IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 22, 2021

\+ W.P.(C) 966/2021
MR. PEEYUSH TIWARI

..... Petitioner

Through: Ms. Rashmi Gogoi, Mr. Tanmay Mehta, Mr. Shubhanshu Singh and Mr. Shailesh Kumar Sinha, Advs. with Petitioner in person.

versus

FOOD CORPORATION OF INDIA

..... Respondent

Through: Mr. Manoj, SC for FCI with Ms. Aparna Sinha, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers: -

> *"(i) Issue a writ, order or direction in the nature of Certiorari to quash and/or set aside the Impugned Order dated 03.11.2020 by which the appeal of the petitioner has been rejected by the Board of Directors and the order dated 16 July 2020 passed by the Managing Director has been confirmed;*
> *(ii) Issue a writ, order or direction in the nature of Certiorari to reverse and set aside and quash the Penalty Order dated 16 July 2020 passed by the Managing Director of the Respondent removing the Petitioner from service;*

(iii) Issue a writ, order or direction in the nature of Mandamus in favour of the Petitioner and against the Respondent to reinstate the Petitioner back in service;
(iv) Issue a writ, order or direction in the nature of Mandamus to treat the intermittent period of the petitioner as that spent on duty and direct the Respondent to pay the complete pay and allowances of the said period to the petitioner:
(v) Consequent to the dismissal order dated 16 July 2020 and the appellate order dated 03.11.2020 being set aside, pass orders for all consequential benefits, in all respect, in favour of the petitioner and against the Respondent;
(vi) Pass any other or further orders as may be deemed to be just and proper in the circumstances of the present case."

2. It is a case wherein the petitioner / Charged Officer ('CO', for short) was the Area Manager of the respondent's District Office at Moga, Punjab. The respondent is an organization created and run by the Government of India. It is a statutory body under the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, formed by the enactment of the Food Corporation Act, 1964.

3. The petitioner has filed this writ petition against the Order dated November 03, 2020, passed by the Board of Directors of the respondent by which the respondent rejected the appeal filed against the Order dated July 16, 2020, passed by the Disciplinary Authority ('DA', for short).

4. Order dated November 03, 2020, confirms the Order of penalty of 'Removal from Service' dated July 16, 2020, passed under Regulation 58 of the Food Corporation of India (Staff) Regulations, 1971 by the DA of the Food Corporation of India ('FCI', for short).

5. It is contended by Ms. Rashmi Gogoi, learned counsel appearing on behalf of the petitioner that the Impugned Order dated November 03, 2020, which affirms the earlier order dated July 16, 2020, is without reliable evidence which could connect the petitioner with the Government Currency ('GC', for short) notes recovered from the petitioner's office and therefore the Impugned Orders amounts to a gross miscarriage of justice. It is further contended by her that the respondent has erred in passing the impugned orders as the order of removal from service as well as the appellate order, are based on no evidence or proof, and at best is a case of suspicion, which cannot entail the penalty of removal.

6. Brief factual background that led to the filing of the present writ petition is that on March 19, 2018, a search was conducted at the office of the petitioner by the Central Bureau of Investigation ('CBI', for short) based on a complaint filed by Rohit Mittal for purposes of investigation. According to the aforementioned investigation conducted at the office chamber of the petitioner, GC notes were obtained from the flush tank of the toilet and from the right-side drawer of the table amounting to a sum of Rs. 2,52,000/- (Rupees Two Lakh Fifty-Two Thousand Only). Moreover, it is submitted that the drawer was inaccessible to the petitioner as it was on the opposite side of the table from where the petitioner sat.

7. In addition, Ms. Gogoi stated that the main purpose behind the investigation was to harass and humiliate the petitioner because the said investigation was carried out based on

a complaint filed by Rohit Mittal the owner of M/s Sran Mills against whom the petitioner and his team had previously taken action. It is further affirmed by Ms. Gogoi that in the original written complaint the petitioner was not even named. She further submitted that the petitioner along with his team had withheld transactions of M/s Sran Rice Mills by way of a letter dated March 05, 2018, and since then he has been holding a grudge against the petitioner.

8. In the present case, the CBI filed its Final Report dated October 11, 2018, wherein the petitioner was not named as an accused. However, according to Ms. Gogoi for the reasons unknown to the petitioner, departmental proceedings for a major penalty were recommended against him in the Final Report based on the GC notes amounting to Rs. 2,52,000/- found in his office. She further stated that the CBI itself did not find material evidence sufficient for the prosecution of the petitioner and did not array him as an accused.

9. Ms. Gogoi also stated that since the CBI officials in the Final Report could not link the petitioner to the GC notes apprehended in his office, the essentials of 'Demand' and 'Acceptance' of illegal gratification as required to be established under the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') could not be established in the present case.

10. It is further stated, that in line with the recommendation of the CBI in its Final Report, charges were framed against the petitioner on May 06, 2019, under Regulation 58 of FCI (Staff)

Regulations, 1971 *vide* memorandum no. Vig 4(11)/2019/PB by the respondent.

