Food Corporation of India submits that a memorandum of charge dated 30.01.2014 containing five charges was served upon the petitioner. Apprehending a charge-sheet, the petitioner absented himself from duty from 24.01.2014 till the date of his retirement. The competent authority had constituted a Committee for serving the charge-sheet at his residence. The father of the petitioner informed the members of the Committee that the petitioner was not available at the residence whereupon the memorandum of

charge sheet was pasted on the main gate of his residence at Nabha. The same was also served upon the petitioner via Registered post on the address given which was undisputedly received by the petitioner on 04.02.2014. A Regular Departmental Enquiry was thereafter conducted wherein the petitioner participated in all the proceedings. The witnesses of the Corporation were examined in the presence of the petitioner and an opportunity to cross-examine the said witnesses was also extended to him. Despite being granted an opportunity to lead evidence, the petitioner did not adduce any evidence. A detailed enquiry report dated 29.05.2014 was eventually submitted by the Enquiry Officer wherein all the charges leveled against the petitioner were held to be proved including causing of loss of Rs. 18,12,132/- on account of misappropriation of the stock. The operative part of the Enquiry report submitted by the Enquiry Officer proving the charge of misappropriation of the stocks is extracted as under:-

> ***ASSESSMENT OF EVIDENCE***
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> *On careful consideration of the facts brought on record during the course of enquiry proceedings, it has come in evidence that the COs while working as such as such at FSD Taiwandi Saboo, District Bathinda did not discharge their duties with absolute integrity and due devotion in as much as during the course of conducting physical verification of wheat stocks of FSD Talwandi Saboo by the DO Committee on 100% weighment, 1117 bags of wheat weighing 948-76-000 Qtls was found short causing loss of Rs.18,12,132/- as per the details given under Article-I of charge sheet of the COs. Stack-wise register was found updated only upto 18.12.2013. At the time of physical verification, wheat stocks were not found available in*

open plinth but stock stood in the registers due to non up-dating of records. 43 bags spillage having mixed with dust and sand without stitching were round lying in scattered condition at the time of physical verification as per the details given under Article-II of the charge sheet of the COs. The gunnies register was also found updated upto 28.12.2013, therefore, difference in gunny bales was noticed by the DO Committee as shown under Article-Ill of the charge sheet of the COs. Further, due to non maintenance of depot records properly, lapses were noticed by the DO Committee during the course of physical verification as shown at Sr. No. 1 to 3 under Article IV of the charge sheet of the COs. Apart from the above, Shri Kuldip Kumar Sharma, AG.I(D) was found absent from duty unauthorizedly for the period from 6.1.2014 to 9.1.2014 and again from 24.1.2014 till his superannuation on 31.1.2014. He also tampered with the attendance register for the month of January, 2014 with impunity.

Shri Subhash Chand, AG.1(D) FCI DO Bathinda who was produced by the Presenting Officer as PW I while identifying his signatures as well as the signatures of other members of the committee and confirming the contents of prosecution documents placed on record and marked as Ex P-1(178 pages) has deposed that as per the directions of the Area Manager, Bathinda, the DO Committee comprising S/Shri Puran Chand, Manager (Genl), Kumar Triveni Dass, Manager (QC), Lachhman Dass, Manager (Depot) and himself after obtaining stack-wise census declaration of wheat stocks as on 24.1.2014, conducted PV of wheat stocks stored at FSD Talwandi Saboo on 100% weighment in the presence of Shri Des Raj, Manager (Depot) of FSD Talwandi Saboo and net shortage of 1117 bags weighing 948-76-000 Qtls. of wheat stock was detected causing loss of Rs. 18,12,132/- to the

Corporation as per the details given under Article-I of the charge sheet of the COs. Shri Des Raj, Manager (D) reported the members of the committee that Shri Kuldip Kumar Sharma, AG.I (D) who was the custodian of wheat stocks was not present on duty in the depot. JHe also reported the DO Committee that Shri Kuldip Kumar Sharma, AG.I(D) has not updated the stack-wise ledger since 28.12.2013. At the time of physical verification, the stock of open plinth was not found available though the stocks stood in the registers due to non updating of depot records. 43 spillages, sweeps grain bags having mixed with dust and sand without stitching were found lying in scattered condition near stack no. OP/13 as per the details given under Article-II of the charge sheet of the COs. Due to non updating of beyond 28.12.2013, variations in gunny bales was-observed by the DO committee as per the details given under Article III of the charge sheet.

The PW-1 has further deposed that due to non maintenance of proper depot records by the said Shri Kuldip Kumar Sharma, AG.1(D) in respect of FSD Talwandi Saboo, the following lapses were observed by the DO Committee during the course of physical verification:-

1. *No made up/spillage bags has been shown in the master ledger during the month of January, 2014. As per stack-wise register, the stock was available in Stack No. IB/10 but stock was Nil physically.*

2. *No entry was made in the stack-wise register after 28.12.2013. However, in the month of January, 2014, 8097 bags weighing 3949.90 Qtls. were issued as per master ledger.*

3. *Stack-wise register and master ledger were not signed by the shed in-charges at the time of receipt and issue of*

stocks. A lot of cutting, fluid alteration and over writing was noticed in the stack wise register.

