

CONSTITUTIONAL WRIT

Present: The Hon'ble Mr. Justice Tapen Sen

Judgment on 03.09.2010

W.P. No. 10153 (W) of 2009

Sri Rameswar Biswas

Vs.

Food Corporation of India & Ors.

Points:

Penalty-Disciplinary proceeding- Disciplinary Authority wants to differ with the views taken by the Enquiry Officer- Whether bound to give a second notice to the employee – Whether the amount of penalty can be recovered by the authority from the gratuity payable- Service law

Facts:

The Petitioner challenges the Charge-sheet, the Enquiry Report, the Order of punishment and questions the non-disposal of his Appeal that he had filed. He has also prayed for a direction upon the Respondents to pay all retirement benefits including pension together with statutory interest. There were three charges against the petitioner but the enquiry officer held two charges were not proved. Regarding other charge finding was that Supervision of CO as Depot in-charge is not adequate. The Disciplinary Authority imposed the penalty of reduction to one stage and ordered recovery of Rs.1 lakh from the terminal benefits of the Petitioner. Petitioner filed an Appeal against the said order. From the gratuity the said sum of Rs. 1 lakh has already been deducted by the authority.

Held:

It is a settled principle of law that if the Disciplinary Authority wants to differ with the views taken by the Enquiry Officer, then he is bound to give a second Notice to the Petitioner. Having not done so, the Disciplinary

Authority would be deemed to have acted contrary to such a settled principle. Para 14

An employer can punish only for listed misconducts which are listed as such in their Service Regulations and not otherwise. Ordering the recovery and punishing the Petitioner for his personality cannot therefore be sustained. Under such circumstances, the impugned Order of punishment is set aside and the Writ Petition is allowed. The matter is remanded to the authorities to pass a fresh Order in accordance with law and from the stage of submission of the Enquiry Report. The Respondents however, must refund the sum that they have deducted from the payable Gratuity of the Petitioner together with simple interest @ 6% p.a. Para 22

Cases Cited:

Lav Nigam Vs. The Chairman and MD, ITI Ltd. and Anr., (2006) 9 SCC 440; Punjab National Bank & Ors. Vs. Kunj Behari Misra (1998) 7 SCC 84

For the Petitioners : Mr. Maniklal Mukhopadhyay

Mr. Debajyoti Das

Ms. Priyanka Das

For the Respondent : Mr. Prabir Kumar Choudhuri

Tapen Sen, J.: The Petitioner challenges the Charge-sheet dated 28.12.2006, the Enquiry Report dated 14.1.2008, the Order of punishment dated 18.6.2008 and questions the non-disposal of his Appeal that he had filed on 11.8.2008 (Annexure- P/15). The Petitioner has also prayed for a direction upon the Respondents to pay all retirement benefits including pension together with statutory interest.

2. According to the Petitioner, he joined the Food Corporation of India in 1973 as Assistant – Grade III (D) and was finally promoted to the post of a Manager (Depot). After serving more than 34 years, he retired on 31.1.2008. According to the further case of Petitioner, he joined as Manager (Depot) at Gopalpur in November 2000 but prior to his joining, a CBI Enquiry was under process against the Officer/Staff of Gopalpur Depot/ District Office, Durgapur for defalcation of FCI stocks and stores. Consequently, 10 employees were either removed from service or transferred to other places. These employees had left the Depot without handing over charge and it was under these state of affairs that the Petitioner had joined and he was neither handed over charge of the Depot nor was he intimated about the “operational hazards” of the said Gopalpur Depot.

3. The Petitioner has, in various paragraphs, stated, for his defence, his activities, his conduct and responsibilities while at Gopalpur. These are stated between paragraphs 3 to 11 and they are quoted below:-

“3. Your petitioner states that in addition to the duty of the Manger (Depot), he was also to take responsibility of Manager (Movement) in the depot and railway siding along with duty of Chief Labour Inspector for the labour force of about 350 heads working there. Therefore, he had to run from various corner of the depot and railway siding for efficient and effective performance of the depot work, movement work at railway siding Asansol and settlement of day to day problems of the workers.

