

(2025) 05 DEL CK 0928
In the Delhi High Court
Case No : Writ Petition (C) No. 6478 Of 2010

Raj Kumar

APPELLANT

Vs

Food Corporation Of India & Ors

RESPONDENT

Date of Decision : 21-05-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Payments of Gratuity Act, 1972 — Section 4(6)(a)

Citation : (2025) 05 DEL CK 0928

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Uddhav Pratap, Vijay K. Kaushal, Deepak Dewan, Muskan Dewan

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. By way of this petition under Article 226 of the Constitution, the petitioner assails orders passed against him in disciplinary proceedings arising out of a chargesheet dated 07/15.10.2003, including the orders of the Disciplinary Authority dated 16.11.2005, the Appellate Authority dated 22/27.06.2006, and the Reviewing Authority dated 29.03.2007.

A. FACTS:

2. The petitioner was appointed as Assistant Grade III (Depot) in the respondent —Food Corporation of India ["FCI"] on 13.12.1976. He was promoted to the post of Assistant Grade II (Depot) on 05.11.1994.

3. The disciplinary proceedings concern a period when the petitioner was posted as Assistant Grade II in FCI, Food Storage Depot ["FSD"] at Faridabad. A chargesheet was issued to him on 07/15.10.2003 on the following Article of Charge:

"That Shri Raj Kumar, AG. II (D) now AG.III(D), while working as such at FSD

Faridabad in Distt. Gurgaon during the year 2001-02 failed to maintain absolute integrity and due devotion to his allotted duties, in so much so that huge shortages/misappropriation of wheat stocks besides other irregularities were observed.

He is thus found of negligent conduct causing loss to the Corporation deliberately for his ulterior motives, contravening thereby Regulation 31, 32 & 32 A of FCI (Staff) Regulations, 1971."

4. The imputation of charge, annexed to the Chargesheet, stated that huge shortages/misappropriation of wheat stocks had been noticed, besides other major irregularities alleged to have been committed by the petitioner, in connivance with other employees. A committee of four Area Managers had inquired into the matter and found a huge shortage to the tune of 1846-85-282 Qtls. A shortage of gunny bales was also noticed, pursuant to which it was contended that the petitioner was involved in misappropriation.

5. An inquiry was held jointly in respect of four employees, viz., Mr. D.P. Gupta, Mr. Sanjeev Kumar Sharma, Mr. Sultan Singh, and the petitioner. After examination of witnesses for the management, and granting opportunity of cross-examination, the Inquiry Officer recorded the statements of the Charged Officers, including the petitioner. The charge was held to be proved.

6. The petitioner submitted a representation against the Inquiry Report; however, it is unnecessary to discuss the same in detail, as the arguments in the writ petition have been confined to the question of parity with the punishment imposed upon Mr. Sultan Singh and Mr. Sanjeev Kumar Sharma. While the petitioner was subjected to the penalty of compulsory retirement, forfeiture of gratuity, and recovery of the sum of Rs. 5,00,000/- as penalty, Mr. Sultan Singh was awarded the penalty of 'Censure' and recovery of Rs. 1,00,000/-, whereas Mr. Sanjeev Kumar was only subjected to a reduction of pay by one increment with cumulative effect.

B. SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. I have heard Mr. Uddhav Pratap, learned counsel for the petitioner, and Mr. Deepak Dewan, learned counsel for FCI.

8. Mr. Pratap has taken me through the report of the Inquiry Officer, in which it is stated that the petitioner was the Silo-in-charge, Faridabad, whereas Mr. Sultan Singh was the Assistant Manager (Depot). Both the said employees, alongwith Mr. Sanjeev Kumar Sharma, Technical Assistant Grade I, who was also in charge of the Silo, are stated by PW-2/Mr. Harish Kumar, Assistant Manager (General), to have been primarily responsible for the loss. Mr. Pratap submitted that perusal of the disciplinary orders against the petitioner, when compared to the orders passed against Mr. Sultan Singh and Mr. Sanjeev Kumar Sharma, would show that broadly similar allegations were made against all three employees, but a far more grievous penalty has been imposed upon the petitioner. Mr. Pratap cited the

judgments of the Supreme Court in *State of U.P. v. Raj Pal Singh* (2010) 5 SCC 783, (hereinafter "Raj Pal Singh"), and *Rajendra Yadav v. State of M.P.* (2013) 3 SCC 73, (hereinafter, "Rajendra Yadav"), and the decision of this Court in *Punjab & Sindh Bank v. Raj Kumar* (2024) SCCOnline Del 6431 [hereinafter, "Punjab & Sindh Bank v. Raj Kumar"] in support of his contentions.

