GAHC010006392013

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2282/2013

ANATH CHANDRA DAS
DY. GENERAL MANAGER ENGG RTD., S/O LATE TAJO RAM DAS, R/O HOUSE NO.60, RUP KONWAR PATH, NEW SACHAL, P.O. KHANAPARA, P.S. DISPUR, GHY-22, ASSAM

VERSUS

THE FOOD CORPORATION OF INDIAand 3 ORS
REPRESENTED BY ITS CHAIRMAN, HEAD QUARTERS, 16-20 BARAKHAMBA LANE, NEW DELHI-110001

2:THE MANAGING DIRECTOR
FOOD CORPORATION OF INDIA
HEAD QUARTERS
16-20 BARAKHAMBA LANE
NEW DELHI-110001

3:THE EXECUTIVE DIRECTOR
NE ZONE
FOOD CORPORATION OF INDIA
ULUBARI
GHY-7

4:THE INQUIRY OFFICER AND GENERAL MANAGER VIG.
FOOD CORPORATION OF INDIA
ZONAL OFFIC N
NOIDA
U.P

Advocate for the Petitioner : MS.M DAS, MR.S CHOUHAN,MS.M DAS,MR.A R SHOME,MR.S CHAUHAN

Advocate for the Respondent : MR.P K ROY,SC, F C I

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 08.02.2024

Date of Judgment : 08.02.2024

Judgment & order(Oral)

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Heard Mr. S. Chauhan, learned counsel, appearing on behalf of the petitioner. Also heard Mr. P. K. Roy, learned senior counsel, assisted by Mr. S. K. Chakraborty, learned counsel, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 24.09.2011, issued by the disciplinary authority imposing upon the petitioner, a penalty of compulsory retirement from his service of the Food Corporation of India(FCI), along with forfeiture of his gratuity to the extent of Rs. 4,00,000/-(Rupees Four Lakhs) in terms of Section 4(6) of the Payment of Gratuity Act, 1972.

3. The fact requisite for adjudication of the issues arising in the present proceeding is noticed as hereunder:

The petitioner, herein, while working as a Deputy General Manager(Engineering) and posted at Zonal Office (NE), Ulubari, Guwahati, had retired from his service on 30.09.2010 on reaching the age of superannuation.

After retirement of the petitioner from his service on 30.09.2010; he received on 06.10.2010, a memorandum of charge, dated 30.09.2010. In the

said memorandum of charge, dated 30.09.2010, 3(three) charges came to be so levelled against the petitioner pertaining to the misconduct committed by him while working as the Assistant General Manager(CE) in the Regional Office (Assam) of the Food Corporation of India(FCI). On receipt of the said memorandum of charge, dated 30.09.2010; the petitioner vide his representation, dated 07.10.2010, approached the disciplinary authority requiring the latter to grant access to him to the listed documents. The petitioner also enclosed a list of documents along with his representation, dated 07.10.2010, required to be perused by him so as to prepare an effective written statement in the matter. The said documents having not been received; the petitioner vide his representations, dated 13.10.2010, and 20.10.2010, again prayed before the authorities for furnishing to him, the copies of the documents as sought for by him in his representation, dated 07.10.2010. It is seen that the documents as sought for by the petitioner was not so furnished to him by the competent authority thereby preventing him from preferring a written statement in the matter. As the petitioner had not submitted his written statement in the matter, within the time prescribed; the disciplinary authority vide order, dated 21/26.10.2010, proceeded to direct for holding of an inquiry in the matter against the petitioner and accordingly, appointed an Inquiry Officer as well as a Presenting Officer for the purpose.

The disciplinary authority, thereafter, vide order, dated 07.12.2010, contended that the memorandum of charge, dated 30.09.2010, was sought to be served upon the petitioner on 30.09.2010 itself, however, as he was not found available in the Zonal Office, the same was accordingly pasted at a conspicuous place of his residence, by a Committee constituted in the matter. With regard to the prayer of the petitioner as made in his representation, dated 07.10.2010, seeking additional documents, it was contended that such request was turned down by the competent authority. It was, however,

provided that the petitioner may seek further documents from the Inquiry Officer during the inquiry proceedings.

Poised thus; the petitioner received an addendum, dated 15/22.12.2010, wherein, the Article of Charge No. III as set-out in the memorandum of charge, dated 30.09.2010, was amended and a further charge was added thereto basing on a case registered by the Central Bureau of Investigation (CBI, for short) being RC.12(A)2010/GWH, dated 30.11.2010, against the petitioner, herein, and others; for misusing their official position.

It is to be noted here that an addition was also made in the list of documents and the First Information Report(FIR) as lodged by the CBI in the said case along with a communication, dated 17.09.2010, as issued by the Head Branch of CBI, Guwahati, was also incorporated along with an First Information Report(FIR) in RC.12(A)2010/GWH, dated 30.11.2010.

It is also to be noted that in the list of witnesses as annexed to the memorandum of charge, dated 30.09.2010, 2(two) more witnesses were so added and the witnesses so added, were the Officers of the CBI.

The Inquiry Officer on entering the matter, continued with the inquiry proceedings and the petitioner participated in the matter. On conclusion of the inquiry; the Inquiry Officer proceeded to submit his Inquiry Report and therein, while holding the Article of Charge No. I to be not proved; the Article of Charge No. II, was held to be partially proved.