Shri Kuldip Kumar Sharma, AG.1(D) has admitted during enquiry that he joined at FSD Talwandi Bhai on 20.5.2013 on transfer from DO Patiala. As per Office Order No. 47 dated 20.5.2013, he was directed by the Manager (Depot), FSD, Talwandi Saboo to act as custodian of stocks lying at the centre i.e. covered and cap, DSA and gunnies and was further advised in the said order to count the whole stocks lying at the centre immediately and run the depot smoothly as a custodian of stocks. The said CO remained custodian of stocks till his retirement on 31.1.2014 and this fact has not been disputed by the CO. It has come in evidence that the CO was not present in the depot at the time of receipt of wheat stocks. 446965 bags of wheat had already been stored in the depot prior to his joining at FSD Talwandi Saboo. Being custodian of wheat stocks, it was incumbent on the part of the CO to ensure proper security and safety of wheat stocks. He ought to have counted the whole stocks lying at the centre immediately as per the directions of Manager (Depot) contained in Office Order No. 47 dated 20.5.2013 and should have brought the fact of detection of shortage/ irregularity observed if any, to the notice of Manager (Depot) or the Area Manager, Bathinda but he did not do so till his retirement but instead of doing so, he passed the following remarks in the office Order Register below the Office Order No. 47 dated 20.5.2014 just to escape from his culpability:-

"Noted with the remarks that at the time of receipt of wheat stocks I was not present and stocks will be taken over after peripherally counting open and covered. As

regards DSA Shri Kapil Kumar, AG.III(D) who is the I/C of DSA will also assist. In case of any shortage, I will not be responsible. Moreover, all the stocks were received in the presence of Shri Balwant Singh, Manager (Depot), Raman/Talwandi Saboo." These remarks recorded by the CO on his own have not been brought to the notice of either Manager (Depot) or Shri Kapil Kumar, AG.III(D).

It is also in evidence that during the absence period of Shri Kuldip Kumar Sharma, AG.1(D) from 6.1.2014 to 9.1.2014 and w.e.f. 24.1.2014 onwards, the depot operation was carried out by Shri Des Raj, Manager (Depot) himself with the assistance of Sh. Kapil Kumar, AG.III(D) and special of wheat loaded on 6.1.2014 ex Talwandi Saboo to Gaya was also supervised by the Manager (D) himself with the assistance of said AG.III(D) but since Shri Kuldip Kumar Sharma, AG.I(D) was the custodian of wheat stocks, therefore, it was incumbent on his part to make necessary entries in the depot records on his joining on 13.1.2014 but he did not do so. Had he made the proper entries of receipt and issue of stocks in the depot records, the variations noticed by the DO Committee should not have taken place. It further observed by the DO Committee during physical verification that the stack- wise register and master ledger of receipt and issue operations were not signed by the CO with impunity to escape his responsibility. Instead of admitting the lapses, the CO has tactfully shifted the onus of delinquency upon Shri Des Raj, Manager (D) and Kapil Kumar, AG.III(D) merely by stating that the requisite entries pertaining to period of his leave were required to be made by them. The godown were sealed with paper seal and all the members of the DO

Committee signed on the paper seal to the fullest satisfaction of Shri Des Raj, Manager (D) who had also signed on the paper seat-therefore, the CO cannot derive any mileage from the fact of non making of entry of the same in the log book and the main gate register as contended by the CO in his defence. The moisture content was determined by the Committee in the presence of Shri Jagpal Singh, Manager (QC) of FSD Talwandi Saboo, therefore, the same cannot be doubted. Regarding sale of damage wheat stocks to private party of Bhuchcho@ Rs. 600/- per quintal and its subsequent reporting to the GM® vide his letter dated 3.2.2014 and 10.2.2014 (Ex D-10(KKS) as alleged by the CO in his defence, the PW-2 namely Shri Des Raj, Manager (D) FSD Talwandi Saboo during cross examination has categorically deposed that no wheat stock was damaged during 7.1.2013 to January, 2014. To ascertain the factual position, the said communications need to be linked while taking decision, if consider necessary. Apart from this, the CO has also attached a copy of Fax dated 15/16.10.2014 of Manager (Depot) Gaya reporting transit shortage against special loaded ex Raman to Gaya. But the CO has not clarified as to how much quantity was loaded from Raman and Talwandi Saboo Depots and as to whether the transit shortages pertain to the stocks loaded from Talwandi Saboo or Raman. Therefore, the CO cannot derive any mileage from the said Fax.