11. Thereafter O.P Dani, Chief General Manager (Funds) of the respondent was appointed as the Inquiry Officer ('IO', for short) by way of an Office Order dated June 13, 2019, passed by MD, FCI. The Inquiry Proceedings against the petitioner were initiated on June 24, 2019. The IO after considering all the material on record, examination, and cross-examination of all the witnesses as well as the prosecution and defense brief(s) presented by the petitioner, submitted a detailed Inquiry Report on December 10, 2019. It is also the contention of Ms. Gogoi that while concluding the report, it was observed by the IO that the charges against the petitioner could not be proved.

12. It is also stated that the facts and findings of the IO were submitted to the DA of the respondent, however, the DA being dissatisfied with the findings of the Inquiry Report served a Disagreement Memo dated March 05, 2020.

13. It is contended by Ms. Gogoi that the observations made by DA in the Disagreement Memo are without considering the facts that the IO had, well understood and appreciated all the facts in hand, and then came to a conscious and thoughtful observation that under no circumstance the GC notes recovered from the office chamber of the petitioner could be linked to the petitioner. The observations made by the DA are violative of the principles of the PC Act as well. However, the petitioner after receiving the Disagreement Memo dated March 05, 2020, submitted a detailed response dated May 26, 2020, wherein he

submitted that the officers had conducted a thorough search of his car as well as house, wherefrom nothing incriminating could be obtained. It is further submitted that such assumption on the part of the respondent was not tenable in law and the concept of 'Demand', 'Acceptance' and 'Recovery' had not been established in the case of the petitioner.

14. However, on July 16, 2020, the DA held the petitioner guilty of all charges and imposed a penalty of "Removal of Service" ('Penalty Order', hereinafter) under Regulation 58 of FCI (Staff) Regulations, 1971 ('Regulations of 1971', hereinafter). She submitted that the Penalty Order had been passed by the DA without considering any of the points raised by the petitioner in his detailed reply dated May 26, 2020.

15. The petitioner aggrieved by the Penalty Order dated July 16, 2020, filed an appeal before the Board of Directors of the respondent under Regulation 68(ii) of the Regulations of 1971. However, the said appeal was rejected by the Board of Directors vide Order dated November 03, 2020. All submissions made by the petitioner in the said appeal were rejected, without ascribing proper reasons thereto. Ms. Gogoi submitted that the Impugned Order affirming the Penalty Order is patently incorrect because there is a clear reversing of the burden of proof and invoking incorrect presumption which is not justifiable in law and the petitioner was not caught red-handed demanding or accepting a bribe. She further submitted that there is no concept known to the law under which the Board of Directors and the MD of the respondent could have presumed that the GC notes were kept by

the petitioner himself. In this regard, the reliance was placed on the judgment of the Supreme Court in ***K.L. Tripathi v. State of Bank of India and Ors., (1984) 1 SCC 43,*** wherein it was categorically held that the exercise of discretionary power involves two elements: (i) Objective and; (ii) Subjective and the existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. Suspicion and presumption cannot take the place of proof even in a domestic inquiry and held that the Writ Court is entitled to interfere in the findings of facts so recorded by the Authority in certain circumstances. Ms. Gogoi further stated that rather, it was not for the petitioner to prove that the GC notes were kept by him. The onus was on the prosecution to prove that the said GC notes had been placed in the flush tank and drawer by the petitioner himself which admittedly the prosecution has failed to prove. In this regard, Ms. Gogoi placed reliance on the judgments of the Supreme Court in ***State of Punjab v. Madan Mohan Lal Verma, (2013) 14 SCC 153***, and ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200.***

16. It was also contended by Ms. Gogoi that the Impugned Orders suffers from the vice of perversity and *Wednesbury* unreasonableness and is clearly against the Doctrine of Proportionality.

17. In addition, it is further contended by Ms. Gogoi that the Impugned Order fails to appreciate that the absence of videography of the actual recovery of GC notes from the flush-tank is a serious prejudice caused to the case of the prosecution

and makes probable the defense of the petitioner, that the GC notes were planted. In addition, it was submitted that there was no abnormality or malfunction in the flush when the petitioner used the same toilet a few minutes before Constable Balkar Singh (PW-2). This further makes probable the defense of the petitioner that the GC notes were planted since it seemed to have malfunctioned magically when Constable Balkar Singh (PW-2) used the flush tank. It is also stated by Ms. Gogoi that it is a matter of record that no one saw the petitioner placing the GC notes either in the flush or the drawer as has come out in the evidence during the inquiry proceedings. In this regard, she also stated that PW-1 to PW-4, while deposing before the IO in their cross-examination dated October 04, 2019, and PW-5 in his cross-examination dated November 08, 2019, had categorically stated that they never saw the petitioner placing the GC notes anywhere in the chamber or the toilet. Hence, without any specific proof of demanding illegal gratification or any proof of receiving / accepting any such gratification, mere recovery of the said GC notes from the chamber of the petitioner does not prove the alleged misconduct said to have been committed by the petitioner, rather it confirms the defense of the petitioner that someone with ill intentions, has tried to frame him.