4. Your petitioner states that the capacity of the Gopalpur Depot was 37800 Mts. Whereas to save demurrages, more than 40,000 Mts. Stocks of food grains- wheat and rice were accommodated there. In addition to that, there were various commodities of food grains stored there viz. Wheat (red), wheat (white), rice (boiled), rice (raw) and issuable and non-issuable food grains including gunnies and dead stock articles, which also had covered a very good position of capacity. Moreover, one stack space about 100 Mts.

Was utilised as shed/godown/sector office for conducting the operational work in every depot/sheds. Therefore, to accommodate the new arrivals of the food grain, the food grain bags were dumped at the alleyways/gangways gangways and thus, the individual identity of the bags and its contents were not assessable. Another serious problem was noticed there was that all sheds/godowns were having only one door, floors were not damp-proof and there were no scopes of cross ventilation in those sheds/godowns. In short, the A.R.D.C., Gopalpur a storage unworthy godown where stocks of food grains should not be stored for more than ¾ months. But due to non-availability of movement programme and deteriorated condition of wheat and rice, the depot was bound to keep the stocks for years together, for which the stocks were further deteriorated to a greater extent and for the same, respondent authorities were responsible. In addition to the storage unworthiness of the godown and also due jampacked condition of the depot along with non-posting of quality control staff there, the curative measures of the food grains of the godowns could not be undertaken properly and effectively, as a result , the wheat and rice stocks were deteriorated to a great extent and some of the stocks were turned into Category 'A' to Category 'C' – 'D' (partly damaged). The District Manager/Area Manager, Durgapur was also intimated about the alarming condition of the stocks of the depot by the petitioner in due time as soon as he joined there. The District Manager (Durgapur) also had intimated the same to the Senior Regional Manager/General Manager. A xerox copy of the D.O. letter issued by the Senior Regional Manager (W.B.) to District Manager, Durgapur, is annexed herewith and marked hereto with the letter 'P-2'.

5. Your petitioner states that due to abovesaid deplorable condition of the godown/depot, prior to his arrival there and also for the release of punished/transferred staff from the depot without handing over the charge of the godown/shed/sector, the storage losses, which had taken place prior to

arrival of your petitioner there, could not be brought into limelight and all those losses (for which CBI enquiry had been conducted and a good number of employees were punished/transferred) were detected subsequently when the godown/sheds were physically verified by way of issuing/shifting the stocks to other sheds/depot for the purpose of de-hiring the depot of Gopalpur. Thus, it was crystal clear that the alleged losses/shortages of both bags/weight had taken place prior to arrival of your petitioner at Gopalpur Depot, when the depot was running in a pellmell condition but unfortunately due to negligence and careless attitude of the higher-ups coupled with giving shelter/coverage of the past deeds, the entire responsibility was thrown upon the shoulder of your petitioner who was working day and night in three capacities of Manager (Depot), Manager (Movement) and CLI and therefore, for the alleged losses, neither your petitioner was responsible nor any negligence on his part could be levelled upon him as the alleged storage loss had been taken place/occurred prior to his arrival at Gopal Depot.

6. Your petitioner states that as per job specification of the corporation, Manager (Depot) is not the custodian of stocks. AG-I (depot) is the custodian of the stocks/shed incharge and for any omission/commission of stocks of food grains in the shed/godown/sector, Shed Incharges are personally responsible and answerable to the authority. But even knowing such position of job specification, the respondent authorities had thrown all responsibilities upon him wrongly, illegally and arbitrarily in violation of their own rule/job specification and therefore, the same is not tenable in the eye of law. A xerox copy of each of the job specification of Manager (Depot)/AM(D) and AG-I (D) are annexed herewith and marked hereto jointly with the letter 'P-3'.