As regards absence of the CO for the period from 6.1.2014 to 9.1.2014, Shri Des Raj, Manager (D) has deposed during enquiry that the CO was absent from duty for the said period and accordingly crosses were marked on these dates against his name in the attendance register *but the CO removed these crosses with while fluid and written the word MCL over these dates on his own and accordingly the matter was reported to the Area Manager., Bathinda in writing on 10.1.2014. No explanation of the CO was called for by the Manager (D) for the said lapse as deposed by the PW-2 during enquiry. As per instructions in vogue it was obligatory on the part of the CO to obtain station leave permission from the controlling authority before leaving the Hqrs. He was also required to inform the controlling authority about his alleged illness in writing along-with medical certificate from the appropriate medical authority immediately from the date of his alleged illness but he did not do so but instead requested for grant of 4 days casual leave for the said period on his joining on 13.1.2014. As further deposed by the PW-2 the CO submitted leave application much late on 23.1.2014 along-with medical certificate and requested for grant of 4 days MCL for the said period which was forwarded by the Manager (D) on 12.2.2014 (Ex D-I(KKS). To cover up the misdeed he tampered with the attendance register with impunity. It was further reported in the said communication of Manager (D) dated 12.2.2014 that no leave application for the period from 24.1.2014 to 31.1.2014 has been received from the CO. The CO has not produced any document which could establish that the CO has obtained prior permission of Manager (D) before leaving the Hqrs. for his home town Nabha and proceeding on leave on medical ground w.e.f. 24.1.2014 onwards. But the CO submitted application subsequently addressed m the Area Manager, Bathinda after his retirement on 10.2.2014 and requested for grant of MCL for the period 24.1.2014 to 31.1.2014 (Ex D-2(KKS). Before leaving the Hqrs. and* *proceeding on leave on medical ground, it was obligatory on the part of the CO apprise this fact of his illness to Manager (D)/controlling authority in writing alongwith medical certificate of appropriate medical authority but he did not do so which established the fact that he was absent from duty unauthorizedly and submitted the medical certificate subsequently on 10.2.2014 to cover the period of his absence.*

It has further come in evidence that only one Manager (D) and one AG.III(D) were posted at FSD Talwandi Saboo which were quite insufficient to handle 22,000 MT capacity. Due to depleted strength of staff, the Manager (D) FSD Talwandi Saboo requested the Area Manager, Bathinda vide letters dated 9.7.2013 and 31.7.2014 to post additional depot staff but no staff was posted at the centre. Since no movement planned ex Talwandi Saboo for next 2 months, therefore, the request of the CO for withdrawal of the charge of the stocks and stores owing to his retirement on 31.1.2014 was not acceded to by the Area Manager, Bathinda as is evident from Ex D-12(KKS). It is the prerogative of the controlling authority to deploy AG.III(D) as joint custodian of stocks subject administrative feasibility for which the CO cannot derive any benefit. This above plea put-forth by the CO in his defence established the fact that the CO-Shri Kuldip Kumar Sharma, AG.1(D) himself remained the custodian of stocks of FSD Talwandi Saboo till his retirement.

It has also come in evidence that complete documents as demanded by Shri Kuldip Kumar Sharma, AG.I(D) in his defence have not been supplied by the concerned controlling authority. By doing so, he has been *deprived the opportunity to project his defence and to defend his case during enquiry. The other plea put- forth by the CO in his defence are not tenable. The CO has failed to discharge his duties with absolute integrity and due devotion during his incumbency at FSD Talwandi Saboo.*

As regards Shri Kapil Kumar, AG.III(Depot), it is in evidence that the CO joined as AG.III(Depot) at FSD Talwandi Saboo in October, 2011 and discharged his day to day duties as such as per the directions of Manager (Depot) and no specific charge of stocks/stores was assigned to him. As deposed by the PW-2, the CO made entries in the depot records as per the directions of the Manager (Depot). Therefore, he is not accountable for the charges framed against him.

CONCLUSION:-

In light of the overwhelming evidence as has been brought out above, the charges framed against Shri Kuldip Kumar Sharma, AG.1(D) vide memorandum dated 30/31.1.2014 are established to the extent indicated above.

Since Shri Kapil Kumar, AG.III(Depot) during his incumbency at FSD Talwandi Saboo has discharged his day to day duties as such as per the directions of Manager (Depot) and no specific charge of stocks/stores was assigned to him as stated above, therefore, he is not responsible for the shortages/other lapses observed by the DO Committee. Hence, the charges framed against him vide memorandum dated .31.1.2014 are not established.

It has further come in evidence that Shri Des Raj, Manager (Depot) intimated the storage grains as well as made up bags of wheat 2013-14 for the month of 11/2013 and 12/2013 (Ex D-2(KK) to the DO Bathinda but in the next month in January, 2014 he himself had reported to the Area Manager, Bathinda vide letter dated 22.1.2014(Ex D-3-KK) that all the storage gain as well as made up bags had fictitious records. This shows that there was hanky-panky in the depot operations and things were not going properly. Thus, Shri Des Raj Manager (D) who joined the depot on 15.7.2013 and supervised the work of Shri Kuldip Kumar Sharma, AG.(D) is also accountable for the shortages/other lapses observed by the DO Committee during the course of physical verifications. Had he discharged his supervisory duties effectively, the shortages/other lapses as observed by the DO committee could have been avoided. He cannot escape himself from the said shortage/other lapses simply by reporting the matter to the Area Manager, Bathinda. While assigning the charge of stocks and stores of Talwandi Saboo to Shri Kuldip Kumar Sharma, AG.1 (D), Shri Des Raj, Manager (Depot) also directed the said Shri Kuldip Kumar Sharma, AG.I(D) vide Office Order No. 47 dated 20.5.2014 to count the whole stocks lying at the centre immediately. But after passing the said order, the Manager (Depot) remained a silent spectator and did not remind him to count the stocks.