18. It is further submitted that the Impugned Order failed to appreciate that the failure of the CBI to take the fingerprints of the petitioner and compare them with the recovered GC notes must lead to an adverse inference against the prosecution's case especially when it is the petitioner's categorical defense that he

had volunteered to give his fingerprints for comparing with the prints on the recovered GC notes. It is no one's case that the CBI asked for fingerprints and that the petitioner refused to give them. Therefore, the fact that there were no fingerprints of the petitioner on record or any tallying of the same with the GC notes must lead to an adverse inference against the respondents and not the other way around as erroneously concluded in the Impugned Orders.

19. That apart, Ms. Gogoi contended that the Board of Directors of the respondent erred in holding that the room of the petitioner was a restricted area. As stated in the defense brief during inquiry proceedings, the room was accessible to other FCI Staff / Cleaning staff even when the petitioner was not in the office. Therefore, the fact that the said GC notes could have been planted in his absence or placed by somebody else to the prejudice of the petitioner cannot be ruled out. In this regard, reliance has been placed on the judgment of the Apex Court in ***M.K. Harshan v. State of Kerala, (1996) 11 SCC 720.*** It is further stated that nothing incriminating was recovered from the petitioner's house, which has restricted access; whereas the only recovery was from the chamber of the petitioner whose lock, key, and access were not exclusive to the petitioner. According to Ms. Gogoi, the respondent ignored that the area used by the petitioner was accessible to other persons and anyone with an ill motive could have easily planted the GC notes in the two places where they were found.

20. She also contended that the respondent in the Impugned Orders has relied on the principle of 'preponderance of probability' to hold the petitioner guilty of all charges leveled against him, while completely ignoring the basic fact that there was no 'probable' case against the petitioner due to lack of any binding evidence against him.

21. According to her, the respondent has acted purely on suspicion while passing the strictest order(s) against the petitioner removing him from services, which is malafide and arbitrary. In this regard, she has relied upon the judgments of the Supreme Court in ***C.M Sharma v. State of Andhra Pradesh, (2010) 15 SCC 1,*** and ***Dnyaneshwar Laxman Rao Wankhede (supra).***

22. In addition, Ms. Gogoi placed on record the judgment of the Apex Court in ***Dilip and Anr. v. State of M.P., (2007) 1 SCC 450,*** wherein it was observed that it is settled law that if two views are possible, the benefit of the doubt should be given to the accused.

23. She further relied upon the judgment of the Apex Court in ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors., (2001) 1 SCC 182,*** wherein it has been held that judicial review of administrative action is feasible and the same has its application to its fullest extent, even in departmental proceedings when it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable.

24. Apart from the above-stated submissions made by Ms. Gogoi she further submitted that the following judgments relied

upon by the respondent are distinguishable from the facts of the present instance: -

(i) ***SBI and Ors. v. Ramesh Dinkar Punde, (2006) 7 SCC 212,*** in this case, the IO had found the CO guilty which is completely different from the instant case wherein the IO has exonerated the petitioner.

(ii) ***Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759, B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749***, and ***Pravin Kumar v. Union of India, (2020) 9 SCC 471,*** these judgments are on the scope of judicial review where the Courts have held that the conclusion of the IO / DA can be interfered if the decision is based on no evidence and / or is perverse which is the case of the petitioner herein.

25. Moreover, reliance has also been placed by Ms. Gogoi on judgments dealing with the onus of proof on the respondent in the case of ***Orissa Mining Corporation and Anr. v. Ananda Chandra Prusty, (1996) 11 SCC 600,*** and ***General Manager (Operations) SBI and Anr. v. R. Periyasamy, (2015) 3 SCC 101***.

26. A counter affidavit has been filed on behalf of the respondent wherein it is stated that there is no ground made out for intervention by this Court. In this regard, it is stated that the Penalty Order dated July 16, 2020, passed by the DA / MD is well reasoned.

27. It is the submission of Mr. Manoj, learned counsel appearing on behalf of the respondent that the Penalty Order was confirmed by Impugned Order dated November 03, 2020. The

Board while passing the Impugned Order after due deliberations gave the following reasons: -

> *"i. It was highly improbable that anybody could have planted money in the flush tank with the intention to trap the Petitioner.*
> *ii. In response to the plea of the Petitioner that CBI did not find sufficient material to prosecute him, the Board was of the unanimous view that it was difficult to prove charges in such cases and further that Disciplinary proceedings are different from criminal proceeding where charges had to be proved beyond reasonable doubt.*
> *iii. The Board was in agreement with the view that chamber of the Petitioner was a restricted place."*

28. Thus, this Court, in its supervisory jurisdiction, should not embark upon re-appreciation of evidence or facts. In this regard, Mr. Manoj relied upon the following Judgments rendered by the Supreme Court: -

i. The Apex Court in ***SBI and Ors. (supra)*** inter alia held that it was impermissible for the High Court to reappreciate the evidence, which had been considered by the IO, DA, and the Appellate Authority.

ii. Further, reliance has been placed on ***Apparel Export Promotion Council (supra)***.

