

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15803 of 2013

=====

Babban Kumar Srivastava Son Of Sri Ram Chandra Prasad Resident Of
Pushp Mansion, Mohalla- Alkapuri, Bhagwanpur, P.S.- Muzaffarpur Town,
District- Muzaffarpur Bihar

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Food, Government of India, Krishi Bhawan, New Delhi
2. The Food Corporation Of India, 16-20, Bara Khamba Lane, New Delhi
3. The Managing Director, Food Corporation Of India, 16-20, Bara Khamba Lane, New Delhi
4. The Executive Director East Zone, Food Corporation Of India, 10 A- Middle Ton Row, Kolkata- 700071
5. The General Manager, Region, Food Corporation Of India, Regional Office, Exhibition Road, Patna- 800001
6. The Area Manager, Food Corporation Of India, District Office Muzaffarpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Perna Rishi, Advocate
For the Respondent/s	:	Mr. N. A. Shamsi, ASG
For the FCI	:	Mr. Shashidhar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 15-05-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:-

“i) For issuance of writ in the nature of certiorari or any other appropriate order or direction for quashing the order dated 29.09.2007 passed in disciplinary proceeding by Sri A.K. Verma, General Manager (Region), Food Corporation of India, Regional Office, Patna, whereby



and whereunder in exercise of the powers conferred under Regulation-56 and Appendix-II r/w Regulation-54 of the Food Corporation of India (Staff) Regulations, 1971 imposed upon the petitioner; the penalty of reduction to a lower post of AG II (D) fixing his pay at the initial stage of the pay scale of AG-II (D) and recovery of Rs. 3,00,000/- (Rs. 3 lacs) only. Recovery will be made from his salary not exceeding 1/3 of his pay and remaining amount will be recovered from permissible terminal benefits of his retirement with further direction that he will earn normal increment in the reduced post in accordance with existing rule and his seniority to be counted from the date of this penalty order. The penalty is effective from the date of the order.

It was further ordered by him that the period of suspension as per order issued by his office order of even number dated 14.10.2005 and revocation order issued under reference of even number dated 06.05.2006 will be treated as not spent on duty and the petitioner will not get any amount against the period of suspension except the



subsistence allowance already paid to him.

- ii) *For issuance of a writ in the nature of certiorari or any other appropriate order or direction for quashing the order dated 12.01.2009 passed by the Executive Director (EZ) as being the appellate authority in exercise of power conferred to him under Regulation-72 of the F.C.I. (Staff) Regulations, 1971 rejected the appeal petition of the petitioner and declined to interfere with the order of the Disciplinary authority as contained in Annexure-1.*
- iii) *For issuance of a writ in the nature of certiorari or any other appropriate order or direction for quashing the order dated 13.12.2012 passed in Review Petition by the Reviewing Authority, namely, the Managing Director of the Food Corporation of India, H.O., New Delhi, who in exercise of power conferred to him under Regulation-74 of F.C.I. (Staff) Regulation, 1971 rejected the Review petition preferred by the petitioner in the Vigilance Case No. Vig.3(934)/2005.”*

3. The brief facts giving rise to the present writ petition are that the petitioner was an employee of Food Corporation of



India Limited (hereinafter referred to as the 'corporation') and was initially appointed as an Assistant Grade-III (Depot) on 16.01.1978. He was promoted to the post of Assistant Grade-II (Depot) on 02.09.1998 and further promoted to the post of Assistant Grade-I (Depot) on 19.02.2005. The petitioner superannuated from service on 31.01.2013. While the petitioner was posted in the district office of Corporation at Muzaffarpur, a memorandum was served upon him on 06.05.2006 for certain irregularities committed by the petitioner and it was proposed to hold an enquiry in terms of Rule 58 of the FCI (Staff) Regulations, 1971. Pursuant to the said memorandum, the petitioner submitted his defence brief (statement) before the Enquiry Officer on 22.11.2006, requesting him to exonerate the petitioner from the charges levelled against him. The enquiry officer proceeded with the enquiry and after conclusion of the enquiry, submitted his enquiry report, before the disciplinary authority on 25.11.2006. Second show cause notice was issued to the petitioner, which he replied on 15.12.2006, however without even considering the reply to the second show cause notice, submitted by the petitioner, the disciplinary authority i.e. G.M. (Region), Regional Office, FCI, Patna vide impugned order issued vide Ref. No. vig.3(934)/2005 dated 29.09.2007 proceeded to award punishment, in exercise of