Apart from S/Shri Kuldip Kumar Sharma, AG.I (D) and Kapil Kumar, AG.III(D), the DO Committee (page 3 of Ex P-1) has also indicated the names of the other officers/Officials who were present in the depot at the time of receipt/issue of wheat stocks and, therefore, they *are also accountable for the shortages observed by the DO committee."*

6. Referring to the above, it is submitted by the Counsel that all the contentions of the petitioner were duly taken into consideration including the stock having been verified by the Manager at earlier point of time and no deficiency detected. It was also specifically reported that the Manager (depot) had although initially conveyed about the storage record, however, he himself reported in the month of January, 2014 that there were severe lapses in the depot operations and the operations were not being run properly. The charge as regards the shortage of the food stock was returned to have been proved against the petitioner by the Enquiry Officer after specifically noticing all the defaults by him prior to the period he proceeded on leave.

7. He further contends that on receipt of the regular departmental enquiry, a copy thereof was supplied to the petitioner to submit his objections, which was submitted on 16.10.2014. Upon careful consideration thereof, the order of punishment dated 29.01.2015 was passed against the petitioner imposing punishment of dismissal from service alongwith full forfeiture of gratuity.

8. A statutory appeal against the said order of punishment was preferred by the petitioner to the Appellate Authority on 24.02.2015 alongwith the supplementary appeal dated 19.08.2015. Personal hearing was also granted again to the petitioner on 06.10.2015 as well as on 10.12.2015. A detailed order was passed in the Appeal on 26/29.09.2016 whereby the

order of punishment was partly modified from "penalty of dismissal from service alongwith full forfeiture of gratuity" to that of "Dismissal from service alongwith 75% forfeiture of gratuity".

9. A review petition dated 24.11.2016 alongwith the supplementary review petition dated 09.04.2017 was thereafter preferred by the petitioner which such review petition was dismissed by a detailed order dated 25.01.2018.

10. He further contends that the service conditions of the petitioner are governed by the Food Corporation of India (Staff) Regulations, 1971 and that the procedure as prescribed under the FCI regulations had been meticulously followed. Due opportunity of hearing had been duly extended to the petitioner by all the authorities but the submission of the petitioner were lacking merit. The charge of misappropriation of 1042 bags was established despite consideration of all the submissions from the 100% physical verification of the stock reports, as submitted by the Sub Committee on 24.01.2014.

11. He further contends that the argument of the petitioner about similarity of the role as against the Manager Desh Raj is misconceived since the petitioner was the actual custodian of the record and Desh Raj was only a supervisory officer. Besides, a separate statement of allegations was served upon Desh Raj for imposition of minor penalty and a separate order of punishment was eventually passed. There was no memo of charge being enquired against the Manager Desh Raj in the enquiry proceedings that had been initiated against the petitioner. A further reference is also made by the

Counsel for the respondent to the order dated 28.08.2023 passed by this Court wherein the petitioner confined her prayer only to the extent of parity and punishment. The said order is extracted as under:-

> *1. The petitioner, through instant petition under Articles 226/227 of the Constitution of India, is seeking setting aside of order dated 29.01.2015 (Annexure P-8) whereby petitioner has been dismissed from service along with forfeiture of gratuity; order dated 26/29.09.2016 (Annexure P-13) whereby punishment of dismissal from service has been upheld, however, forfeiture of gratuity has been reduced to 75% and order dated 25.01.2018 (Annexure P-16) whereby review petition has been dismissed.*
>
> *2. Learned counsel for the petitioner, at the outset, confines her prayer to the extent of parity in punishment. She submits that as per record and allegations against the petitioner, the petitioner was posted at Talwandi Sabo during 2013-15. The petitioner was custodian of wheat/rice stored at Talwandi Sabo depot of Food Corporation of India. Des Raj was Manager of the depot and one Kapil Kumar was Assistant Grade-III (Depot). The petitioner on account of illness was not on duty from 06.01.2014 to 09.01.2014. He was further not on duty from 24.01.2014 to 31.01.2014 i.e. date of his retirement. The petitioner concededly did not seek leave prior to being absent from duty on the aforesaid dates, however, leave of the petitioner was ex-post facto sanctioned by competent authority vide order dated 19.02.2015. Physical*

verification of the stock was conducted on 28.12.2013 and no shortage was found, however, a special team conducted physical verification on 24.01.2014 and shortage of 1042 bags of wheat was detected. 1042 bags consisted of 911 quintals of wheat valued at Rs.18,28,328/- The petitioners as well as other employees, namely, Des Raj and Kapil were charge sheeted. The petitioner was charge sheeted because he was custodian and responsible for the pilferage. Des Raj was charge sheeted because he was overall incharge of the depot and he did not make entry of movement of stock which took place on 06.01.2014 i.e. in the absence of the petitioner. There was also charge of misappropriation against Des Raj. Enquiry was conducted against petitioner as well as Des Raj. The petitioner was awarded punishment of dismissal from service along with forfeiture of gratuity and Des Raj was awarded punishment of reduction in time scale of pay by two stages for a period of 2 years without cumulative effect. In the punishment order, it was further mentioned that if recovery is not effected during the remaining service period of delinquent officer, the same may be recovered from his terminal/retiral benefits.