29. It is averred by Mr. Manoj that there is a *prima facie* case against the petitioner. In this regard, he drew the attention of this Court to the fact that GC notes aggregating to a sum of Rs. 2.52 lakhs were recovered from the flush tank of the toilet attached to his exclusive chamber and from the drawer of his table. The petitioner, as the Area Manager, was the head of the FCI District

Office situated at Moga, Punjab. He had a separate chamber in which no one could enter without his permission. As such, it was practically inaccessible. In addition to this, the GC notes were recovered from the flush tank of his toilet within a few minutes of his visiting the said toilet, before PW-2. Only because the petitioner was not caught red-handed or that no one claimed to have seen him placing the money, he cannot escape the penalty. It is also affirmed by Mr. Manoj that when the petitioner used the toilet, he did not complain of any malfunctioning of the flush. When PW-2 used the toilet minutes after the petitioner, he found that the water flow was blocked. Moreover, if anybody wanted to give a bribe to the extent of Rs. 2.52 lakhs, they would give it to the head of the office only, either directly or indirectly. Therefore, it is evident that there existed a strong *prima facie* case against the petitioner.

30. Mr. Manoj also dealt with the issue of shifting of onus / burden of proof. In this regard, he submitted that in criminal proceedings, the burden is always on the prosecution to prove that the accused has committed the offence beyond reasonable doubt. However, the onus of proof keeps on shifting throughout the trial. Even in criminal cases, the onus is shifted on the accused to rebut the claims and evidence after the prosecution has established a prima facie case against the accused. To support his view, he relied upon the judgment in ***Orissa Mining Corporation and Anr. (supra)*** wherein the Supreme Court has held that the burden of proof does not always lie upon the department in a disciplinary proceeding. In the present case, the

burden may be shifted to the delinquent officer depending upon his explanation. Further, reliance in this regard was placed on ***Lek v. Matthews, (1927) 29 LI. L. Rep. 141 (U),*** decided by the House of Lords.

31. It is further submitted by Mr. Manoj that the maxim *'Res ipsa loquitur'* is squarely applicable in the instant case and once this doctrine is found to be applicable, the burden of proof shifts on the petitioner. It is also contended that the onus shifted to the petitioner to show that if he had not placed those GC notes in his chamber, how those GC notes could be found in his chamber. The petitioner, except making vague allegations that the money had been planted or that somebody had framed him, could not give answer to this fundamental question. It is the submission of Mr. Manoj that it is clear that the petitioner had failed to discharge the onus to rebut the *prima facie* case made out against him. In the absence of any credible or cogent defense, it must be concluded that those GC notes were placed by the petitioner himself in his chamber.

32. According to Mr. Manoj, non-pressing of charges by the CBI against the petitioner is inconsequential. That apart, he has placed reliance upon the judgment of the Supreme Court in ***Pravin Kumar (supra).*** In this regard, he stated that first, there was no complaint against the petitioner but against one Virender Singh. Virender Singh was trapped by the CBI and taken into custody. The team of CBI visited the office of the petitioner only incidentally to collect the files about the complainant, who had lodged the above complaint against the said Virender Singh. It

was when the petitioner was asked to bring the concerned file that he started behaving suspiciously and excused himself to go to the toilet. When the CBI Constable used the said toilet immediately thereafter, the malfunctioning of the flush aroused suspicion, and GC notes of over Rs. 1 lakh were discovered from the flush tank. Subsequently, his chamber was searched, and Rs. 1.5 lakh were discovered from the drawer of his table. However, in addition, the CBI in a self-contained note dated December 07, 2018, addressed to Central Vigilance Commission ('CVC', for short), FCI, observed that Ghanshyam Yadav and Peeyush Tiwari were also involved in corrupt practices, and in view thereof, Regular Departmental Action (RDA) proceedings for the major penalty be initiated against them.

33. Furthermore, Mr. Manoj submitted that unlike in criminal proceedings, where charges need to be proved beyond reasonable doubt, the Standard of Proof in departmental proceedings is based on the preponderance of probability. He contended that the Supreme Court in catena of decisions has held that the scope of inquiries before a Criminal Court and in the departmental proceedings are separate. The Department of Personnel and Training instructions contained in the Office Memorandum dated July 21, 2016, clearly stipulate that while in a criminal trial, the charge has to be proved beyond reasonable doubt, but in a departmental inquiry, the standard of evidence is based on the preponderance of probability. Therefore, upon examination of the entire facts and circumstances about the petitioner's case, any prudent man would find it improbable that GC notes were placed

in the drawer and flush tank by anybody except the petitioner. Thus, it would indisputably be inferred that the preponderance of probability was that the GC notes had been placed in his drawer and the flush tank by the petitioner himself and thus, charges, against him are adequately proved. He has relied upon the decision in ***General Manager (Operations) SBI and Anr. (supra).***

34. It was also affirmed by Mr. Manoj that the penalty of removal from service is in accordance with the CVC manual. CVC Manual prescribes only Removal (which shall not be a disqualification for future employment under the Government) or Dismissal from service in every case in which the charge of possession of assets disproportionate to known source of income or the charge of acceptance from any person of any illegal gratification is established.

35. It is further submitted by Mr. Manoj that the DA found the reasoning of the IO to be specious. The Regulation 59(2) of the Regulations of 1971 permits the DA, if it disagrees with the findings of the inquiring authority on any article of charge, to record its reasons for such disagreement and record its findings on such charge if the evidence on record is sufficient for the purposes. In this regard, reliance has been placed on the judgment of the Supreme Court in ***Punjab National Bank and Ors. v. Sh. Kunj Behari Misra, (1998) 7 SCC 84***.

36. Mr. Manoj while dealing with the issue that no ground has been made out for intervention by this Court, he submitted that the judicial review under Article 226 of the Constitution of

India is of the decision-making process and not of the decision. That apart, he stated that Writ Court shall not reverse the finding so long as there is some evidence to reasonably support the conclusion. In this regard, reliance has been placed on the judgment of the Supreme Court in ***R.S. Saini v. State of Punjab, (1999) 8 SCC 90***.

37. A rejoinder has been filed on behalf of the petitioner to the counter affidavit filed by the respondent, wherein Ms. Gogoi has stated that the respondent has sought to defend the petitioner's case primarily on the following grounds: -

(i) That no ground(s) have been made out by the petitioner for intervention by this Court under writ jurisdiction;

(ii) That there is the existence of a strong *prima facie* case against the petitioner;

(iii) That the burden of proof to establish the innocence of the petitioner was on the petitioner himself;

(iv) That the non-existence of any charges by the CBI (post inquiry) against the petitioner was completely inconsequential;

(v) That the standard of proof in such departmental proceedings is not very high. That preponderance of probability is sufficient;

(vi) That the penalty of removal from services is in accordance with the CVC Manual.

38. Ms. Gogoi submitted that in response to the ground (i) and (ii) mentioned above, the petitioner has a strong *prima facie*

case in his favour. The petitioner verily believes that the order dated November 03, 2020, confirming his removal from service is ex-facie bad and unconstitutional besides being completely against the principles of law and natural justice. She averred that the respondent has acted in a prejudicial manner and the Impugned Orders, besides being a clear departure from the well-established principles of law has also been passed arbitrarily and unfairly. It is an indisputable fact that the CBI had not found any incriminating material against the petitioner sufficient to carry out prosecution qua him. However, despite the lack of such incriminating evidence, the respondent went ahead and passed the Impugned Orders.

39. Furthermore, Ms. Gogoi in response to the ground (iii) mentioned in paragraph 37 above, submitted, the erroneous reversal of the burden of proof is fatal to the findings under the Impugned Order and hence the same ought to be set aside. Concerning the ground (iv), it is the petitioner's case that since the CBI could not link the petitioner to the GC notes apprehended in his office, hence the essentials of 'Demand' and 'Acceptance' of illegal gratification as required to be established under the PC Act could not be established in this case. About ground (v), it is submitted that the respondent while relying on the principles of the preponderance of probability to hold the petitioner guilty of all charges has completely ignored the basic fact that there was no probable case qua the petitioner due to clear lack of any binding evidence against him. Further, concerning ground (vi), it is submitted that the removal of the

petitioner from services on what the respondent claim to be a ground of preponderance of probability is too harsh.

40. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the impugned orders dated November 03, 2020, and July 16, 2020, passed by the Appellate Authority and the DA removing the petitioner from the services of the respondent organization is justified.

41. The facts as noted above would reveal that on March 19, 2018, a search was conducted at the office of the petitioner by the CBI and during the search a cumulative amount of Rs. 2,52,000/- was recovered from the flush tank of the toilet of the petitioner's office and from the right-side drawer of the table.

42. It is the case of the petitioner as contended by Ms. Gogoi that the DA has initiated departmental proceedings under the Regulations of 1971 and the IO has not found the charges proved. The conclusion of the IO is primarily the following: -

> *"On the complaint of M/s. Sran Rice Mills, agency team came to the chamber of the CO and sought file pertaining to temporary banning of M/s. Sran Rice Mills. Agency could have examined the said record, documents and that no action against the CO has been initiated by the agency under its ambit clear point to the fact that the said record, documents were in order and no lacuna in these documents / file could be detected.*
>
> *In the instant case, there is no complaint against the CO and nobody had seen the CO for placing the money in various locations. Prosecution witnesses admitted the fact that none of them had seen CO placing the money at either of the locations where it was found. Not only this, prosecution also failed to provide any oral and documentary evidence of demand, acceptance and*

recovery on the part of the CO and nothing incriminating found in the house and car of the CO during search by the CBI team. A search was conducted without any Independent Witness and as Witnesses deposed, they attended after the search conducted by the CBI team (PW.3 and PW.4).