It is to be noted here that the Presenting Officer having not pressed the

Article of Charge No. III in the inquiry; the same was not inquired into by the Inquiry Officer and in the Inquiry Report, it was noted that the said Article of Charge No. III not having been pressed by the Presenting Officer and the Officials of the CBI not having participated in the inquiry proceeding inspite of notices issued to them, the matter was left to be decided by the Food Corporation of India(FCI) Management who might have received the CBI reports in the matter.

The disciplinary authority on receipt of the Inquiry Report; forwarded the same to the petitioner vide the communication, dated 09.09.2011, along with a disagreement memorandum, dated 09.09.2011. The disciplinary authority after noticing the conclusions reached by the Inquiry Officer in the inquiry pertaining to the Article of Charges No. I & II as well as the Article of Charge No. III; proceeded to disagree with the Inquiry Report, insofar as, it concerns the Article of Charge No. III and more specifically, pertaining to the allegations against the petitioner relating to the case filed by the CBI in RC.5(A)/2010-GWH. The disciplinary authority by relying upon the report submitted in the matter by the CBI authorities pertaining to the case being RC.5(A)/2010-GWH, proceeded to hold that the CBI authorities has clearly brought out, therein, the culpability on the part of the petitioner, herein, for his supervisory lapses and accordingly, by agreeing with the said report of the Inquiry Officer as regards the findings so recorded with regard to the Article of Charges No. I & II; held the Article of Charge No. III to have been proved insofar as it relates to the allegations so levelled against the petitioner in connection with RC.5(A)/2010-GWH.

It is to be noted that the allegations levelled against the petitioner through the addendum, dated 15/22.12.2010, in connection with CBI Case No.

RC.12(A)2010/GWH, dated 30.11.2010, was not pressed against the petitioner.

The petitioner vide his representation, dated 19.09.2011, responded to the disagreement memorandum, dated 09.09.2011, as issued by the disciplinary authority in the matter.

The disciplinary authority, thereafter, vide order, dated 24.09.2011, on consideration of the materials coming on record and also by recording a finding to the effect that the Article of Charge No. III was not proved on technical ground requiring the issuance of the disagreement memorandum, dated 09.09.2011, in relation to the Article of Charge No. III, specifically pertaining to the CBI Case No. RC.5(A)/2010-GWH; and upon perusal of the report of the CBI authorities as submitted in connection with the above-noted case i.e. CBI Case No. RC.5(A)/2010-GWH, proceeded to conclude that the petitioner had a role in the matter and also observing that the disciplinary proceedings being *quasi judicial* proceedings based on preponderance of probability, so, the level of evidence in such proceedings being at a different level from that of a criminal proceeding and thereby; held the petitioner to be guilty with regard to the allegation as contained under Article of Charge No. III relating to CBI Case No. RC.5(A)/2010-GWH.

Having drawn the above conclusions; the disciplinary authority proceeded to impose upon the petitioner, a penalty of compulsory retirement from his service along with a direction for forfeiture of his gratuity to the extent of Rs. 4,00,000/- (Rupees Four Lakhs) in terms of Section 4(6) of the Payment of Gratuity Act, 1972, by holding that the same was so done to partially indemnify the loss caused to the Corporation.

The petitioner being aggrieved by the order of the disciplinary authority, dated 24.09.2011, proceeded to submit an appeal in the matter before the Chairman, Food Corporation of India(FCI). It is to be noted that the appeal as preferred by the petitioner in the matter was rejected by the appellate authority vide order, dated 20.05.2013.

4. The petitioner being aggrieved by the penalty as was imposed upon him, as well as the recovery made from his Provident Fund account vide the impugned order, dated 24.09.2011; has instituted the present proceeding.

5. At this stage; it is to be noted that against the petitioner basing on the cases registered by the CBI; 2(two) criminal proceedings came to be so instituted in the form of Special Case No. 5/2011 and Special Case No. 5(A)/2011 before the Court of Special Judge(CBI), Assam. The petitioner in the above-noted criminal cases, upon contest; came to be acquitted from the charges so levelled against him by the learned trial Court vide judgment & order, both, dated 18.12.2020.

6. Mr. Chauhan, learned counsel for the petitioner, after taking this Court through the materials brought on record in the present proceeding, has submitted that the disciplinary authority having based the order of penalty only on the Article of Charge No. III, more particularly, the allegations levelled against the petitioner, herein, in the said Article of Charge No. III pertaining to the CBI case being RC.5(A)/2010-GWH; he is restricting his arguments to the said part of the Article of Charge No. III only.

7. Mr. Chauhan, learned counsel, has submitted that the proceedings in the

matter having been so instituted after the petitioner had superannuated from his service; the penalty as imposed upon him of compulsory retirement, could not have been so imposed by the disciplinary authority.

8. Mr. Chauhan, has further submitted that the petitioner was subjected to hostile discrimination and was prevented from defending the allegations levelled against the petitioner in a manner required in-as-much as the respondents had refrained from furnishing to the petitioner, the documents as sought for by him. The learned counsel has submitted that the inquiry proceedings having been so proceeded without furnishing to the petitioner, the documents as sought for by him; the inquiry proceedings stood vitiated and basing on such vitiated proceedings, the petitioner could not have been imposed with any penalty.

9. Mr. Chauhan, learned counsel, has submitted that the disciplinary authority had issued a disagreement memorandum, dated 09.09.2011, disagreeing with the findings arrived at by the Inquiry Officer in his Inquiry Report pertaining to the Article of Charge No. III and that too; limited to the allegations as levelled against the petitioner pertaining to the CBI Case No. RC.5(A)/2010-GWH, relying upon the report of the CBI authorities in the above-noted case, which was not proved in the inquiry.