9. Mr. Dewan, on the other hand, first submitted that the petition is barred by delay and laches, having been filed only in October 2010, more than three years after the disciplinary proceedings came to a close with the order of the Reviewing Authority dated 29.03.2007.

10. On merits, Mr. Dewan submitted that the orders of the Disciplinary Authority in the cases of the other officers make it clear that it was the petitioner who was Silo-in-charge, and the role played by him was distinguishable from the role played by the other charged officers. He drew my attention to the finding in the order against Mr. Sultan Singh that his punishment was reduced only because he was on the verge of retirement, and the order against Mr. Sanjeev Kumar Sharma, that he had, in effect, been exploited by the petitioner herein.

11. In rejoinder, on the question of delay and laches, Mr. Pratap cited the judgment of the Supreme Court in *Sukh Dutt Ratra & Anr. v. State of H.P. & Ors.* (2022) 7 SCC 508 [hereinafter, "Sukh Dutt"]

C. ANALYSIS:

(a) Re: Delay and laches

12. Turning first to the question of delay and laches, it may be noted that the disciplinary order dated 16.11.2005 was first challenged by the petitioner in appeal and review under the FCI (Staff) Regulations, 1971. These culminated in orders dated 22/27.06.2006 and 29.03.2007. The writ petition was, however, filed more than three years thereafter, supported by an affidavit dated 07.09.2010. The issue regarding delay was noted in the first order of the Court, dated 24.09.2010, and the petitioner was granted liberty to file an application explaining the delay. CM APPL. 19704/2010 was thereafter filed for this purpose. By an order dated 18.03.2013, the writ petition was admitted, leaving open the question of delay.

13. To explain a delay of over three years, the petitioner has averred as follows, stating that he had certain medical issues during the relevant period:

"5. That it is humbly submitted that as there being no time limit for filing the writ petition and it may be filed within a reasonable time if the entire situations are normal though the reasonable time is also not defined. However, it is just for avoiding any controversy in the present case of the petitioner, had there been the normal situation, then the reasonable time for filing the writ petition for him could be presumed to have been the end of July, 2007. But because of his illness as explained above, the petitioner is undergoing treatments from 21.7.2007 onwards and the writ petition could not be filed which however, could be filed

only on 15.9.2010 before this Hon'ble Court after the delay of 1110 days if it is reckoned from the August, 2008 to 15.9.2010 the date of filing this writ petition."

14. Alongwith CM APPL. 19704/2010, the petitioner, however, has only filed a single medical certificate dated 02.10.2010, according to which he was being treated from May 2007 for obesity, diabetes mellitus, anxiety neurosis, and depressive neurosis. It was stated that he was advised to get treatment and expert consultation.

15. While the law does not stipulate any strict period of limitation for invocation of constitutional remedies, the judgments of the Supreme Court require the Court to ensure that writs are not issued in respect of belated and stale claims (Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108, paragraphs 16, 17 [hereinafter, "T.T. Murali Babu"]. State of J&K v. R.K. Zalpuri, (2015) 15 SCC 602, paragraphs 26-28 [hereinafter, "RK Zalpuri"]). The judgments in T.T. Murali Babu and R.K. Zalpuri both flow from orders of termination of employment, which were challenged four to five years later. The period is, thus, comparable to the period of delay in the present case. In both cases, the Court held, on an examination of the explanation offered, that the writ ought not to have been entertained.