If any official from the CBI/Police visits the house, office or other place of any individual, it is normal for that individual to feel nervous. In the present case, the CO became nervous when CBI team visited his office, which has been taken as abnormal behavior by the CBI Team.

It is not out of place to mention that PW-2 went to the same toilet for urination and after using it, when he tried to flush the toilet, he observed that there was no free flow of water into the toilet. Therefore, he opened the cover of the flush tank before intimation to the C.O. and found that a number of currency notes were there in the flush tank. This chain of events don't look normal. If a flush doesn't work in any washroom, we either leave the washroom without proper flushing and / or inform the caretaker of the washroom or incharge / owner of that place about the malfunctioning of the flush. Opening of cover in first instance normally doesn't take place.

During the course of inquiry proceedings, there is no evidence that the CBI team took the finger prints of the CO. The defence has pleaded that CO had himself volunteered to give his finger prints so that the same could be got tallied with the recovered GC Notes, but the CBI team did not take the finger prints of the CO for the reasons best known to the Agency. (Refer to para no.5 at page 5 of the defence brief)

Prosecution did not find any solid ground against the CO and recommended for departmental action instead of prosecution done in other cases.

As such, the charges against the CO have not been proved. With the above observations, the Report is

submitted to the Managing Director/Disciplinary Authority."

43. The DA disagreed with the conclusion of the IO and gave a disagreement note. The conclusion in the Inquiry Report primarily is: -

(i) That there is no complaint against the petitioner and nobody has seen the petitioner for placing the money in various locations.

(ii) The prosecution witness admitted the fact that none of them has seen the CO placing the money at either of the locations where it was found.

(iii) The respondent has also failed to prove any oral and documentary evidence of demand, acceptance**,** and recovery of money from the CO.

(iv) That nothing incriminating was found in the house and car of the petitioner during the search by the CBI Team. The search was conducted without any independent witness as is clear from the witness who deposed that they attended after the search was conducted by the CBI.

(v) That if any official from CBI, Police visits the house, office, or other place**s** of any individual, it is normal for the individual to feel nervous.

44. In the present case, the petitioner became nervous when the CBI team visited his office and his conduct has been taken as

abnormal behaviour by the CBI team. PW-2 went to the same toilet for urination and after using it when he tried to flush the toilet, when he observed that there is no free flow of water into the toilet. Therefore, he opened the cover of the flush tank of the toilet and found the GC notes were present there. It is the case of Ms. Gogoi that the chain of events does not look normal. She argued, supposing if the flush in a washroom stops working, we either leave the washroom without proper flushing and / or inform the caretaker of the washroom or in-charge / owner of that place about the malfunctioning of the flush. Opening of cover in the first instance normally does not take place.

45. The fingerprints of the petitioner / CO were not taken during the inquiry proceedings, however, the CO volunteered to give fingerprints so that the same could be tallied with the recovered GC notes.

46. The DA in his disagreement note was of the following view: -

(i) Witnesses PW-2 and PW-4 and documents Ex-P1 and P3 confirmed the recovery of GC notes. Though it is established that money was not found from his possession but the flush tank and drawer in his office chamber.

(ii) The CO has failed to explain the source of huge cash recovered from the flush tank of the toilet, and drawer in his chamber. The CO could not prove that money recovered does not belong to him. He failed to prove the theory that unaccounted

money was planted. The IO has also relied upon the memo dated March 19, 2018. No document / witness has been produced by the CO in his defence.

(iii) The petitioner herein has submitted his reply to the note of disagreement. The DA in its Penalty Order was of the following view: -

"xxx xxx xxx

***AND WHEREAS**, the undersigned has gone through the contents of Charge sheet, findings of Inquiry Officer and documentary evidences adduced during the enquiry, written statement of defence and prosecution, reply submitted by the CO to the disagreement memorandum in a careful manner and has observed the following:-*

i) The submission of the CO that access of the lock & key of his chamber was not restricted to him cannot be considered as the chamber of the Area Manager is a restricted place and no one can enter in the chamber of the Government Authority Without his consent.

ii) CO has quoted the Judgement of Hon'ble Supreme Court of India dated 12.08.2013 in the matter of State of Punjab V/S Madan Mohan Lal Verma in Criminal Appeal No. 2052 of 2010 according to which no one can be convicted mere on the basis of mere recovery of unaccounted money in absence of demand and acceptance. The quoted Judgement is regarding conviction in criminal trial on the charges of bribery and is not relevant in the departmental proceedings having charges of involvement in corrupt practices.

This argument is misconceived by the CO because the Supreme Court in a catena of decisions has held that the scopes of enquiries

before a Criminal Court and in the Departmental Proceedings are totally separate. Whereas in the criminal proceedings, the charges have to be proved beyond all reasonable doubt but in the departmental proceedings, the charges have to be proved only on the preponderance of probabilities.

iii) The representation submitted by the CO has been examined afresh from the touchstone of the preponderance of probability. There could be following two probabilities:

(a) The recovered money pertains to the CO as alleged in the charge sheet.

(b) Another, it doesn't pertain to the CO but planted by someone else as defended by the CO.

Ongoing through the sequence of events i.e. trap was conducted at godown around 3:45 PM and CBI team reached District office, Moga at 4:15 PM where during the course of seizure of files, the said money was recovered from the toilet and plastic folder in the official chamber of the CO. The money amounting to Rs.2.52 lakh was recovered at two places. There are following three important facts:

a. The money was recovered from two places.

b. Amount was quite huge.

c. Timing of recovery was after 4 PM.

Considering the above three facts and circumstances, the possibility of occurrence of "planted" with ill intention is not possible as it is hardly possible for someone to keep money in a drawer and toilet flush tank during the office time i.e. between 10 AM to 4 PM. Further, if the money were kept by the someone else before 10 AM, the

same could have been recovered by the CO himself at least any one of the two places during 10 AM to 4PM before search of the CBI. Further, placing the money at two places is unlikely for the purpose of framing someone. Thus, in the given scenario, preponderance of probabilities tending to draw a conclusion that the said recovered money belonged to Sh. Peeyush Tiwari and the same was placed by him.

IV. The charges against CO was that huge cash was recovered by the CBI from his toilet flush tank and folder kept in his drawer of a table which points out towards his involvement in corrupt practices. On the basis of documentary evidences P.Ex.l to P.Ex.3 & the depositions of witnesses, it is clear that the amount of Rs. 2.52 lacs was recovered from the chamber/toilet of the CO. Hence, the burden lies on the CO to displace the said charges by bringing evidence on the record, either direct or circumstantial evidence, to establish with reasonable probability that the money was planted to frame him. The CO was given sufficient opportunity to explain how the said recovered amount in question found in his office toilet/drawer were kept by someone else with the intention to frame the CO but the explanations given by the CO is mere misleading apprehension.

V. Thus, in the given scenario, preponderance of evidence and the sheer weight of circumstantial evidence tend to draw the conclusion that the said recovered money belonged to the CO. Thus, Undersigned is of the opinion that the said money was earned by the CO by means of illegal gratification.

***AND WHEREAS** keeping in view all the above facts, I hold the CO guilty of charges as contained in the Articles.*

*Now therefore, I, D.V. Prasad, Managing Director, Food Corporation of India, Headquarters, New Delhi in exercise of powers conferred under Regulation 56 of FCI (Staff) Regulations, 1971 hereby impose a penalty of "**Removal from Service**", upon the CO, Sh. Peeyush Tiwari, AGM (Genl), the then Area Manager, FCI, DO, Mega, Punjab.*

xxx xxx xxx"

47. From the above conclusion of the DA in the impugned order it was concluded that: -

(i) The Chamber of the area manager is a restricted place, and no one can enter without his consent.

(ii) The Judgment in the case of ***Madan Mohan Lal Verma (supra)*** of the Supreme Court relied upon by the petitioner is with regard to conviction in the criminal trial of charges of bribery and the same is not relevant in the departmental proceedings as the charges have to be proved only on the preponderance of probability.

(iii) The money was recovered from two places. The amount was quite huge and the timing of the recovery was after 4 pm. Hence the possibility of occurrence of planted with ill intent is not possible. It is hardly possible for someone to keep money in the drawer and toilet flush tank during the office time between 10 am to 4 pm. If the money was kept by someone before 4 pm the same could have been recovered by the CO before the search of the CBI. However, placing the money in two places is

unlikely for framing someone. Despite giving an opportunity to explain, how money in question was found in his office toilet and drawer by someone to frame him, the CO could not bring any evidence on record either direct or circumstantial evidence to establish with reasonable probability that money was planted to frame him.

48. I have seen the reply filed by the CO to the disagreement note. It is not the case of the petitioner that the key to the room is with someone else. In other words, the key of the room is always in his custody. It is not his case that he was away from his office between 10 am to 4 pm on that date. He did take a stand that the FCI staff / Cleaning staff used to enter his room. But I find it is not his case after the opening of the office room and between 10 am to 4 pm any of the FCI staff or Cleaning staff has entered the office. He has not named any FCI staff / Cleaning staff who had entered and cleaned his room or the toilet during the day. In fact, he has not named any person who may have planted the money in his office.

49. It appears that the plea of Ms. Gogoi was also that when there was no abnormality or malfunction in the flush when the petitioner used the same few minutes before Constable Balkar Singh used it, make a probable defence of the petitioner that the GC notes were planted, is not appealing. Firstly, no motive has been imputed to Constable Balkar Singh for planting the money. Secondly, it may have happened that the petitioner may have used the flush before putting the GC notes which made the

flush unworkable when Constable Balkar Singh went to the toilet and pressed the flush. In any case, flush of the toilet is not the only place where the money was found, it was also found in the drawer of the table, for which no explanation is forthcoming. It is logical to presume, in the absence of any material to the contrary that the money which was found in the drawer / in the flush of the toilet in the office of the petitioner, belonged to the petitioner as he could not explain the source of that money.

50. The plea of Ms. Gogoi that CBI did not find enough evidence to prosecute the petitioner and the IO has also not found the charges proved is enough indication that the test of preponderance of probability or circumstantial evidence is not made out from the record is also unmerited for the reason as there was no evidence with the CBI to prove the charge of taking bribe against the petitioner beyond reasonable doubt, it had recommended the conduct of disciplinary proceedings against the petitioner and accordingly action was initiated against the petitioner resulting in the impugned orders. Hence, the petitioner cannot take advantage of the fact that CBI had not initiated prosecution against him. Even the plea that the IO has also not proved the charge is unmerited in view of the disagreement note of the Disciplinary Authority and the order passed thereon.

51. The scope of judicial review in departmental inquiry is very limited, i.e., the charge need not be proved beyond reasonable doubt, but on preponderance. In this regard, I may

refer to the Judgment of the Supreme Court in the case of ***M. Siddiq v. Suresh Das, (2020) 1 SCC 1,*** wherein the Court speaking through the Constitution Bench has prescribed the standard of preponderance of probability in para 720 as under: -

> *"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.] In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms : (All ER p. 373 H)*
>
> > *"(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."*
>
> *(emphasis supplied)*

52. A plea was taken by Ms. Gogoi that it was the obligation of the respondent to prove that the money recovered from the toilet / drawer was the bribe money received by the petitioner and not proving the same will not make the charges proved, is

also unmerited. Surely, the money has been recovered from the office of the petitioner and in the absence of any evidence that someone has planted the same with ulterior motive, the burden / onus shall shift on the petitioner to account the money. Not accounting for the same, presumption can be drawn that the money is of the petitioner received by him beyond his know sources of income and the same was placed by him.

53. Ms. Gogoi in support of her submission had relied upon the Judgment in the case of ***Orissa Mining Corporation and Anr. (supra)*** which would not help the case of the petitioner. In fact, Mr. Manoj has relied upon the same judgment wherein in paragraphs 5 and 6, the Supreme Court has held as under: -

> *"5. In a disciplinary or a departmental enquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer. In this sense, the learned counsel for the appellant may be justified in complaining that the standard of proof stipulated by the High Court in this case sounds inappropriate to a disciplinary enquiry. At the same time we must say that certain observations made by the inquiry officer in his report do lend themselves to the criticism offered by the High Court.*
>
> *6. On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer,*

depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent."

54. The Supreme Court in para 14 of ***General Manager (Operations) SBI and Anr. (supra)*** has reiterated the above position as under: -

> *"14. In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim omnia praesumuntur rite esse acta which means "all things are presumed to be done in due form".*

55. The above conclusion of the Supreme Court may not come to the aid of the petitioner, more so with regard to the plea advanced by Ms. Gogoi. In the very same Judgment, the Supreme Court dealing with a case relating to disciplinary proceedings has culled out the scope of judicial review in para 9 as under: -

> *"9. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya [(2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721], this Court observed as follows: (SCC p. 587, para 7)*
>
> > *"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led*

in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature of Bombay v. Shashikant S. Patil.)"

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard."

56. In so far as the other Judgments relied upon Ms. Gogoi are concerned, the same have no bearing in the case in hand, which arises from the disciplinary proceedings initiated against the petitioner herein and not from a criminal case as was the case in ***M.K. Harshan (supra)***. There the Court has held that as the prosecution was not able to prove the charge beyond reasonable doubt, and the appellant therein was entitled to benefit of doubt.

57. Similarly, even the Judgment in the case of ***C.M Sharma (supra)*** has no applicability. The said judgment arises from the conviction of the petitioner in a criminal case under the PC Act. It was in these proceedings, the Supreme Court has held that there is no evidence to support the allegation that the petitioner had made the demand for monies and / or had accepted the said monies.

58. The charge against the petitioner, in this case, is not demanding / accepting the money as bribe, but the same is that the petitioner could not satisfactorily give any reasonable ground of the recovery of money from his office / toilet and from the table drawers and in the absence of any evidence that someone has planted the money to trap the petitioner of serious charges against him, the charges have been held to be proved.

59. Similarly, the case of ***Dnyaneshwar Laxman Rao Wankhede (supra)*** shall also be not applicable in the facts of this case as the said Judgment arises from criminal proceeding initiated against the respondent therein. In fact, I find Mr. Manoj is justified in relying upon the Judgment of the Supreme Court in the case of ***Apparel Export Promotion Council (supra)***, wherein the Supreme Court in para 16 has held as under: -

> *"…….that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once*

findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty……"

60. In view of my aforesaid conclusion, I do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

OCTOBER 22, 2021*/jg*