10. Mr. Chauhan, learned counsel for the petitioner, has submitted that in the inquiry proceeding, the Presenting Officer having not pressed the Article of Charge No. III, accordingly, the allegations as levelled against the petitioner under the said Article of Charge No. III, including the allegations involved in the report submitted by the CBI authorities in connection with Case No. RC.5(A)/2010-GWH was also not inquired into in the said inquiry held against

the petitioner.

11. Mr. Chauhan, learned counsel, has submitted that the report of the CBI authorities relied upon by the disciplinary authority for imposing the penalty upon the petitioner, was not proved in the inquiry held and accordingly, basing on an evidence which has admittedly not emanated from the inquiry held against the petitioner; the disciplinary authority could not have proceeded to rely upon such unsubstantiated and unproved documents for the purpose of imposing upon the petitioner, the penalty.

12. It was further contended by Mr. Chauhan, learned counsel, that the disciplinary authority had not directed for any further inquiry in the matter on noticing that the Inquiry Officer, in his Inquiry Report, had recorded a finding to the effect that the Article of Charge No. III was not pressed by the Presenting Officer.

13. Mr. Chauhan, learned counsel, in the above premises, has submitted that the penalty having admittedly been so imposed upon the petitioner, herein, solely, basing on the materials not proved in the inquiry held against him; the impugned order of penalty, dated 24.09.2011, requires to be interfered with by this Court and consequently, the respondent authorities are required to be directed to release to the petitioner, his dues.

14. Mr. Chauhan, learned counsel for the petitioner, has further reiterated that the CBI report, in question, relied upon by the respondent authorities not having been proved in the inquiry held; could not have been relied upon by the disciplinary authority as an evidence for the purpose of imposing upon the

petitioner, a penalty, in the matter.

15. In support of his contentions; Mr. Chauhan, learned counsel for the petitioner, has relied upon the following decisions of the Hon'ble Supreme Court as well as of this Court:

(i). ***AIR 1958 SC 300*** [***Khem Chand v. Union of India & ors.***]

(ii). ***AIR 1961 SC 1623*** [***State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan***]

(iii). ***AIR 1999 SC 1212*** [***Dr. Uma Agarwal v. State of U.P***.]

(iv). ***(2014) 8 SCC 694*** [***D.D. Tewari(dead) through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Ltd. & ors***.]

(v). ***2000 (1) GLT 203*** [***Lohit Chandra Kalita v. State of Assam & ors.***]

(vi). ***2006 (1) GLT 235*** [***Girish Ch. Sarmah v. Bongaigaon Refinery & Petrochemicals Ltd. & ors***.]

(vii). ***2010 (5) GLT 371*** [***W. Birbal Singh v. State of Manipur & ors.***]

16. Per contra, Mr. Roy, learned Senior counsel appearing on behalf of the Food Corporation of India(FCI), has submitted that the petitioner, herein, was granted all reasonable opportunity to place his defence against the allegations levelled against him in the inquiry so held. The documents relied upon by the authorities for establishing the allegations against the petitioner were also provided to him.

17. It has been further contended that the petitioner was also furnished with the CBI report as submitted in the matter in CBI Case No. RC.5(A)/2010-GWH, in terms of an application made by him in this connection.

18. Mr. Roy, learned senior counsel, has contended that the petitioner during the course of inquiry; did not raise any objection with regard to the manner in which the said inquiry was being proceeded with. With regard to the disagreement memorandum, dated 09.09.2011, it was contended that the

findings as recorded, therein, by the disciplinary authority in respect of the Article of Charge No. III; is supported by evidences coming on record in the in question. It is further contended that the evidences available on record were considered by the disciplinary authority for recording such disagreement memorandum, dated 09.09.2011, and accordingly, it was submitted that this Court would be pleased not to interfere with the said disagreement memorandum, dated 09.09.2011, as submitted in the matter by the disciplinary authority.

19. It is submitted that the disagreement memorandum, dated 09.09.2011, as recorded in the matter pertaining to the Article of Charge No. III by the disciplinary authority, was furnished to the petitioner and he had duly submitted his representation thereon on 13.09.2011, which was duly taken into consideration by the disciplinary authority before passing the impugned order, dated 24.09.2011.

20. Mr. Roy, learned senior counsel, has further submitted that the misconduct as levelled against the petitioner being so proved in the inquiry, held against him and the same being of serious nature which had resulted in a huge financial loss to the Corporation; this Court would not in exercise of its power of judicial review, sit as an appellate authority over the findings of the disciplinary authority and substitute the same with the views of this Court in the matter.

21. The learned senior counsel has further submitted that the findings as recorded by the Inquiry Officer as well as the findings recorded in the disagreement memorandum, dated 09.09.2011, by the disciplinary authority, being so supported by evidence available on record; the penalty as imposed

upon the petitioner, herein, would not call for any interference.

22. Mr. Roy, learned senior counsel, has further contended that given the nature of allegations proved against the petitioner; the penalty as imposed upon him, cannot be held to be disproportionate to the allegations levelled against him and accordingly, the same would not call for any interference.