the powers conferred under Regulation 56 and Appendix-II r/w Regulation-54 of the Food Corporation of India (Staff) Regulation, 1971, whereby he imposed the penalty of reduction to a lower post of AG-II (D) fixing his pay at the initial stage of the pay scale of AG-II(D) and recovery of Rs. 3,00,000/- from the petitioner. It was further ordered that recovery will be made from his salary, not exceeding 1/3 of his pay and remaining amount will be recovered from the permissible terminal benefits of his retirement with a further direction that he will earn normal increment in the reduced post in accordance with the existing rule and his seniority to be counted from the date of this penalty order. It was further ordered that the penalty will be effective from the date of the order and the period of suspension as per the order issued by this office dated 14.10.2005 and revocation order issued on 06.05.2006 will be treated as not spent on duty and the petitioner will not get any amount against the period of suspension, except the subsistence allowance, already paid to him. Being aggrieved with the order of punishment dated 29.09.2007, the petitioner preferred statutory appeal before the appellate authority on 21.11.2007, wherein he stated that no evidence was found against him and he has not committed any misconduct, even then the enquiry officer by ignoring the evidence and the materials available on record,



proceeded to hold the petitioner guilty of the charges levelled against him. The appellate authority without even examining the points raised by the petitioner in his memo of appeal, proceeded to reject the appeal of the petitioner, vide his order dated 12.01.2009. Being aggrieved with the order dated 12.01.2009 passed by the appellate authority, the petitioner preferred review petition on 17.03.2009, for review of the order dated 12.01.2009, whereby his appeal was rejected. When no order was passed on the review preferred by the petitioner, he submitted a detailed representation on 18.05.2012, with a request to take a decision on his review petition, since the petitioner was on verge of retirement and he was suffering with economical loss and mental harassment, but no action was taken by the authorities concerned. The petitioner, having no other alternative remedy, filed a writ petition which was numbered as C.W.J.C. No. 14484 of 2012. The writ petition was heard by a Hon'ble Single Judge and after hearing the parties, the same was disposed of vide order dated 09.08.2012, with a direction to the petitioner to approach the Managing Director of the Corporation along with a copy of the order and the Managing Director of the Corporation was directed to consider the same in accordance with law and to decide the same by a speaking order within the period of three months thereafter. Pursuant to the order



dated 09.08.2012 passed in C.W.J.C. No. 14484 of 2012, the petitioner filed a representation on 17.08.2012 along with the copy of the review petition dated 17.03.2009 and the order dated 09.08.2012, with a request to take decision on the matter within three month's period, fixed by the Hon'ble Court. The Managing Director vide his order bearing no. A & R/10 (47) 2009 dated 13.12.2012 dismissed the review petition preferred by the petition.

4. The learned counsel for the petitioner submits that the penalty imposed by the disciplinary authority is disproportionate to the gravity of the offence/alleged misconduct. He submits that the order not to grant full salary to the petitioner for the period under suspension has been passed without assigning any reason for the same and the provisions contained in Regulation 54, 58 and 59 of the FCI (Staff) Regulation, 1971 was not followed before imposing penalty upon the petitioner. Although some documents were requisitioned by way of defence for proving the innocence of the petitioner, but, it was not provided to the petitioner and even the non-availability certificate was not delivered as per Rules, to the petitioner, thereby the petitioner has been deprived of the reasonable opportunity to defend himself. The enquiry officer as well as the disciplinary authority did not consider the defence statement of the petitioner, before awarding the punishment to the



effect that the petitioner, at the relevant time, was A.G.-II(D) and was discharging the duty as Pay Point In-charge, whose duty was to prepare cheques as per acknowledgment/acceptance issued by the In-charge of PPC, Narkatiaganj one Satish Kumar, A.M. (QC) and one Ajay Kumar Singh, who was posted as A.G.-II (D) and discharging the duty as Shed In-charge, was responsible for storing the food grains after taking its weight. He further submits that both the above-mentioned persons remained at Narkatiaganj up to 30.11.2004 and all of a sudden were transferred by the Area Manager, Muzaffarpur and were relieved without handing and taking over charge of the stocks. The charge-sheet is also silent about handing over and taking over of the stocks and has also not been proved. The petitioner had taken over the charge of stores, but the Enquiry Officer and the Disciplinary Authority ignored this vital aspect of the matter and certain documents relating to the proceedings were shown to the petitioner, just before commencement of the proceeding on 31.10.2006, which were brought from the District Office of the Corporation at Muzaffarpur. Copy of such document was not provided to the petitioner and even no opportunity was given to the petitioner for preparing defence for the effective cross examination of prosecution witnesses, by giving time, which is in complete



violation of provisions contained under Regulation 58 of the F.C.I. (Staff) Regulation, 1971, which inter alia provides that 3 days' clear time, excluding the date of inspection of documents and the date of commencement of examination of witnesses, be given to prepare the defence of the case and the same is also violative of the principles of natural justice and fair play. Due to the imposed penalty order, the petitioner sustained huge and recurring financial loss. The recoverable amount has also been recovered from his gratuity, which cannot be deducted or recovered by way of penalty as gratuity is not a bounty, therefore, the petitioner is entitled for the entire amount of gratuity.

5. The learned counsel for the petitioner further submits that so far the punishment of treating the period under suspension as not spent on duty is concerned, it will appear that no specific show cause for withholding payment, other than the subsistence allowance, was given to the petitioner, before passing of the order imposing penalty and it is well settled that for withholding any payment of the suspension period, such allowance, a show cause is necessary to be given to the delinquent and no salary can be withheld for the period under suspension, without prior notice.



6. The learned counsel for the petitioner finally submits that the order passed by the disciplinary authority as well as the appellate authority is wholly without jurisdiction and is arbitrary.

7. Per contra, the learned counsel appearing on behalf of the F.C.I. i.e. respondent no.2 to 6 submits that while posted as AG-I(D) of PPC, Narkatiaganj, the petitioner committed gross negligence in performance of the duty and acted in a manner detrimental to the interest of the Corporation, failed to maintain absolute integrity, devotion to duty and failed to keep the depot records up-to-date, which resulted in huge shortages of foodgrains, detected by District Physical Verification Team. Being the sole in-charge of the depot, it was the primary duty of the petitioner to keep the depot records up-to-date and take proper care of the foodgrains kept there, but the petitioner failed to do so and despite all the efforts made by the Physical Verification Team, the stock ledger, gunny account register, etc were not placed before the Physical Verification Team. Due to shortage of such huge quantity of foodgrains, the Corporation sustained heavy financial loss. The matter was examined at the level of the corporation and charge-sheet was issued to the petitioner under Regulation 58 of the F.C.I. Regulation. An enquiry was set up by appointing an enquiry officer and the presenting officer vide order dated 11.06.2006. The



enquiry officer after conducting due enquiry submitted his enquiry report on 25.11.2006, whereby he found the charges for shortage of rice and gunnies to be proved. Enquiry report was duly served upon the petitioner and the petitioner filed his written submission on 15.12.2006. The disciplinary authority after examining the records, reply of the petitioner, oral and documentary evidence adduced before the enquiry officer, came to the conclusion that the petitioner is directly involved in shortage of 1338.74 quintal of rice and guilty of the charges levelled against him. Accordingly, the disciplinary authority proceeded to pass the order of punishment dated 29.09.2007. The petitioner preferred statutory appeal, however the same was rejected and the review application filed by the petitioner was also rejected vide order dated 13.12.2012. He further submits that while imposing the order of punishment against the petitioner, all the required procedures have been followed by the competent authority and the punishment has been passed in accordance with the existing rules and regulations of the corporation and there is no illegality or infirmity in the punishment order passed by the disciplinary authority.

8. Having heard the learned counsel for the parties and after going through the records, it appears that a departmental proceeding was initiated against the petitioner for certain



irregularities committed by him on 06.05.2006 in terms of Rule 58 of the FCI (Staff) Regulation 1971. The petitioner submitted his defence brief before the enquiry officer, which was not accepted and the enquiry officer proceeded with the enquiry. After conclusion of the enquiry, he submitted his report before the disciplinary authority, whereby he found the petitioner guilty of the charges levelled against him. Second show cause notice was issued to the petitioner, which was duly replied by him. The disciplinary authority by the impugned order dated 29.09.2007, proceeded to award punishment in terms of Regulation 56 and Appendix-II r/w Regulation 54 of the FCI (Staff) Regulation, 1971, whereby penalty of reduction to a lower post of AG-II (D), fixing his pay at initial stage of AG-II (D) and recovery of Rs. 3,00,000/- from the petitioner was awarded. Some other punishment was also awarded, including the order that the period of suspension i.e. 14.10.2005 to 06.05.2006 will be treated as not spent on duty and the petitioner will not get any amount against the period under suspension, except the subsistence allowance, already paid to him. He filed an appeal before the appellate authority, which was rejected on 12.01.2009. The petitioner preferred Review Petition on 17.03.2009, which was finally dismissed on 13.12.2012. It appears that during the entire



departmental proceeding, petitioner was given an opportunity to appear and place his defence, which he duly filed, however it was alleged by the petitioner that some documents were not provided to him and he was denied reasonable opportunity to defend himself. It appears that petitioner duly participated in the departmental proceeding and after considering the reply submitted by the petitioner and his defence at the time of disciplinary enquiry was also considered, the enquiry officer submitted the report, wherein the petitioner was found guilty of the charges levelled against him. Even the disciplinary authority, after duly considering the report of the enquiry officer and the reply to the second show cause notice submitted by the petitioner, proceeded to award order of punishment against him. The petitioner failed to perform his duties to keep the depot reports up to date and he did not provide the same to the verification team at the time of inspection. Due to dereliction of duty on the part of the petitioner, the corporation suffered loss and he was awarded the penalty which, in the opinion of this Court, does not require any interference and the same is accordingly not interfered with.

9. So far the second contention of the petitioner to the effect that before passing the order, imposing penalty of withholding the entire payment for the period under which the



petitioner was under suspension, except the amount which was already paid to the petitioner during period of suspension is concerned, admittedly no show cause was issued to the petitioner before passing the order of not making payment of any further amount, apart from what was paid to him during the period under suspension. The memo of charge was issued to the petitioner for certain other charges and there was no charge with regard to withholding of his entire payment for the period, during which he remained under suspension, therefore, even the enquiry was not conducted for the said purposes. It was incumbent upon the disciplinary authority to give notice/show cause to the petitioner, before passing the order of withholding of his salary, apart from whatever paid to the petitioner during period of suspension.

10. The Hon'ble Supreme Court of India in a case reported in **2026 SCC OnLine SC 813 (Dr. Nigam Prakash Narain Versus the National Medical Commission &Ors.)**, in paragraph no.12 has held as follows:-

“12. Once the charge originally framed against Dr. Narain was successfully defended by him, the Ethics Committee (on being prodded by the Executive Committee) proceeded to hold Dr. Narain guilty of an act of omission, which was at variance with the charge. This was without informing him of the same and without calling for his explanation. There has, indeed, been a breach



*of principles of natural justice. A coordinate bench of this Court in **Ravi Oraon v. State of Jharkhand**²⁰ has held that once a delinquent employee had successfully defended a charge, the disciplinary authority, in absence of a fresh show cause notice, cannot punish the delinquent employee on a completely different charge which was not framed. This would be a denial of fair and reasonable opportunity of hearing and in violation of the principles of natural justice. Thus, the Executive Committee could not have imposed the punishment without issuing a fresh show cause notice and/or without granting Dr. Narain a fair and reasonable opportunity to respond to the new/alternative charge under consideration. We quite appreciate that the Executive Committee's decision, to that extent, does suffer from a serious flaw."*

11. Accordingly, the punishment to the effect that the petitioner will not be entitled for any amount, except the subsistence allowance, which was paid to him during the period of suspension i.e. 14.10.2005 to 06.05.2006 is not sustainable and is accordingly set aside.

12. The petitioner will be entitled for payment of entire salary for the period in between 14.10.2005 to 06.05.2006, after deducting the amount, if any, paid to the petitioner during the said period, towards subsistence allowance. The entire payment shall



be made to the petitioner within a period of three months from the date of receipt/production of the copy of the order.

13. With the aforementioned observation and direction, the writ petition is allowed in part.

14. Pending application, if any, shall also stands disposed.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	06.04.2026
Uploading Date	15.05.2026
Transmission Date	NA