3. Learned counsel further contends that Des Raj was senior of the petitioner and pilferage, if any, took place in the absence of the petitioner. The responsibility of Des Raj was on the higher footing than responsibility of the petitioner especially in view of the fact that movement of stock took place in the absence of the petitioner. The petitioner has *been awarded higher punishment than Des Raj. In view of principles of parity, the petitioner could not be awarded higher punishment than punishment awarded to Des Raj. In the punishment order of Des Raj, it has been noticed that recovery of loss would be made from him, however, nothing has been recovered from Des Raj whereas a sum of Rs.7.5 Lacs by way of forfeiture of gratuity stands recovered from the petitioner.*

In support of her contention, petitioner relies upon judgment of Hon'ble Supreme Court in State of U.P. Versus Raj Pal Singh; 2010 (5) SCC 783 and judgment of this Court in Sadhu Ram Versus Punjab State Co-op. Supply and Marketing Federation Ltd; 1991(3) RSJ 280. The relevant extracts of the said judgments read as:-

State of U.P. Versus Raj Pal Singh

1. *This appeal is directed against the judgment of the High Court of Allahabad interfering with an order of punishment inflicted upon the respondent in a disciplinary proceeding. Admittedly, the respondent was an Assistant Warder and the allegation against him was that he along with four other Assistant Warders beat one Shivdan Singh, and even though the senior officers dissuaded them, they never listened to that. These allegations were proved in a departmental proceeding and the disciplinary authority passed the order of dismissal so far as the*

present respondent is concerned, though in respect of some others, he passed the order of stoppage of five increments. The respondent assailed the legality of the order by approaching the Public Service Tribunal. The Tribunal having refused to interfere, he approached the High Court. The High Court came to the conclusion that the charges and the delinquency being same and identical, and all the employees having been served with a set of charges out of the same incident, there was no justifiable reason to pass different orders of punishment, and, therefore, the order of dismissal cannot be sustained. The High Court consequently set aside the order of dismissal and directed stoppage of five increments in case of the respondent as was the order in case of some other Assistant Warders. The High Court further directed that the delinquent respondent would be paid only 50% of backwages. It is this order of the High Court which is the subject- matter of challenge in this appeal. It is contended on behalf of the appellants that once the charges have been held to be established, it was not appropriate for the High Court to interfere with the quantum of punishment and judged from this standpoint, the order of the High Court cannot be sustained. In support of the said contention, reliance is placed on the *decision of this Court in* *<u>B. C. Chaturvedi v. U.O.I, and Ors. 1996 (1) SCT 617: JT 1995 (8) SC 65 and Secretary to Government, Home Department and Ors. v. Srivaikundathan, 1991 (1) SCT 715 (SC): JT 1998 (8) SC 470.</u>* *Though, on principle, the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established, to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order* *requiring our interference under Article 136 of the Constitution."*

[Emphasis Added]

<u>Sadhu Ram Versus Punjab State Co-op. Supply and Marketing Federation Ltd.</u>

5. After hearing the learned counsel for the parties and having gone through the inquiry report and the impugned order of dismissal passed thereon, I am of the considered view that the impugned order dated 26th August, 1988, Annexure P. 9, is not sustainable in the eye of law. According to the opening para of the impugned order, common charges against Jasminder Singh Sandhu, Sadhu Ram (petitioner) and Balwinder Singh had been levelled. Further, according to the report of the Inquiry Officer, all these officers had acted in a careless and irresponsible manner as all of them were responsible for maintaining the stocks. There is no separate role assigned to the petitioner (Sadhu Ram) either in the inquiry report or in the impugned order of dismissal from service. Rather, the learned Managing Director did not direct his mind to the finding arrived at by the Judicial Magistrate Ist Class, to the effect that "As far as Sadhu Ram accused is concerned, he was not incharge of the open godown and the wheat found short was not his custody. Therefore, there was not entrustment to him. He has handed over the charge this godown to accused Balwinder Singh and Jasminder Singh on 12.7.83 while the shortage was found in between 27.12.83 to 28.1.84". Otherwise *also, when Balwinder Singh had been reinstated by the Labour Court, the petitioner, who was a Field Officer, and could not avail of the remedy under the Industrial Disputes Act, being not a workman, was also entitled to be dealt with alike and he could not be singled out for imposing the punishment of dismissal from service. In the absence of any special and particular role assigned to the petitioner, who, at the most, according to the respondent, was a co- accused, he could not be subjected to any punishment when Field Assistant Balwinder Singh had been reinstated into service. The Constitutional guarantee of Articles 14 and 16 is available to the citizens not only in the matter of equal treatment during the course of employment, but at the time of imposing the punishment in disciplinary proceedings also. The view finds support from the judgment of Hon'ble the Supreme Court in Sengara Singh v. State of Punjab, 1983 (3) S.L.R. 68 the relevant extract wherefrom is reproduced below:-*

> *"...the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution.... Logically the appellants must receive the same benefit which those reinstated received, in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service."*

[Emphasis Added]

4. Mr. K.K Gupta, learned counsel for the respondents submits that charges levelled against Des Raj were entirely different from charges levelled against the petitioner. The petitioner was custodian of the stock whereas Des Raj was incharge of the depot. Des Raj handled the stock because petitioner was absent from duty. On account of handling of stock on one particular occasion, Des Raj could not be awarded same set of punishment as has been awarded to petitioner who was custodian of the stock.