7. Your petitioner states that the concerned Sector/shed/godown incharges, who were compelled by the then authorities to take over the charges of the sheds/sectors/godowns of Gopalpur on the basis of book balance only after

departure of the punished/transferred employees, were also punished for high percentage of storage losses in their sheds as the earlier losses could not be identified due to non-conducting of 100% weighment of the stocks stored there. The entire episode was taken place due to ill, wrong and arbitrary direction of the respondent authorities to cover up some fishy affairs of the depot which occurred prior to joining of your petitioner at Gopalpur Depot. The petitioner was treated as a scapegoat and thereby he was made a victim for the misdeeds of the respondent authorities for which your petitioner was in no way responsible.

8. Your petitioner states that as per Corporation's rules, quality control officials are personally responsible for the storage losses in the godowns/sheds. They are answerable for proper maintenance of the stocks. As far as the quality control staff are concerned, they are responsible not merely for advice but for planning and implementing of the necessary steps for keeping the stocks in sound condition. In the instant case, the stocks of food grains of rice and wheat had been deteriorated to a great extent and the condition of the grains was down graded, heavy infestation was noticed including the attack of Khapra and deterioration means loss of weight and therefore, deterioration of food grains was one of the prime reason for the alleged storage losses. Xerox copies of the instruction of the Corporation authorities and the acceptance of the respondent authorities dated 2.2.2001 are annexed herewith and marked hereto jointly with the letter 'P-4'.

9. Your petitioner states that in FCI, charge sheets are issued purely based upon book figures of storage losses, representing the differences between the receipt weight and delivery weight. Period of storage, down gradation of stocks, storage unworthiness of the godown, driage of moisture contents and handing losses are never taken into account which is wrong, illegal and does not represent the actual losses in storage in FCI Depot/godowns. The losses are also never be quantified by the authority concerned. In view of the

above position, the Managing Director of the Corporation had instructed all concerned to investigate as to the cause of such loss and consequential responsibility of the delinquent officials. Such charges can be kept pending and should be processed further after due investigation if the case exists. In the instant case also no investigation was conducted as to the reasons of the alleged storage losses and the quantum of loss was assessed/found out on the basis of quantity receipt minus quantity issued and therefore, the same figure could not in any way represent the actual storage losses position of the Gopalpur Depot and therefore, the charge sheet prepared on the above-said basis was void ab initio. A xerox copy of the said D.O. letter dated 28.11.1996 is annexed herewith and marked hereto with the letter 'P-5'.

10. Your petitioner states that the moisture contents had played a vital role in contributing losses in storage at Gopalpur Depot. The Admitted position was that the differences of 1% moisture contents between receipt and delivery of food grains might contribute storage losses about 0.7%. in this case, this important and vital point was purposefully overlooked by the disciplinary authority while assessing the losses in storage. Thus, it was proved beyond doubt that without verifying and taking into account the various aspects of the grounds/reasons of storage losses, the disciplinary authority in a casual manner and also to cover up the past misdeeds of the staff and officers of Gopalpur Depot including District Office, Durgapur, had flashed the quantity of storage losses by way of stock receipt minus stock delivered, which was totally wrong, irregular, illegal, unscientific and in violation of FCI's own instruction. Hence, the very calculation of the quantity of storage losses suffered from inherent defects and therefore, the alleged storage losses did not represent the actual picture of the depot and thus, the allegation of high percentage of storage loss as well as negligence in supervision stood incorrect.

11. your petitioner states that it is scientifically proved that food grains of rice are an organic compound of botanic origin, origin, consisting of starch, protein, oil and water. These organic compounds are subject to earlier or later decomposition, depending upon mode of preservation and natural weather/environmental condition. Hence, the question of good preservation arises under a particular temperature in an air-tight container. It can be preserved for a longer period but it is very much difficult to preserve the food grains in the open godown in its original grade/condition more than one year. If the food grains are stored in the open godown, the peripheral layer of the grains deteriorates and turns into dust condition. Every biological product has natural destruction and loss of weight after a specified period and the food grains of rice and wheat is not exception to that. The percentage of weight loss increases with the deterioration of the stocks in question. In the instant case, the food grains of rice and wheat were stored in the storage unworthy godown of Gopalpur Depot in a jam-packed condition. The quality control treatment was not possible to undertake due to shortage of quality control staff, jam-packed condition of the godown, storage of food grains more than its capacity in the godowns, non-availability of cross-ventilation and failure of maintenance of 'FIFO' system due to one door system of the sheds. Moreover, the stocks of food grains were severely infested with Khapra and as such stocks of wheat issued for Bangladesh had been refused/returned back. Therefore, a very good quantity of food grains was severely downgraded which contributed a very good quantity towards storage losses at Gopalpur Depot, which was not accounted for. Hence, the figure of storage losses as shown by the respondent authorities was not the accurate one."

(Quoted)

4. It appears that on 28.12.2006, a Charge-sheet was issued against the Petitioner. There were three Articles of Charges against him and they read as follows:-

“ARTICLE OF CHARGES FRAMED AGAINST SHRI RAMESWAR BISWAS, ASSTT. MANAGER (DEPOT) FORMERLY POSTED AT ARDC GOPALPUR UNDER THE DIST. MANAGER, FCI, DURGAPUR.

Article:I

Shri Rameswar Biswas, Asstt. Manager (Depot) while working as Depot Officer, ARDC, Gopalpur under the Dist. Manager (Durgapur) had neglected to supervise the wheat stocks in the Sector-A,B& C of the Depot during the period from Jan. 2002 to July 2003, as a result of which the Depot sustained huge loss of the wheat stocks found on 100% weighment out of physical verification which were detected as short of Qtls. 3664,14;280 amounting to Rs. 33,23,010.08 due to his supervisory lapse and lack of proper control on the performance of the shed In-charges of the sheds under the Sectors A,B &C, Shri Rameswar Biswas failed to maintain absolute integrity and devotion to his duties and acted in a manner prejudicial to the interests of the Corporation contravening Regulation 31(a), (b), (c), 32,32A(5)(9) and (30) of the FCI Staff Regulations, 1971 as amended.

Article.II.

Shri Rameswar Biswas, Asstt. Manager (Depot) while working as Depot Officer, ARDC Gopalpur under the Dist. Manager (Durgapur) had neglected to supervise the Rice stocks in the Sector A,B & C of the Depot during the period June 31(a),(b),(c), 32,32A (5)(9) and (30) of the FCI Staff Regulations, 1971 as amended.

Article:III

Shri Rameswar Biswas, Asstt. Manager (Depot) while working as Depot supervise the weight of weigh Bridge where weight variations were detected on placement of empty/loaded truck from front side, middle side and back

side. By his acts as aforesaid, Shri Rameswar Biswas failed to maintain absolute, integrity and devotion to his duties and acted in a manner prejudicial to the interests of the Corporation contravening Regulations 31(a), (b), (c), 32,32A(5)(9) and (30) of the FCI)Staff(Regulations-1971 as amended.”

(Quoted)

5. The Enquiry Report that was submitted by the Enquiry Officer concluded with the following findings. They read as follows:-

“Conclusion:-

In view of above, I like to conclude as follows:

Article:I- Supervision of CO as Depot incharge is not adequate.

Article:II- Charges not sustainable.

Article:III- Charges not proved.”

(Quoted)

6. Thus, from a perusal of the aforementioned conclusion, it is evident that Charge nos. 2 and 3 were not proved whereas in respect of Charge no. 1, the finding was that the supervision of the Petitioner was not adequate.

7. Thereafter on 18.6.2008, the Disciplinary Authority passed an Order wherein he stated that the arguments put forward by the Enquiry Officer on pages 4 and 5 of the Enquiry Report was not acceptable and finally, in exercise of his powers conferred under Regulation 56 and Appendix (ii) read with 60A of the FCI (Staff) Regulations, 1971, imposed the penalty of reduction to one stage in the same time scale of pay and further Ordered the recovery of Rs.1 lakh from the terminal benefits of the Petitioner.

8. It appears that thereafter the Petitioner filed an Appeal on 11.8.2008 which was followed by reminders dated 20.1.2009, 16.2.2009 but the Petitioner has stated that till date, the Appeal has not been finalised.

9. In their Affidavit-in-opposition, the Respondents have stated that the Petitioner was proceeded against under Regulation 58 of the FCI (Staff)

Regulations on account of his supervisory failure which resulted in the shortage of 3664.14.280 Quintals of Wheat valued at Rs. 33,23,010.08 and 3631.29.810 Quintals of Rice valued at Rs. 43,14,781.02. They have also stated that there were supervisory failure on the part of the Petitioner with regard to weight verification and it was detected on placement of the loaded/empty stocks on the weigh bridge

10. They have further stated that the Enquiry Officer submitted his Report dated 14.1.2008 and concluded that so far as Charge No. 1 was concerned, the supervision of the Petitioner was not adequate and that so far as Charge nos. 2 and 3 were concerned, the Enquiry Officer came to the conclusion that these were not proved. The Petitioner filed a reply to the Enquiry Report in his defence on 29.1.2008 and the Disciplinary Authority, considering all these materials imposed the penalty referred to above vide Order dated 18.6.2008. They have also admitted that the Petitioner had filed his Appeal on 11.8.2008. According to them, the Petitioner is solely responsible for the loss suffered because of his supervisory lapses and because of his irresponsibility, the FCI suffered a huge loss. They have further justified the punishment in various other paragraphs of the Affidavit-in-opposition.

11. Mr. Manicklal Mukherjee, learned Counsel for the Petitioner has confined his submissions only to points of law. He has relied upon the case of *Lav Nigam Vs. The Chairman and MD, ITI Ltd. and Anr.* Reported in **(2006) 9 SCC 440** in support of his contention that the Disciplinary Authority could not have straightway issued the Order of punishment without giving a Notice to the Petitioner when he disagreed with the findings of the Enquiry Officer. He relied upon a portion of the impugned Order in which the Disciplinary Authority observed that the arguments of the Enquiry Officer on pages 4 and 5 were not acceptable to him. Consequently, he gave his own reasoning and came to the conclusion that the Petitioner was accountable and thereafter imposed the punishment. He submits that under

such circumstances and following the ratio decided by the Supreme Court in *Lav Nigam Case (Supra)*, the Disciplinary Authority was bound to have given a Notice to the Petitioner before coming to a conclusion and/or finding of guilt. Having not done so, he submits that the Order is fit to be set aside. The relevant portions of the Order of the Disciplinary Authority are as follows:-

“And Whereas Shri Rameswar Biswas, Manager (Depot) was given a personal hearing on 30.01.08 as a way of reasonable opportunities. And Whereas the undersigned has gone through the reply in defence of the Charged officer together with the entire case particulars carefully that have been placed before him. The Enquiry Report states that charge No. 1 is established and charge No. II and III are not sustainable but the losses that have been reflected in the Article of charge as well as in imputation in respect of charge No. II is indeed very magnifying. It ranges from 0.6% to as high as 29% interms of storage loss. The Inquiry Officer has come to the conclusion against charge No. I that there was lack of intensity in supervision on the part of Shri Biswas. The charges No. II & III also allege his supervisory failure in curbing the losses. **And Whereas the arguments put forward by the Inquiry Officer in the Enquiry Report on Page-4 and 5 respectively is not acceptable.** Gunny account is a very vital instrument in the hands of the supervisory Manager, they are to submit the DSI, DSR and duly tallied with the workdone slips. If gunny saving operationi have been undertaken the same should and ought to have been duly cross checked with the workdone slips and ultimately reflected in the said same documents. The Registers should have been checked and tallied if gunnies had been issued from the stores, the same should have been duly kept track of and verified with the DSI and DSR which is sent to the Distt. Office every day after every transaction. From there it can be checked up the gunny position. It may not tally fully and correctly to 100% in view of

old and torn gunnies, but nevertheless the variation can not be to the extend of 4074 pieces of gunnies found in excess. Some of the gunnies may have been inducted which may or may not be in the knowledge of the depot-in-charge Shri R Biswas, AM(D), but from the above narration it can be inferred upon that Shri Biswas had not been undertaking revision of the gunny account and the home work relating thereto. It was expected of him to ensure that all the depot transactions at FSD Gopalpur was in order and duly tallied with it operationally. **He is lacking in his Supervisory ability** as a result he had encouraged for the incurrance of such loss or excess, indirectly causing loss, and a failure to protect the interest of the Corporation. **He is accountable for same.** And Whereas the investigating teams have not taken into account the in depth causes of the gunnies and its shortages and excess. There are reflections around that ventilators were broken in the depot. Some foodgrains may have passage out in/and out of these openings. In order to make good the shortage in the grains, gunnies have been inducted in blending the whole shady affair as the case of Storage loss. It was indeed a colourful exercise in the position of the incumbent who had been appointed to take care and protect the interest of the corporation, but acted otherwise. Since the quantum of the losses can not be evaluated exactly at this belated stage, I **feel a token recovery** of Rupees one lakhs would meet the part of the losses so incurred to FCI by the casual and negligent, easy go attitude of Sri Biswas. And Whereas regarding the shortage in the wheat, there is no doubt gross negligence and lacking effective supervision in not being a black cat, watch dog on the part of him. **He appears to be a simple, docile and introvert type of person, not knowing how to tackle the den of evil mongers around him. The observation made by the Enquiry Officer in his report has indication of the same. He does not appear to be that rough and tough. His simplicity had been exploited by the subordinate staff. Shri Biswas should have known the art and the science of the**

working knowledge. And Whereas on assessment of evidences, examination of Inquiry Report and reply of the Charge Officer as a Disciplinary Authority, **the undersigned considers that the ends of justice would be met by imposing the penalty of reduction of one stage ion the same time scale of pay and a recovery of one lakhs upon Shri Rameswar Biswas, Manager (Depot)** Now, Therefore, the undersigned in exercise of the powers conferred upon under Regulation-56 and Appendix (ii) read with 60A of the FCI (Staff) Regulations, 1971 hereby imposes the penalty of reduction to one stage in same time scale of pay and a recovery of one lakhs upon Shri Rameswar Biswas, Manager (Depot) from his permissible terminal benefits. (G.P. Pandey) Executive Director (EZ)”

(Quoted but emphasis by bold fonts is by this Court)

12. Learned Counsel submits that from a perusal of the aforementioned observations of the Disciplinary Authority, it would be evident that he has come to his own conclusions after differing with the Enquiry report and therefore, he could not have passed the impugned Order of punishment without giving Notice to the Petitioner.

13. Para 10 of the aforementioned Judgment in *Lav Nigam's Case* reads as follows:-

“10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.”

(Quoted)

14. There appears to be substance in the arguments of the learned Counsel. It is a settled principle of law that if the Disciplinary Authority wants to differ

with the views taken by the Enquiry Officer, then he is bound to give a second Notice to the Petitioner. Having not done so, the Disciplinary Authority would be deemed to have acted contrary to such a settled principle.

15. In another case of the Supreme Court passed in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Misra** reported in (1998) 7 SCC 84 (Paras 17 and 19), the Supreme Court has held as follows:-

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority had recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favor of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard.

In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(Quoted)

16. There is another aspect to this case and that is with regard to the observations made by the Disciplinary Authority himself. These observations, are as follows:-

“He appears to be a simple, docile and introvert type of person, not knowing how to tackle the den of evil mongers around him. The observation made by the Enquiry Officer in his report has indication of the same. He does not appear to be that rough and tough. His simplicity had been exploited by the subordinate staff. Shri Biswas should have known the art and the science of the working knowledge.”

