

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th April, 2010.

+

W.P.(C) 233/2002

P.K.CHAKRAVORTY

..... Petitioner

Through: Mr. Riju Raj Jamwal, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Raj Birbal, Sr. Advocate with Ms.
Raavi Birbal, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

This order is in continuation of the earlier order dated 12th April, 2010.

1. As recorded in the order dated 12th April, 2010, the petitioner has already withdrawn the challenge to the punishment in so far as, stopping his one increment and depriving him of wages over and above the subsistence allowance already received by him, for the period of suspension. The petitioner has confined the grievance in the present petition only to whether the period of suspension is to be treated as a period spent on duty or not.

2. Pursuant to the order dated 12th April, 2010 and as directed therein the respondent HPCL has filed an affidavit. In the said affidavit, it has *inter alia* been stated that the Disciplinary Authority which has passed the order dated 13th April,

2000 is also the Competent Authority which is empowered to take the decision in terms of Rule E 1(c) of the Conduct, Discipline and Appeal Rules for Management Employees of HPCL. The said position is not controverted by the counsel for the petitioner also.

3. The counsel for the HPCL has urged that as per Rule E 1 (c), unless the employee is exonerated (which is not the case here) the period of suspension is not to be treated as period spent on duty, unless the Competent Authority directs otherwise. It is contended that in the absence of Competent Authority directing otherwise, it has to be presumed that the period of suspension is not to be counted as period spent on duty. However, this Court is of the opinion that a decision in that regard is necessarily required to be taken and the Competent Authority is required to record that no case for directing otherwise is made out.

4. Upon the same being put to the counsel for the HPCL, the counsel contends that in the present case the Competent Authority has by recording in the order dated 13th April, 2000 that the petitioner will not be entitled to any other benefit over and above the subsistence allowance already paid to him during his suspension period, held that no case for directing otherwise is made out. Attention is further invited to the departmental appeal preferred by the petitioner against the order of the Disciplinary Authority. It is contended that the grounds of the said appeal are set out on internal page 3 of the order dated 16th April, 2001 of the Appellate Authority. It is further contended that the Appellate Authority has on internal page 4 of its order expressly held that annual increment is not a matter of right but must be earned through satisfactory performance and no annual increment can be granted while an employee is under suspension. It is contended that by so holding the Appellate Authority has expressly directed otherwise. Attention is also invited to the observations of the Disciplinary Authority *inter alia* to the effect that the petitioner during the period of suspension was in employment elsewhere, though benefit of

doubt was given to him.

5. I have enquired from the counsel for HPCL whether there are any other implications of treating the period of suspension as period spent on duty or not besides qua increment. The counsel for the petitioner contends that the same even without increment for that period, would have a bearing on quantum of pension of the petitioner and will also affect the future promotions of the petitioner. The counsel for HPCL is not in a position to controvert the said effect also of not treating the period of suspension as period spent on duty.

6. Though the Appellate Authority has in its order dated 16th April, 2001 expressly applied itself to the aspect of whether the period of suspension is to be counted as period spent on duty, however I find that under Rule E 1(c) (supra), the decision in this regard is to be of the Competent Authority and whose decision has under the Rule been made final. Rule 'J' providing for appeal to the Appellate Authority has been perused. The Appellate Authority is not found to be vested with the jurisdiction to hear an appeal with respect to the decision taken by the Competent Authority under Rule E 1(c). Thus the observations even, if any, of the Appellate Authority qua treatment of the period of suspension and as to whether the same is to be counted as time spent on duty or not are without jurisdiction and to no avail in as much as under the Rules the Appellate Authority is not empowered to hear an appeal or pronounce on the decision of the Competent Authority, taken in exercise of powers under Rule E 1(c) (supra).

7. That brings me back to the order dated 13th April, 2000 of the Disciplinary/Competent Authority. The mere observation therein that the petitioner will not be entitled to any other benefit over and above the subsistence allowance is not found indicative of exercise of power under Rule E 1(c) (supra).

8. The counsel for the HPCL has contended that it was not even the plea of the

petitioner before the Disciplinary Authority and is not a ground taken in the writ petition before this Court either. However the same is not found to be relevant. Under the Rule aforesaid the Competent Authority whose decision has been declared to be final, is required to pass an order as to whether the period of suspension is to be treated as period spent on duty or not and if the Competent Authority holds not to direct otherwise it is required to give reasons therefor. This is in consonance with the thread of the principle of natural justice found to run throughout the disciplinary proceedings/domestic inquiry.

9. It is thus found that the Competent Authority of HPCL has not taken a decision as to whether a case is made out to direct otherwise from the general rule of the period of suspension being not treated as a period spent on duty since the petitioner was not exonerated.

10. This writ petition is accordingly disposed of directing the Competent Authority of HPCL to take a decision in this regard. The counsel for the petitioner states that he be given an opportunity to make a representation in this regard. The said representation be made within four weeks of today. The Competent Authority of HPCL to take a decision within eight weeks, thereafter. Though the counsel for HPCL has contended that there is no requirement for oral hearing but to avoid any further complications/delays, has agreed to grant oral hearing also to the petitioner in this regard.

11. This Court had in order dated 12th April, 2010 also left open the question whether the action of the Competent Authority, if not directing otherwise, has the effect of meting out punishment to the petitioner more than that of stoppage of one increment as intended. Since the matter is being referred back to the Competent Authority and which is also the Disciplinary Authority, it is deemed appropriate to leave the said question also to be represented by the petitioner along with the

representation aforesaid and the Competent Authority/Disciplinary Authority is directed to deal with the said aspect also.

12. Needless to state that notwithstanding the disposal of the present petition, the parties shall have their remedies to the limited extent aforesaid against the order of the Competent Authority/Disciplinary Authority.

With the aforesaid directions, this petition is disposed of leaving the parties to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

27th April, 2010
pp