5. On being confronted with the fact that as per petitioner no recovery has been made from Des Raj, Mr. Gupta, seeks short accommodation to verify factual position.

6. Adjourned to 13.09.2023."

12. He contends that in compliance to the above said order, a supplementary affidavit of 11.09.2023 was filed wherein the distinction between the role of the petitioner viz.-a-viz. the role of Desh Raj was specifically culled out and it was explained as to why separate penalties have been imposed upon both the persons. The relevant extract of the said affidavit reads thus:

1. That the deponent has gone through the order dated 28.08.2023 passed by this Hon'ble Court and has noticed certain factual errors in the order which, with utmost respect to this Hon'ble Court, are pointed out as under:

i. *the petitioner remained posted as Assistant Grade-I (Depot) at Food Storage Depot, Talwandi Sabo from 20.05.2013 to 31.01.2014 (i.e. till his retirement) and not during 2013-2015.*

ii. *the petitioner was the sole custodian of the stock of food grains. Sh. Kapil Kumar, AG-III (Depot) was not the custodian of the stock in any manner. During the unauthorized absence of the petitioner from 06.01.2014 to 09.01.2014, the Railway Authorities provided special railway wagons for loading of the food grains which could not have been avoided as otherwise the Railway heavy Authorities imposed heavy amount of demurrage, therefore, Sh. Des Raj who was Manager (Depot) had to carried out the operation for loading of the special wagons with the assistance of Sh. Kapil Kumar, AG-III (Depot). In the said operation / movement of food grains, no stock was misappropriated so much so no quality complaint was received from destination. This fact would be clear on perusal of the letter dated 22.11.2014 sent by the Area Manager, District Office, Bathinda to the Assistant General Manger (Vigilance), FCI Regional Office, Punjab, Chandigarh, a copy of which is attached as Annexure R-3 (Annexure R-1 & R-2 are already on record).*

iii. *Sh. Des Raj, Manager (Depot) was not charge sheeted for any misappropriation of stock but was only charge sheeted vide Memorandum dated 21.10.2015 (Annexure P-9) and punished vide order dated 20.05.2016 (Annexure P-10) for gross negligence in supervision because of the misconduct of the petitioner who was working under him. The recovery from Sh. Des Raj was not on account of any loss but was ordered to be made in the punishment order dated 20.05.2016 (Annexure P-10) on account of reduction in time scale of pay by two stages for a period of two years and the same was duly recovered by the District Office, Gurdaspur, where he was transferred subsequently, before his retirement.*

iv. *the physical verification of the stock conducted on 28.12.2013 was quarterly physical verification wherein only the number of bags were counted and not the quantity of the food grains (Wheat/ Rice) and at that time no shortage of bag of food grains was found as is clear on perusal of the physical verification report dated 31.12.2013, a copy of which is attached as Annexure R-4. The physical verification conducted on 24.01.2014 was by a special team constituted on receiving of the complaint of shortages caused by the petitioner wherein 100% physical verification was conducted as per the* *physical quantity of the stock which was under the sole custody of the petitioner.*

v. *The shortage noticed in the order dated 28.08.2023 passed by this Hon'ble Court is also not correctly mentioned in the order. If the charge sheet (Annexure P-4), Enquiry Report (Annexure P-6) and the punishment order (Annexure P-8) is perused, it would be clear that the shortage was 948-76-000 quintals found in 1117 bags, which was valued for Rs. 18,12,132/-. The loss on account of gunny bags was for a sum of Rs. 16,196/- and thereby the total loss was Rs. 18,28,328/-, on account of food grains and gunny bags and not only on account of • food grains.*

vi. *Unauthorized absence from duty of the petitioner and later on forging the attendance register by him, was proved in the enquiry against the petitioner and the said period was subsequently regularized and not treated as break in service, after his retirement so as to released his retiral benefits. But the same does not construed as condoning the unauthorized absence which was already proved in the Departmental Enquiry.*

vii. *since the petitioner was AG-I (Depot) and was the sole custodian of the stock wherein huge shortages were found, as detailed above, whereas Sh. Des Raj was the Manger*

(Depot) who was discharging the supervisory duties and no misappropriation of stock etc. was attributed to him and since the petitioner was charge sheeted under Regulation 58 read with Regulation 50 of the FCI (Staff) Regulations, 1971 (for major penalty proceedings) whereas Sh. Des Raj was charge sheeted under Regulation 60 (for minor penalty proceedings) and charges against both of them were different, therefore, the petitioner cannot seek parity in the matter of awarding of the punishment. The judgments cited by the petitioner in this regard, deals with the situation wherein common charges were leveled and all of them were responsible for maintaining the stock, therefore, the said judgments have no relevance with the facts of the present case.