23. Mr. Roy, has further submitted that it is a settled proposition of law that in the event, against a delinquent, any criminal proceeding is instituted and the disciplinary authority proceeds also to initiate the disciplinary proceeding on the same set of allegations; the intent of both the proceedings being different, the decision as arrived at in the criminal proceeding, cannot *ipso facto* apply to the disciplinary proceeding so instituted against the delinquent and the disciplinary proceeding is permissible to be taken to its logical conclusion. Accordingly, it is submitted that the acquittal of the petitioner, herein, in the criminal case so instituted against him, would have no bearing in the disciplinary proceeding so instituted against him and concluded with the issuance of the impugned order, dated 24.09.2011, by the disciplinary authority.

24. Mr. Roy, learned senior counsel, in support of his contentions, has relied upon the following decisions of the Hon'ble Supreme Court:

(i). ***(1994) Supp (2) SCC 468*** [***State Bank of India, Bhopal v. S. S. Koshal***]

(ii). ***(1999) 5 SCC 762*** [***Bank of India & anr. v. Degala Suryanarayana***]

(iii). ***(2011) 10 SCC 249*** [***State Bank of India v. Ram Lal Bhaskar & anr.***]

(iv). ***(2019) 10 SCC 367*** [***Karnataka Power Transmission Corporation Limited represented by Managing Director(Administration & HR) v. C. Nagaraju & anr***.]

(v). ***(2013) 10 SCC 106*** [***Deputy Commissioner, Kendriya Vidyalaya Sangathan & ors. V. J. Hussain***]

25. I have heard the learned counsels appearing for the parties and also given due consideration to the materials placed on record.

26. The petitioner was issued with a memorandum of charge, dated 30.09.2010, and therein; 3(three) Articles of Charge came to be so framed against him.

27. The charges as framed against the petitioner, herein, being relevant; are extracted, hereinbelow:

> "***Shri A.C. Das while working as AGM (CE) in Regional Office (Assam), Guwahati during the period 21.07.2004 to 28.06.2009 and as DGM (CE). Zonal Office (NIE) we.f. 29.06.09 failed to maintain absolute integrity devotion to duty and failed to safeguard the interest of the Corporation by committing serious irregularities in so much so that:-***
>
> ***Article-I***
>
> ***The said Shri AC Das, while working as AGM (CE) in Regional Office (Assam) violated the DOP as laid down under Clause No. 24(iii) (a) of FCI Hqrs order no. F/ No.10 (1)/2004-BC dated 14.01.2005. He delegated the power to float tenders in respect of construction & maintenance works of engineering nature to Manager (CE) posted at District Offices in Assam Region without obtaining the approval of Competent Authority. Consequently during the period from 18.05.05 to 25.07 2008, 22 tender enquiries were floated by Manager (CE) of various District Offices in which the value for works awarded is substantially higher in comparison to the amounts mentioned initially in NIT's. Further, no financial concurrence for award in majority of aforesaid works was obtained from the Associate Finance. His aforesaid act of omission and commission was highly prejudicial to the financial interest of the Corporation.***
>
> ***Article-II***
>
> ***Shri A.C. Das, while posted as AGM (CE) in Regional Office (Assam), was one of the Committee members for site selection for construction of 5000MT capacity godown at Hailakandi. In the recommendations of the committee it was mentioned that earth filling would be required to the extent of 1 Meter However, at a later stage Sh. A.C. Das after being promoted and posted at ZO(NE) as DGM(CE) visited the site of construction and pointed out certain deficiencies including the fact that the plinth level is required to be raised further by 0.33M considering certain factors like the level of main road and raising of village road in future He further expressed apprehension that the campus may be flood affected during the rainy season at later stage while observing that the entire site was flooded with water about 2-3 feet on the date of his inspection ie 19.04.10.***

Consequently, Engineering Division, FCI, Hqrs. approved the recommendations of ZO(NE) to increase the plinth height. Later on ZO(NE) proposed that Hqrs. may review again the case for raising the plinth height as suggested by GM(R), RO Assam vide letter dated 27.07.10. However, it was also mentioned by ZO (NE) that as per the decision taken to raise the plinth height, the brick work in RCC column has already been raised at site of work. Sh.A. C. Das as DGM (CE), ZO(NE) being the supervisory in charge of Civil Engineering works in the Zone was duty bound to examine the issue comprehensively at all stages being a part of entire project from the initial stage. His failure to do so has led to substantial financial loss (approximately Rs 14 lakhs) to the Corporation besides undue delay in execution of the project. Thus, his miserable failure in the assigned duties caused financial loss to the Corporation.

<u>Article-III</u>

A case no. RC0172010A0005 dated 24.03.10 has been registered by CBI against Sh. AC Das along with other officers while being posted as AGM(CE), RO Guwahati for misusing his official position. An amount to the tune of Rs.8,73,181/- was paid to the contractors in Civil works under jurisdiction of FCI, DO Tezpur without execution of the works, thus causing pecuniary loss to the Corporation.

By the above acts, Sri A.C. Das, DGM(CE) Guwahati contravened the Regulations 31(a) (b), 32, 32(A) (5) (9) (30) (38) of the FCI (Staff) Regulations, 1971."

28. The Article of Charge No. III as contained in the said memorandum of charge, dated 30.09.2010, was further amended by adding further allegation against the petitioner, by issuance of an addendum, dated 15/22.12.2010.

29. The allegation so added, vide the addendum, dated 15/22.12.2010, being of relevance; the same is extracted hereinbelow for ready reference:

"The following portion is now added under Article of Charge no. III in Annexure I and Annexure II in Statement of Article of Charge & Statement of Imputation of Misconduct or Misbehaviour respectively of the said chargesheet.