16. Mr. Pratap referred to the judgment of the Supreme Court in Sukh Dutt on the point of delay. In that case, the Supreme Court rejected a plea of delay and laches in a case involving acquisition of the petitioner's lands without compensation. In the context of protection of private property from State expropriation, the Court rejected the State's argument of delay in the "specific factual matrix". While doing so, the Court cited its earlier judgment in Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation (2013) 1 SCC 353., which specifically distinguished such cases from service jurisprudence, where the doctrine of delay and laches has been held to apply. The judgment in Sukh Dutt is thus distinguishable. The present case concerns the same factual context involved in T.T. Murali Babu and R.K. Zalpuri, which must therefore be followed.

17. The explanation for delay in the present case is inadequate. The petitioner, even when he was given a specific opportunity by order dated 29.04.2010 to explain the delay of three years and six months, has not filed any contemporaneous medical records, but only a doctor's certificate issued after the date of the said order. The said certificate also does not clearly indicate that the petitioner was disabled for such a long period, from managing his own affairs in any way, including engaging counsel and instituting a challenge to the disciplinary orders. I am thus unable to accept the petitioner's explanation for the belated filing of this writ petition, and hold that the petition is barred by delay and laches.

(b) Re: Parity of penalty on petitioner qua other Charged Officers:

18. While it is not necessary, in view of the above findings, to adjudicate the

petitioner's contentions on merits, I have heard learned counsel for the parties on merits also. Having regard to the fact that the impugned orders are far-reaching, inasmuch as the petitioner was dismissed from employment, and the fact that this writ petition has been pending for the last fifteen years, I consider it appropriate to consider the petitioner's challenge on merits also.

19. As noted above, the only question urged by Mr. Pratap was with regard to the petitioner's claim of parity with Mr. Sultan Singh and Mr. Sanjeev Kumar Sharma. The judgments of the Supreme Court and of this Court, which deal with claims of parity in penalty proceedings, are predicated upon substantial identity in the charges and findings against the employees in question. All the judgments cited by Mr. Pratap- Raj Pal Singh, Rajendra Yadav, and the Division Bench decision of this Court in Punjab & Sindh Bank v. Raj Kumar proceed on this basis.

20. In order to examine the present case from this perspective, the following factors are of relevance:

A. A committee was constituted to investigate shortage of wheat stocks stored in silos. Both the petitioner and Mr. Sultan Singh, who was the Assistant Manager, were stated to be unable to explain the shortage in the wheat stock of the crop year 1998. The Committee, constituted by the then District Manager, FCI, vide its report dated 21.08.2002, observed that wheat had been misappropriated, for which Mr. Sultan Singh, Mr. Sanjeev Kumar Sharma, and the petitioner, were all responsible. The Committee relied for this purpose upon a statement of Mr. Sanjeev Kumar Sharma and came to the conclusion as follows:

"Hence all the misappropriation / pilferage has been caused by the concerned silo Incharge Sh. Raj Kumar, AG.II(D) in connivance with Sh. Sultan Singh, AM(D) by mixing various types of gunnies before handing over the same to Incharge DSA who remarked unaccountable position in his gunny Register duly signed by the AM(D), Faridabad. The committee has observed the numerous cuttings and overwriting in the gunnies Register which proves the point. Annexure J to J-8.

The empty Silo bins were refilled with wheat 2002-03 after clear certification by concerned incharge i.e. Shri Raj Kumar, aG.II(D) and Sh. Sultan Singh, AM(D), Sh. Mulk Raj, AM(QC) and AM(E/M) Sh. Autar Singh besides Sh. D.P.Gupta, AM(QC). Hence leaving no change of any left over wheat in the concerned bins, Photostat copy enclosed as Annexure K to K-2." Emphasis supplied

B. The Chargesheet dated 07/15.10.2003, issued to the petitioner, was based upon the aforesaid Committee Report. After issuance of the Chargesheet, an inquiry was held against all three officers. The principal witness on behalf of the Management was Mr. Harish Kumar, Assistant Manager, who was a member of the Committee. His evidence was that all three officers in question (Mr. Sultan Singh, Mr. Sanjeev Kumar Sharma, and the petitioner) were primarily responsible. In cross-examination by the petitioner's Defence Assistant, the witness accepted that certain documents bore the signature of Mr. Sultan Singh and not of the petitioner, but ultimately stood by the report of the Committee.