13. It is submitted by him that the petitioner was the sole custodian of the stock where huge shortage was found and that Desh Raj was the Manager (Depot) who was discharging the supervisory duty and no misappropriation of the stock etc. was attributed to him. Since the petitioner was charge-sheeted under Regulation 58 read with Regulation 50 of the Food Corporation of India (Staff) Regulations, 1971 (for major penalty proceedings) whereas Desh Raj was charge sheeted under Regulation 60 (for minor penalty proceedings) hence, charges against both the persons were different and as such the petitioner cannot seek parity in the matter of awarding of punishment. He thus contends that the judgments relied upon by the petitioner would not be applicable to the facts of the present case since in

the said cases, the delinquent employees were issued similar charge sheet for the same lapses/defaults. He further contends that against the order passed by the authorities about forfeiture of the gratuity of the petitioner, he also preferred a petition before the Controlling Officer under the Payment of Gratuity Act, 1972. The competent authorities thereunder passed an order for release of the gratuity which was affirmed by the Appellate Authority as well. Both these orders were a subject matter of challenge in CWP-15274 of 2020 which was allowed vide judgment dated 14.12.2020 and the orders directing the respondent-FCI to release gratuity in favour of the petitioner was set aside. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of ***"Govt. of A.P and others versus Mohd. Nasrullah Khan"*** to contend that in a writ jurisdiction, the High Court does not re-appreciate the evidence and it cannot ordain upon itself the role of Appellate Authority. The jurisdiction is circumscribed and confined to correct the errors of law and the procedure resulting in manifest miscarriage of justice or violation of principles of natural justice and not in reference to adjudication on merits. The operative part of the said judgment reads thus:-

> *"9. The High Court, while upsetting the order of the Tribunal dated 4.4.03 passed in O.A. No. 8066/01 and order of dismissal dated 21.1.2000 confirmed by the Appellate Authority dated 20.10.2001, recorded its finding in paragraph 5 of its judgment as under:*
>
> > *"There is no dispute that the petitioner was posted on Bando-bust duty on the relevant date and the entire premises was under close circuit T.V. System. The question is whether the petitioner has*

committed the theft of camera lens. There is no direct evidence on this aspect. It is only on presumption that when once the camera was not relaying the pictures, the officials of Oracle company came to that place where the camera was positioned and found that the lens was not available with the camera. Even the witnesses examined on this aspect namely the employees of Oracle Company did not state that the petitioner had committed theft of the lens and further it is on record that the electrician himself traced out the camera lens which was lying outside toilet room and the entire premises was carpeted. No other independent officer has been examined to establish that the petitioner had committed theft. However, we see from the report of the Enquiry Officer that he got the cassette displayed and noticed the movements of the petitioner, sitting on chair, getting up and coming towards the camera and touching the lens of camera (hand is clearly visible) between 13-58 and 13-59 hours on 24.3.2000. But this is not the function of the Enquiry Officer. It must be established by the independent evidence. When we directed the learned Government pleader and the learned Counsel for the petitioner to again view the cassette, they stated that the visibility is beyond recognition. In such circumstances, it has to be held that the findings of the Enquiry Officer appears to be based on mere surmises and conjectures and it is finding based on no evidence. In such situation, the Tribunal ought to have held that the Enquiry is vitiated for lack of acceptable

> *and permissible evidence on this aspect. It is also on record that the lens was not recovered from the person of the petitioner and admittedly the petitioner was on guard duty in the premises where the cameras were positioned. In such a situation, it cannot be said that simply because, the lens of one camera is missing, the petitioner committed theft of it. If really the police had conducted investigation, they could have sent the lens to the Forensic expert with reference to the fingerprints and that could have made the matters clear. But for the reasons best known to the police, they did not take such action and tried to find fault with the police constable fastening the charge of theft. Under these circumstances, we are of the considered view that the Tribunal filed to take into consideration this aspect and held that the Enquiry was conducted properly and finding was validly recorded."*

From the finding recorded by the High Court it clearly appears that the High Court re-appreciated the evidence as an Appellate Authority. Apart from re-appreciating the evidence, which is not permissible in law, the High Court also fell in grave error by directing the Govt. Pleader and the learned counsel for the respondent herein to again view the cassettes. It is on record that the Inquiry Officer relied on the video cassettes displayed during the Inquiry as part of additional evidence. The finding has been clearly recorded by the Inquiry Officer on the basis of the evidence adduced by PWs. 1, 2, 3 and 4 during the Inquiry.

10. By now it is a well-established principle of law that the High Court exercising power of judicial review under

Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

11. We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In ***Union of India v. Parma Nanda, (1989)2 SCC 177, K****. Jagannatha Shetty, J., speaking for the Bench, observed at page SCC 189 as under:*

> *"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the*

> *proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."*

12. Again, the same principle has been reiterated by this Court in B.C. Chaturvedi v. Union of India & Ors., 1996(1) SCT 617: (1995)6 SCC 749. K. Ramaswamy, J., speaking for the Court, observed at page SCC 759 as under:

> *"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion, which the authority reaches, is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But*

that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding and mould the relief so as to make it appropriate to the facts of each case."

As already said, in the present case there is no allegation of violation of principles of natural justice or the inquiry being held inconsistent with the mode of procedure prescribed by the rules or regulations."