"***One more case has been registered by CBI in RC.12(A)/2010-GWH dated 30.11.2010 against Sh. A.C. Das, the then AGM(Civil), FCI, RO Guwahati and others for misusing his official position. An amount of Rs. 12,07,838/- was dishonestly and fraudulently paid to the contractors in Civil works under jurisdiction of FCI, DO Tezpur without execution of the works. As a result of their acts of omission and commission undue pecuniary loss to the Corporation to the extent of Rs.12.07,838 /- is caused. The work orders which were falsely shown to have executed and payments were made are as follows:-***

(i) Work order no. Engg. (O)/2008/15 dtd.21-06-2008, pertaining to painting of roof (GS Sheet) of FSD Bhalukpong by Sh. Golap Medhi (For Rs. 2,25,598/-)

(ii) Work order no. Engg. (O)/2006/48 dtd. 12-07-2007, pertaining to

misc. repairing work at FSD Bhalukpong by Sh. Akash Chakroborty (For Rs. 1,86,406/-)

(iii) Work order no. Engg. (O)/2006/47 dtd.03-05-2007, pertaining to improvement of Sanitary and Water Supply at FSD Bhalukpong by M/s. Gita Enterprise (For Rs. 3,46,502/-)

(iv) Work order no. Engg.(O)/2006/30 dtd. 10-01-2007, pertaining to reconstruction of Boundary Wali for changing position of Main Gate of FSD Bhalukpong by Sh. Charu Mohan Sharma (For Rs. 3,49,332/-)."

30. Having noticed the Article of Charge No. III, as levelled against the petitioner and on perusal of the Inquiry Report as submitted by the Inquiry Officer in the matter; it is found that the Inquiry Officer in his Inquiry Report, dated 15.08.2011, on discussing the evidence coming on record, proceeded to hold that the Article of Charge No. I to be not proved.

31. As regards the Article of Charge No. II; the Inquiry Officer had for consideration of the same, culled-out 4(four) points. Thereafter, on considering the evidence coming on record in relation to the allegations forming the basis of the Article of Charge No. II; the Inquiry Officer proceeded to hold that the said Article of Charge No. II, to be partially proved.

32. With regard to the Article of Charge No. III; the Inquiry Officer recorded the following findings in his Inquiry Report:

"***9.3 As the P.O. has not pressed the charges in Article-III, the C.O. while referring to the CBI's report in the case filed on 24.3.2010 has pleaded for being discharged from these cases and as the CBI Inspector could not attend inquiry proceedings in-spite of notices issued to him nor did the CBI make available the copies of documents to the PO/IO; the matter may be decided by the FCI Management who might have received the CBI reports by now.***"

33. A perusal of the said conclusions as drawn by the Inquiry Officer with regard to the Article of Charge No. III, would reveal that the said charge was not being pressed by the Presenting Officer in the inquiry; the allegations forming the basis of the said Article of Charge No. III was not inquired into.

34. The disciplinary authority, thereafter, vide a disagreement memorandum, dated 09.09.2011, agreed with the conclusions reached by the Inquiry Officer in his Inquiry Report with regard to the Article of Charges No. I & II. However, with regard to the Article of Charge No. III; the disciplinary authority by disagreeing with the findings recorded in this connection in the inquiry report, proceeded to record his findings in the disagreement memorandum, dated 09.09.2011.

35. A perusal of the said disagreement memorandum, dated 09.09.2011, would go to reveal that the disciplinary authority by taking note of the Inquiry Report as submitted by the CBI authorities in CBI Case No. RC.5(A)/2010-GWH; proceeded to hold that the allegations so levelled against the petitioner in Article of Charge No. III basing on the said CBI case, stood proved by the CBI report and the culpability on the part of the petitioner having been brought out by the CBI in the said Inquiry Report, the Article of Charge No. III, to the extent, it relates to the CBI report in the CBI Case No. RC.5(A)/2010-GWH, was held to be proved and accordingly; the petitioner was required to submit his representation in the matter.

36. A copy of the Inquiry Report as well as the CBI report in CBI Case No. RC.5(A)/2010-GWH were also forwarded to the petitioner along with the disagreement memorandum, dated 09.09.2011. The petitioner, thereafter, submitted his representation in the matter. The disciplinary authority, thereafter, vide his order, dated 24.09.2011, on consideration of the materials coming on record in the inquiry including the disagreement memorandum, dated 09.09.2011; proceeded to consider the same, to arrive at a conclusion with regard to the penalty that would be called upon to be imposed upon the petitioner, herein.