C. The evidence of another member of the Committee, Mr. R.K. Verma (PW-3), was also on the same lines. However, in cross-examination by the Defence Assistant to Mr. Sanjeev Kumar Sharma, he specifically stated that the Charged Officer (Mr. Sharma) could not be held responsible for the shortage of foodgrains in the Silo, but for the number of gunnies found short.

D. After recording the statements of the Charged Officers, the Inquiry Officer, vide Report dated 21.04.2005, came to the following conclusions, as against the petitioner:

"In view of the above discussions in the foregoing paras, documents placed on record and taking a rational view of the facts and circumstances of the case taking the pleadings forwarded by the CO it has been found that CO has not been able to prove his innocence about huge shortages/misappropriation of wheat stocks and it has been proved that the CO had been using gunnies on his own and no statement/record has been placed to co-relate such consumption with the entries of his non/requisition provided to DSA Incharge on day to day basis. Since some of the points concerning involvement of the CO to have plying two trucks and conniving with the MLC will require further investigation if warranted in the case by the competent authority but the analysis is based only on the allegations in the article of charges framed against the co that he had failed to maintain absolute integrity and due devotion to his allotted duties causing huge shortage and other irregularities as in case of shortage of gunnies which has been proved in the foregoing paras.

In view of the above, the charge leveled against the CO stand proved."

E. The Disciplinary Authority considered the petitioner's representation against the Inquiry Report and came, inter alia, to the finding that the petitioner, in connivance with other charged officers, used gunnies in operation of stocks without giving receipts to the concerned officer. The petitioner's challenge to the statement of Mr. Sanjeev Kumar Sharma has also been rejected. The roles of the petitioner, Mr. Sanjeev Kumar Sharma, and Mr. Sultan Singh have been dealt with as follows:

" The lapses on the part of the CO are clearly identified in the Inquiry Report. The economic cost of wheat of crop year 1998-99 was Rs.800.34 per qtl. as certified by Regional Finance and therefore, for wheat alone a loss of Rs.14,77,430/-has been caused. The COs namely Shri Raj Kumar and Shri Sanjeev Kumar are also responsible for huge shortages/misappropriation in stocks of gunnies and hence, the total loss caused by them to the Corporation amounts to more than Rs. 17 Lac. Though it is a fact that for these losses, Shri Raj Kumar, AG.II(D) is primary responsible, who might have been doing the misappropriations by creating a gang like situation in the depot but the working of Sh. Sanjeev Kumar was also not proper. The controlling officer of the COs Shri Sultan Singh, the then AM(D) who was also one of the COs in this case had stated that he lodged complaints against Sh. Raj Kumar with Distt. Manager

about the high handedness of Sh. Raj Kumar vide letter dated 21.5.2002. Shri Sultan Singh, then then AM(D) had also asserted that the working of Shri Sanjeev Kumar, Incharge DSA was not proper because he used to remain away due to sports activities though he continued working as the Incharge DSA. From the facts of the case as already narrated above, it is clear that primary responsibility lies with Shri Raj Kumar.

Now comes the question of the penalty. I am fully convinced about the malafide and mischief played by Shri Raj Kumar in misappropriating the FCI stocks and stores and therefore, requires imposition of a harsh penalty. It is only because of the actions of such unscrupulous persons that bad name is being brought to the Corporation and people are losing faith in Govt. institutions.

This is high time that this situation needs to be corrected and such unscrupulous people who indulge in malafide actions are shown door. Therefore, a penalty as specified hereunder is imposed upon Shri Raj Kumar.

Now, therefore, the undersigned by virtue of powers conferred under Regulation 56 read with Regulation 54 of FCI (Staff) Regulations, 1971, hereby impose upon him a penalty of Compulsory Retirement from the services of the Corporation alongwith recovery of Rs. 5.0 Lacs (Five Lacs only) from his retirement dues/ other benefits which can be adjusted as per rules. The entire amount of gratuity which is payable to him is ordered to be forfeited under the provisions of Section 4(6) (a) of payments of Gratuity Act, 1972 to partially indemnify the losses suffered by the Corporation and will be adjusted towards the recovery of Rs.5 (Five Lacs only).

A copy of this order is being placed in his CR Dossier." Emphasis supplied

F. As far as Mr. Sultan Singh is concerned, he was the Assistant Manager of the FSD-Faridabad at the relevant time. His contention was that the petitioner was solely responsible for the losses in stocks of wheat, and Mr. Sanjeev Kumar Sharma and the petitioner were responsible for the shortage of gunnies. The findings against him, in a disciplinary order dated 24/25.06.2005, are as follows:

"On examination of reply it is observed that reply of the CO is not convincing. He has tried to shift the responsibility on the shed Incharge and gummy Incharge. However he has not disputed the fact that there was shortage/misappropriation of the stocks/gunnies. He has tried to defend himself by saying that his duties were only administrative in nature. If we accept his plea then where is the need of posting an AM(D) in the depot. Depot could have been run by the class III officials alone. In fact, the CO has failed miserably in supervision of the depot affairs which has led to observance of huge shortage/misappropriation of stocks and gunnies besides many other irregularities. In fact such huge irregularities can't happen without direct/covert connivance of the AM(D). Non submission of defence brief also shows his careless nature. The plea of CO regarding losses due to moisture loss, infestation, dust are also far fetched. Keeping in view the losses occurred in the last 10 years, there is negligible quantitative loss due to these

factors and overall the position should be at par by taking some quantitative gain in wheat even after taking into account the storage period. In fact a quantity of 1846 Qtls. Was misappropriated due to ineffective supervision/connivance of the CO and huge discrepancies in gunnies were also observed for which CO is definitely responsible.

Such lapses on the part of C.O. should have resulted in imposition of a major penalty on the C.O. but because of the fact that he is retiring on 30.06.2005, a minor penalty is being considered. The economic cost of wheat of Crop Year 1998-99 was Rs.800.34 per qtls. as certified by Regional Finance and therefore, for wheat alone a loss of Rs.14,77,430/-has been caused. He is also responsible for huge shortages/misappropriation on stocks of gunnies and hence, the total loss caused by him to the Corporation amounts to more than Rs.17 lac. Though it is a fact that for these losses, Shri Raj Kumar, AG II(D) is primarily responsible, who might have been doing the misappropriations before the C.O. joined the Depot but 8 months period was sufficient enough for him to unearth the misappropriations/shortages on the part of Shri Raj Kumar. C.O. has stated that he lodged complaints against Shri Raj Kumar with Distt. Manager about the high handedness of Sh. Raj Kumar vide letter dated 21.5.2002 and on the basis of this letter =he claimed his disassociation with Shri Raj Kumar. C.O. has also asserted that the working of Shri Sanjeev Kumar, In-charge DSA was not proper because he used to remain absent due to sports activities though C.O. himself has admitted that he did not change the In-charge DSA. From the facts of the case as already narrated above, it is clear that primary responsibility lies with Shri Raj Kumar but the C.O. Shri Sultan Singh, AM(D) being a Supervisory Officer of the Depot could not escape from his responsibility. It seems instead of holding the bull by its horns in tackling the gang like situation at the centre during that period, he chose to merely write a letter. He had freedom to change the custodians of stocks/gunnies and if OM was coming in his way, he should have taken up the matter with R.O. Because of his supervisory lapses, FCI was put to huge losses. Therefore, keeping in view the fact that C.O. is going to retire on 30.6.05, it would be fair enough on our part to recover of these losses from him.

Now, therefore, the undersigned by virtue of powers conferred under Regulation 56 read with Regulation 54 of FCI(Staff) Regulations, 1971, hereby imposes a penalty of 'Censure' and a recovery of Rs.1 lacs to partially indemnify the Corporation against the losses suffered by it.

A copy of this order is being placed in his C.R. Dossier. Emphasis supplied"

G. The disciplinary order dated 16.11.2005 against Sanjeev Kumar Sharma, finds as follows:

"Shri Sanjeev Kumar is responsible for huge shortages/misappropriation in stocks of gunnies. Though, it is a fact that for these losses, Shri Raj Kumar, AG 11(0) is primary responsible, who might has been doing the misappropriations by

creating a gang like situation in the depot but the working of Shri Sanjeev Kumar was also not proper. The controlling officer of the COs Shri Sultan Singh, the then AM(D) who was also one of the COs in this case had stated that he lodged complaints against Shri Raj Kumar with Distt. Manager about the high handedness of Shri Raj Kumar vide letter dated 21.05.2002. Shri Sultan Singh, the then AM(D) had also asserted that the working of Shri Sanjeev Kumar, Incharge DSA was not proper because he used to remain away due to sports activities though he continued working as the Incharge DSA. From the facts of the case as already narrated above, it is clear that primary responsibility lies with Shri Raj Kumar but the other C.O. Shri Sanjeev Kumar can also not be absolved from his responsibility. Though, it is admitted that Shri Sanjeev Kumar used to remain away due to his sports activities and all the mishappenings/mischiefes were played by Shri Raj Kumar only yet when a specific job was allotted to Shri Sanjeev Kumar, he should have given proper time and attention to the assigned work. Though no malafide can be attributed to Shri Sanjeev Kumar yet he is responsible for his carelessness.

There is no doubt that Shri Sanjeev Kumar has been a Ranji Trophy Player and has been recruited under Sports Quota. No malafides have been proved against him by the 1.0. The CO has placed relevant orders allowing him to relieve in the afternoon for practice purposes both by Zonal Office(N) and FCI, Headquarters and he has also placed his participation in the Cricket Championship on record. However, he has been negligent in his duties as he recorded use of gunnies, which were consumed in his absence without any requisition and even when he was not in the depot. Though he claimed during his personal hearing that he used to inform about the realities to his superior but he has not produced any document in support of his visit. He is no doubt a sportsman and is not very well conversant with the office procedures but once he has been recruited in the organization, he is supposed to learn the office working. This situation could have been exploited by Shri Raj Kumar, AG II(D) who is known to be a notorious person which has even been alleged by his supervisory officer Shri Sultan Singh, the then AM(D). Therefore, the ends of the justice would be met by the imposition of a major penalty as specified hereunder.

Now, therefore, the undersigned by virtue of powers conferred under Regulation 56 read with Regulation 54 of FCI(Staff) Regulations, 1971, hereby impose upon him a penalty of stoppage of one increment with cumulative effect." Emphasis supplied

21. A comparison of the three disciplinary orders clearly shows that it is the petitioner who has been held to be the kingpin of the transactions which gave rise to the disciplinary proceedings. Mr. Sultan Singh has certainly been held guilty of inadequate supervision, but a minimal penalty was imposed upon him, in consideration of his impending retirement. All three disciplinary orders recognise the role of the petitioner as being "primarily responsible" for the situation and, in fact, as creating a gang-like situation in the Depot. The role of

Mr. Sanjeev Kumar Sharma has been clearly found to be much more limited than the role ascribed to the petitioner. While Mr. Sanjeev Kumar Sharma has been blamed for inadequate attention to his duties, it has been specifically held that no mala fides are attributed to him. The petitioner has clearly been held responsible to a higher degree, and the penalty imposed upon him is, therefore, higher.

22. The case of Mr. Sultan Singh also proceeds on a slightly different reasoning, with regard to his imminent retirement. The correctness of the findings against him, or whether the consideration of his impending retirement was justified, are not the subject matter of the challenge in this petition, to which he is not even a party. The only question is whether the petitioner is entitled to imposition of a lower penalty on grounds of parity with him. Suffice it to say, the petitioner's case was materially different on many counts, including the merits of the allegations found against him.

23. In the present case, on a comparison of the findings against the petitioner with the findings recorded against the officers with whom he claims parity [viz., Mr. Sultan Singh or Mr. Sanjeev Kumar Sharma], I find no justification for this claim. No other argument was advanced to assail the impugned orders, particularly with regard to the quantum of penalty. The petition therefore fails on merits, also.

D. CONCLUSIONS:

24. For the aforesaid reasons, the writ petition is dismissed, both on the ground of delay/laches, and on merits.