14. A similar position in law was reiterated by the Hon'ble Supreme Court in the matter of ***"State Bank of India and others versus Ramesh Dinkar Punde"*** reported as 2006 (4) S.C.T 61 wherein it was held that it is not permissible for the High Court to re-appreciate the evidence that had already been considered by the Inquiry Officer, the disciplinary authority as well as the Appellate Authority. The High Court in its powers of judicial review cannot sit over the findings of the disciplinary authority as an appellate court/authority. The operative part of the judgment reads thus:-

> *"6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an appellate authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any. resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. (See Govt. of A.P. and Ors. (appellant) v. Mohd. Nasrullah Khan (respondent). 2006(1) SCT 588: (2006) 2 SCC 373 at page SCC 379).*

15. Reference is also made to the judgment of the Hon'ble Supreme Court in the matter of ***"R.S. Saini versus State of Punjab"*** reported as ***1999 (8) SCC 90*** to contend that once the disciplinary authority has taken into consideration sufficient material available on record alongwith the explanation of the delinquent submitted in writing as also the arguments through the Counsel, the conclusions which are well founded cannot be

interfered with by a writ Court. The operative part of the said judgment reads thus:-

> "*16. A narration of the charges and the reasons of the enquiring authority for accepting the charges, as seen from the records, shows that the enquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the enquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the enquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.*
>
> *18. We have noted earlier, that the scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for. We too have considered the complaint within that limited scope in order to find out the correctness of the allegation that the impugned order of the disciplinary authority suffered from the vice of perversity, non-application of mind and tainted by malice and having come to the conclusion that the*

> *report of the requiring authority cannot be faulted with on any of the grounds stated above, we are unable to agree with the appellant. For the reasons stated above, this appeal fails and is hereby dismissed. No costs."*

16. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

17. The Counsel for the petitioner has emphatically argued that certain findings were also recorded by the Enquiry Officer against respondent-Desh Raj while conducting the Enquiry against the petitioner. and that certain relevant documents as were necessary for him to prove his case had not been supplied to him. The Counsel has been confronted that the said argument would require re-appreciation of evidence and merits of the findings recorded in the enquiry report whereas, as per the order dated 28.08.2023, she had already confined her prayer to the extent of claiming parity with Desh Raj, Manager. The specific contention raised was that there was an allegation of mis-appropriation against Desh Raj as well. An argument was also raised that the pilferage took place under Desh Raj. It was in the said background that respondent Counsel was directed to file an affidavit. The needful was done on 11.09.2023 pointing out that there was no allegation of any pilferage or misappropriation of stock against Desh Raj and he was issued a show cause for a supervisory lapse only. Detailed narrative about the shortage having occurred during the period of actual control of petitioner was specifically submitted with a specific claim about there being no loss in loading of special on 06.01.2014. Despite a lapse of more than an

year since filing of the affidavit, the specific content of the affidavit remains undisputed. Thus, a valid distinction between the allegations, the role, the responsibilities, the charge and the penalties have been drawn. The same having been done by the respondent, the petitioner would be estopped from seeking to re-agitate the merits after the challenge had already been confined.

18. Under the given circumstances, the facts as noticed above remain uncontroverted. The petitioner cannot claim any parity with Manager-Desh Raj against whom only a supervisory lapse has been established and proved. Thus, a differential punishment could be imposed by the competent authority on a person who was the actual custodian of the stock, with respect to any deficiency/shortage so noticed, against a person who was not. A mere submission of an affidavit by the petitioner that he had taken over the stock on a peripheral calculation and did not carry out an actual physical verification cannot be accepted as a ground sufficient to absolve the petitioner of his responsibility to carry out a physical verification. It is also noticed that the petitioner was transferred to Talwandi Sabo on 20.05.2013 and the purported affidavit is of June, 2013. It was incumbent upon the petitioner to have exercised due care and caution while carrying out a verification of the stock and it would not be open to him to thereafter, contend that since he had not carried out a physical verification of the stock, hence, he cannot be held liable for any deficiency/shortage therein. Having taken over the charge of the stocks, the petitioner cannot claim a partial unverified takeover of stock. It would create a very absurd

administrative situation if every person taking over charge were to behave similarly and more so when stock is the only thing to be taken over while transferring the charge. Each person who occupies that position takes over stock from an earlier incumbent and can't be held accountable for the stock that he handed over to another. Additionally there is no bar at carrying out a verification and if petitioner preferred his convenience over prudence, he has to accept accountability.

19. The position in law having been well settled that the scope of interference by a writ Court in a judicial review against orders passed in disciplinary proceedings is limited. The High Court would not sit as a Court of appeal to supplant its own decision for that of the competent authorities. I find that no such grounds have been made out as would demonstrate that there is a violation of principles of natural justice or the necessary evidence has not been considered by the competent authorities. Besides, the punishment cannot be said to be shockingly disproportionate considering the gravity of proven charge against him.

20. The present writ petition is accordingly dismissed. The orders passed by the Appellate Authority dated 26/29.09.2016, modifying the punishment to that of "Dismissal from service alongwith 75% forfeiture of Gratuity" and that of Reviewing Authority dated 25.01.2018 confirming the same are hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 13, 2025

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No