37. The disciplinary authority in his order, dated 24.09.2011, again reiterated that the disagreement memorandum, dated 09.09.2011, was issued only pertaining to that part of the Article of Charge No. III relating to the CBI Case No. RC.5(A)/2010-GWH. Thereafter, the disciplinary authority proceeded to record the following conclusions:

> "***The departmental proceedings are quasi-judicial proceedings based on preponderance of probability so level of evidence in such proceedings is at different level from that of criminal proceedings of CBI which are based upon evidences on record. In fact, there are two RCs registered against Shri AC Das for release of payment without actual execution of works. The RC.12(A)/2010-GWH was not pressed due to technical reasons but CBI Report in RC.5(A)/2010-GWH clearly Indicates that release of payment without execution of actual work. Thus, it can be inferred that such practice was widely prevalent under supervision of Shri AC Das. So, his contention that his role is limited to 10% test check only is also not acceptable as he cannot be supervising works which were never executed. The passing of bills by him based on entries of measurement book and without supervision of work at the ground level shows that he has given his approval for bill payment. Non-maintenance of records i.e. site order book, Inspection book at the ground level also show lack of supervision by Sh. A. C. Das. Thus, I find him guilty on portion of article of charge no.3 relating to RC.5(A)-GWH."***

38. Upon drawing the above conclusions; the disciplinary authority proceeded to impose upon the petitioner the penalty of compulsory retirement from his service of the Corporation along with forfeiture of his gratuity to the extent of Rs. 4,00,000/-(Rupees Four Lakhs) in terms of Section 4(6) of the Payment of Gratuity Act, 1972.

39. On examination of the conclusions drawn by the disciplinary authority in his order, dated 24.09.2011, extracted hereinabove; would go to show that the Article of Charge No. III was held to be so proved against the petitioner only basing on the CBI report as submitted in the matter in CBI Case No. RC.5(A)/2010-GWH. The disciplinary authority ignoring the findings as arrived at by the Inquiry Officer in connection with the Article of Charge No. II which was held to be partially proved; limited his consideration to that portion of Article of Charge No. III relating to the CBI Case No. RC.5(A)/2010-GWH and

in the conclusions of the disciplinary authority as extracted hereinabove; it is found that there was a categorical statement made that the petitioner was found guilty only with regard to that part of the said charge pertaining to the CBI Case No. RC.5(A)/2010-GWH.

40. Accordingly, it can be safely concluded that the penalty as imposed upon the petitioner, was so imposed on consideration of the CBI report in CBI Case No. RC.5(A)/2010-GWH, pertaining to allegations forming part of the Article of Charge No. III and not on the basis of any other allegation levelled against the petitioner in the disciplinary proceeding so initiated against him. The materials available on record having demonstrated that the consideration made by the disciplinary authority in his disagreement memorandum, dated 09.09.2011, as well as in the order, dated 24.09.2011, for the purpose of imposition of penalty upon the petitioner being confined to the CBI report as submitted in CBI Case No. RC.5(A)/2010-GWH; this Court is limiting the consideration with regard to the validity of the penalty as imposed upon the petitioner vide order, dated 24.09.2011, to the above aspect only.

41. As noticed hereinabove; the Article of Charge No. III as originally framed against the petitioner contained allegations as forming the basis of the said CBI Case No. RC.5(A)/2010-GWH. However, the said CBI report not being in existence as of then, was not made a part of the list of documents corresponding to the said charge. As reflected in the disagreement memorandum, dated 09.09.2011, the said report was forwarded to the Presenting Officer only on 04.07.2011.

42. Having noticed the materials as reckoned by the disciplinary authority for imposition of the penalty upon the petitioner, vide order, dated 24.09.2011;

this Court would now consider as to whether the materials so considered, could be reckoned to be an evidence as coming on record in the inquiry so held against the petitioner, herein.

43. Regulation 59 of the provisions of the Food Corporation of India(Staff) Regulations, 1971, provides for the manner in which the action is to be taken on receipt by the disciplinary authority of the Inquiry Officer's report. Regulation 59(2) of the said Regulation of 1971, mandates that the disciplinary authority, if it disagrees with the findings of the inquiring authority on any Article of Charge, shall record its reasons for disagreement and also record its own findings on such charge, if evidence on record is sufficient for the purpose.

44. The provisions of Regulation 59(2) of the Food Corporation of India(Staff) Regulations, 1971, being relevant, is extracted hereinbelow:

> "***59. Action on the inquiry report:***
>
> ***(1).....***
> ***(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."***

45. A perusal of the provisions of Regulation 59(2) of the Regulation of 1971, would reveal that the same while empowering the disciplinary authority to disagree with the conclusions reached by the Inquiry Officer on the charges levelled against a delinquent, mandates that the findings as would then be recorded by the disciplinary authority against such charge, is necessarily to be based on evidence on record and after examining as to whether the same is sufficient for the purpose.

46. In the case on hand, the penalty as imposed upon the petitioner is on the basis of the report of the CBI authorities in CBI Case No. RC.5(A)/2010-GWH. The allegations as contained in the said CBI report, formed a part of the Article of Charge No. III so levelled against the petitioner in the present proceeding, so drawn against him. The Article of Charge No. III is a distinct charge and the same pertains to the CBI case registered against the petitioner, herein. The CBI report now relied upon by the petitioner although not a part of the list of documents as appended to the Show Cause Notice, in question; the materials available on record reveal that the same was furnished to the petitioner, herein. A copy of the First Information Report(FIR) in CBI Case No. RC.5(A)/2010-GWH, dated 24.03.2010, was made a part of the list of documents by the addendum, dated 15/22.12.2010.

47. A perusal of the inquiry report would go to reveal that the Presenting Officer had not pressed the charges as contained in the Article of Charge No. III drawn against the petitioner. In view of such development; the Inquiry Officer proceeded to hold that such charge is not being inquired into, with a further finding that the CBI Inspectors enlisted as witnesses in the list of witnesses; had also not appeared in the inquiry inspite of notices being issued to them. Further, it was recorded that the CBI authorities had not made available copies of the documents relevant to the charge framed against the petitioner either to the Presenting Officer or to the Inquiry Officer. Accordingly, it is to be held that the CBI report in CBI Case No. RC.5(A)/2010-GWH, being not produced in the inquiry held against the petitioner and the same not being proved in the inquiry; it cannot be construed to be an evidence, coming on record, in the inquiry.