(Quoted)

17. Upon a perusal of the aforementioned observations and considering the earlier observations made by the said Disciplinary Authority mentioned

above, the said observations, where he says that since the quantum of losses cannot be exactly evaluated a token recovery would meet part of the losses for the casual, negligent and easy-go attitude of the Petitioner and then proceeding to deduct the sum of Rs. 1 lakh from his terminal benefits and, as has been told to this Court, the recovery has already been made from his gratuity, this Court is of the view that for the personality of a person, the punishment is not at all commensurate. In para-27 of the Writ Petition and towards the bottom thereof the Petitioner has stated that Rs. 1 lakh has been realised from his gratuity and the same be refunded together with statutory interest. In other words, the Petitioner has clearly mentioned the fact relating to recovery of this amount from his gratuity. This specific statement has not been denied in Para-22 of the Affidavit-in-opposition which merely reads as follows:-

“22. With reference to paragraph No. 27 of the said petition I deny the allegations made therein, save and except what are matters of record. I state that the delay if any occurred to clear the retrial benefits of the petitioner was due to disciplinary proceeding against the petitioner.”

(Quoted)

18. In this context, Para-27 of the Writ Petition needs also to be quoted:-

“27. Your Petitioner states that as per FCI’s rules/regulations and procedure in vogue, retirement benefits, i.e. gratuity, encashment of leave, CPF and pension are payable on the date of retirement of the petitioner but due to defective and illegal order issued by the respondent authority in violation of FCI (staff) regulations, 1971, after the retirement of the petitioner the payment of retirement benefits had been kept for months together even after receiving several representations from the petitioner. Your petitioner further humbly states that after keeping pending all the retirement benefits for more than 11 months, the respondent authorities had paid him the same except pension without paying any interest for such delayed payment. It is also an

admitted fact of law that gratuity is untouchable and no recovery can be made from the same even against an admitted dues. Hence, it is prayed before this Hon'ble Court for allowing statutory interest and refund of Rs. 1 lakh, realised from the gratuity amount illegally by the respondent authorities.”

(Quoted)

19. Section 13 of the Payment of Gratuity Act, 1972 makes it clear that gratuity payable under the said Statute shall not be liable to attachment in execution of any Decree or Order of the Civil Court, Revenue Court or Criminal Court. Section 13 of the Payment of Gratuity Act reads as follows:-

“13. **Protection of gratuity-** No gratuity payable under this Act [and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.”

(Quoted)

20. If the Courts of the land do not have the jurisdiction to attach Gratuity, how could the Respondents do so without establishing that there has been a Notification under Section 5 of the said Act. Moreover from the observations of the Disciplinary Authority on the personality of the Petitioner, it cannot be said that he has committed a grave misconduct as there is neither any charge-sheet of grave misconduct nor any finding based on such a charge.

21. Another factor that bothers this Court is that after the Order of punishment, the Petitioner filed an Appeal on 11.8.2008. Till date the same has not been disposed of. Under such circumstances, this Court has no option but to set aside the Order of punishment dated 18.6.2008 passed by the Authorities.

22. Before this Court parts with this case, it must also like to mention that an employer can punish only for listed misconducts which are listed as such in their Service Regulations and not otherwise. Ordering the recovery and punishing the Petitioner for his personality cannot therefore be sustained. Under such circumstances, the impugned Order of punishment is set aside and the Writ Petition is allowed. The matter is remanded to the authorities to pass a fresh Order in accordance with law and from the stage of submission of the Enquiry Report. The Respondents however, must refund the sum that they have deducted from the payable Gratuity of the Petitioner together with simple interest @ 6% p.a.

23. Writ Petition is accordingly disposed of.

24. Upon appropriate Application(s) being made, urgent Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.

(Tapen Sen, J.)