48. It is to be seen as to whether in the absence of the said report being so

accepted and proved in the inquiry; the same can be construed to be an evidence coming on record in the inquiry for the purpose of disciplinary authority to record his findings after disagreeing with the findings of the Inquiry Officer pertaining to the Article of Charge No. III.

49. In the present case, it is an admitted position that in the inquiry, neither the occasion arose for exhibiting the report of the CBI authorities now relied upon by the disciplinary authority, nor, the authority of the said report were so examined in the inquiry and accordingly; the said report of the CBI authorities, cannot be elevated to the status of an evidence coming on record in the inquiry proceedings and therefore, the same cannot be permitted to be so relied upon to impose penalty against the petitioner, herein. It is to be noted that the CBI report as relied upon by the disciplinary authority for arriving at his conclusions both in the disagreement memorandum, dated 09.09.2011, as well as for the purpose of imposing penalty upon the petitioner, herein, did not form a part of the memorandum of charge issued to the petitioner, nor, the addendum as made thereto, subsequently. As revealed from the disagreement memorandum, dated 09.09.2011; the said CBI report was furnished to the Presenting Officer only on 04.07.2011 i.e. during the course of the inquiry proceedings. Admittedly, the said report not having been exhibited in the inquiry and the author(s) of the report examined in the inquiry; the same cannot be said to a legal evidence emanating from the inquiry so conducted against the petitioner.

50. It is a settled position of law that a disciplinary proceeding being a quasi judicial one; the principles of natural justice, is required to be complied with. This Court while exercising the power of judicial review, is entitled to consider as to whether the authorities while inferring commission of a misconduct on

the part of the delinquent officer, had so done, by taking into consideration, relevant evidence and by excluding, irrelevant facts. The inference of misconduct against a delinquent by the disciplinary authority, must be so based on the legal evidence coming on record in the inquiry and such evidence must have been so taken on record in the inquiry by complying with the principles of natural justice.

51. Reverting back to the provisions of the Regulation 59(2) of the Food Corporation of India(Staff) Regulations, 1971, and it being clear that the disciplinary authority on disagreeing with any of the findings of the Inquiry Officer on any charge; can record his findings thereon, only basing on the evidence on record. Accordingly, the CBI report as relied upon by the disciplinary authority in the matter for imposition of the penalty upon the petitioner, herein; admittedly, not being a legal evidence coming on record in the inquiry held against the petitioner; the same cannot be construed to be an evidence available on record of the inquiry, as indicated under the provisions of Regulation 59(2) of the said Regulation of 1971. It is to be noted that the author(s) of the said report, had also not deposed in the inquiry and thereby, the petitioner was deprived of his right to cross-examine the author(s) of the report.

52. Accordingly, it has to be held that the findings as recorded by the disciplinary authority in the disagreement memorandum, dated 09.09.2011, and the conclusions reached by the disciplinary authority in its order, dated 24.09.2011, for the purpose of imposition of penalty upon the petitioner; has been so arrived at, basing on no evidence.

53. Accordingly, the disagreement memorandum, dated 09.09.2011, as well

as the order, dated 24.09.2011, issued by the disciplinary authority, cannot be sustained.

54. In support of the above-noted conclusions; this Court draws support from the following decisions rendered by the Hon'ble Supreme Court:

(i). The Hon'ble Supreme Court in the case of **State Bank of India, Bhopal v. S. S. Koshal** reported in ***(1994) Supp (2) SCC 468***, had held that while the Inquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come its own conclusions on the charges, it is not in nature of an appeal from an Inquiry Officer to the disciplinary authority, rather, it is one and the same proceedings. It is open to the disciplinary authority to hold the inquiry himself and also, it is equally open to him, to appoint an Inquiry Officer to conduct the inquiry and place the entire records with or without the findings. It was held that, in either of the cases, the final decision is to be taken by the disciplinary authority on the basis of materials adduced.

(ii). The Hon'ble Supreme Court in the case of **Bank of India & anr. Degala Suryanarayana** reported in ***(1999) 5 Supp SCC 762***, on noticing the provisions similar to the one contained in Regulation 59 of the Food Corporation of India(Staff) Regulations, 1971, proceeded to draw the following conclusions:-

> "***10. The law is well settled. The disciplinary authority on receiving the report of the enquiry officer may or may not agree with the findings recorded by the latter. In case of disagreement, the disciplinary authority has to record the reasons for disagreement and then to record his own findings <u>if the evidence available on record be sufficient for such exercise or else to further enquiry and report</u>.***
>
> ***(emphasis added)***

11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

> ***"[T]he High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."***

12. Regulation 7 of the Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 accords with the settled service jurisprudence and provides as under:

> ***"7. Action on the enquiry report. (1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.***
>
> ***(2) The disciplinary authority shall. if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.***
>
> ***(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.***
>
> ***(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."***

13. In the case at hand a perusal of the order dated 5-1-1995 of the disciplinary authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the enquiry officer and then assigned reasons for taking a view in departure from the one

taken by the enquiry officer. The disciplinary authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the disciplinary authority. The finding so recorded by the disciplinary authority was immune from interference within the limited scope of power of judicial review available to the court. We are therefore of the opinion that the learned Single Judge as well as the Division Bench of the High Court were not right in setting aside the finding of the disciplinary authority and restoring that of the enquiry officer. The High Court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned Single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by Bank of India deserves to be allowed to that extent."

(iii). The Hon'ble Supreme Court in the case of ***Moni* Shankar *Vs.*Union of India & anr.,** reported in ***(2008) 3 SCC 484,*** had concluded as follows:

"***17.The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."***

(iv). The Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank & ors., reported in (2009) 2 SCC 570 ,*** had held that the nature of a departmental enquiry is in the form of *quasi judicial* proceeding and the function of the enquiry officer is also quasi judicial in nature. Accordingly, it was held that mere production or consideration of a document is not enough and contents of the documentary evidence have to be proved by examining witnesses. The charges levelled against the delinquent officer must be found to have been true and the enquiry officer is duty bound to arrive at the finding taking into consideration all

materials brought on record. The conclusions as reached by the Hon'ble Supreme Court, in the matter, being relevant, the same is extracted herein below;

> "***23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.***"

55. Applying the decisions of the Hon'ble Supreme Court noticed hereinabove, to the facts arising in the present proceeding; it can be safely concluded that the Article of Charge No. III, not having been inquired into in the inquiry so held; the petitioner, herein, having not been afforded an opportunity to have his say in the matter, no evidence in connection with the Article of Charge No. III can be said to have come on record of the inquiry. It would not suffice, given the stipulations as made in the provisions of the Food Corporation of India(Staff) Regulations, 1971, to rely on materials not proved in the inquiry. Accordingly, the CBI report, in question, not being exhibited and proved in the inquiry, in the manner required; the same could not have been relied upon by the disciplinary authority, either, for recording his findings in the disagreement memorandum, dated 09.09.2011, or, for imposition of penalty upon the petitioner, herein.

56. Accordingly, the disciplinary authority given the stipulation as contained in Regulation 59(2) of the Food Corporation of India(Staff) Regulations, 1971, which requires the recording of reasons upon the disagreement memorandum,

dated 09.09.2011, being issued, to be based on the evidence coming on record in the inquiry; the conclusions reached in the matter by the disciplinary authority in connection with the CBI report involved, has to be so construed to have been so done in clear violation of the mandated procedure in this connection. Further, the reliance placed by the disciplinary authority on the CBI report, in question, without the same being examined in the inquiry and the petitioner, herein, not being afforded an opportunity to question the same by cross-examining the author(s) of such report; it is to be held that the course of action as adopted by the disciplinary authority in the matter, is in clear violation of the principles of natural justice.

57. The said report of the CBI authorities not being in a position to even construed to be an evidence; the reliance as placed thereon, has the effect of vitiating the disagreement memorandum, dated 09.09.2011, as well as the impugned order, dated 24.09.2011, imposing the penalty upon the petitioner.

58. At this stage; it is to be noted that the Article of Charge No. III having not been so considered in the inquiry so held, the disciplinary authority on receipt of the inquiry report in the matter from the Inquiry Officer, was required to direct the Inquiry Officer to conduct a further inquiry in the matter with regard to the said Article of Charge. The said procedure admittedly was not followed in the matter and accordingly, the conclusions as reached by the disciplinary authority in the matter; cannot be sustained and as such, it is to be held that the same is perverse being based on no evidence legally admissible in the matter.

59. In view of the above conclusions; this Court is of the considered view that the disagreement memorandum, dated 09.09.2011, as well as the order,

dated 24.09.2011, requires to be interfered with by this Court and accordingly, the same are hereby set aside.

60. At this stage, the contention of the petitioner that the memorandum of charge was so issued to him after he had superannuated from his service on 30.09.2010, is to be so considered. The petitioner contended that the said memorandum of charge, dated 30.09.2010, was received by him on 06.10.2010 only. However, from the order, dated 07.12.2010, passed by the disciplinary authority; it is seen that the said memorandum of charge was sought to be served upon the petitioner on 30.09.2010 itself and it not being possible, the same was so pasted at a conspicuous place of his residence on the same very date by a committee constituted in the matter. In view of the above position and also the conclusions reached hereinabove; the issue as to whether the memorandum of charge was so served upon the petitioner after the date of his retirement, is not being considered in the present order.

61. Having set aside the order of penalty, dated 24.09.2011; further consequential actions taken in the matter would also stand interfered with.

62. Accordingly, the petitioner, herein, would now be reckoned to have superannuated from his service w.e.f. 30.09.2010 and he would be entitled to receive his pension and pensionary benefits as per the Rules and Regulations of the respondents Food Corporation of India(FCI). Further, the order, dated 24.09.2011, having been interfered with by this Court; the recovery of Rs. 4,00,000/- (Rupees Four Lakhs) as made from his gratuity, would now be required to be re-authorized to the petitioner along with the interest at the rate of 6% per annum with effect from the date of effecting of such recovery till the date it is so re-authorized.

63. In view of the directions passed hereinabove; the pension and pensionary benefits due to the petitioner, be now computed and the amount so becoming due to the petitioner, be released to him along with the amount of Rs. 4,00,000/- (Rupees Four Lakhs) so recovered from his gratuity, with the interest as directed hereinabove; within a period of 3(three) months from the date of receipt of a certified copy of this order.

64. The petitioner, for compliance of the directions passed by this Court hereinabove, shall furnish to the respondents No. 2 & 3, a certified copy of this order.

65. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant