

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

+ **W.P.(C) No. 7297/2005 & CM No. 5224/2005**

% Judgment reserved on: 9th May, 2012
Judgment delivered on: 4th July, 2012

J.K. SHARAN

..... Petitioner

Through : Mr. P.P. Khurana, Sr. Advocate
with Mr. Amit Kumar, Advocate.

versus

UOI & ORS.

..... Respondents

Through : Mr. Jaswinder Singh, Adv for
respondent no. 1.

Mr. Ajit Pudussary and Mr. Dinesh Khurana,
Advocates for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner seeks quashing the order of demotion vide dated 15.07.1991.

2. Also seeking to quash the cancellation of deputation of the petitioner by respondent no.3 vide his order dated 20th July, 1991.

3. He further seeks quashing of termination of his service by respondent no.2 vide order dated 09.08.1991.

4. Facts of the case are that the petitioner had joined direct Class-I Permanent Service in Govt of India, Ministry of Defence through
W.P.C. No. 7297/2005

Indian Ordnance factory Services in Indian Naval Armament Service Cadre. From the Ministry of Defence, he later joined National Thermal Power Corporation (NTPC) on deputation from Govt. of India in the year 1979. He earned three promotions between the year 1979 to 1984 and was permanently absorbed in NTPC.

5. In the year 1984, the respondent no.2, GAIL came into existence, exclusively for cross-country transportation of natural gas by pipelines and marketing of natural gas found offshore. Respondent no.2, inter alia, advertised posts in the rank of Senior Manager (C&P). He applied for the said post and the petitioner was selected and appointed in the month of December 1984.

6. The petitioner within five years of service was given promotion by the respondent no. 2 to the post of Deputy General Manager (C&P) based on good performance appraisal and after getting due clearances from all concerned departments of the respondent no.2.

7. In the year 1989, respondent no.2, based on global tender, was the executing agency of Hazira-Bijapur-Jagdishpur (HBJ) gas pipeline project worth Rs.1700 Crores. In the said project, huge commission/kickbacks were paid to the tune of several crores in supply of steel pipelines by M/s Sumitomo Corporation of Japan and in other contracts.

8. Therefore, the Government of India ordered C.B.I. investigation against the said illegal activities. The role of Mr. Vineet Nayyar, the then Chairman and Managing Director, of respondent no.2 was

investigated by the C.B.I. for complicity with the Indian Agents in payment of kickbacks in HBJ contract and for irregularities in award of feasibility study contract of Tripura Gas Transportation Project to M/S. Snam Progetti of Italy.

9. The statements of the petitioner, who was then Head of the Department, were recorded and questions were asked regarding the proximity of agents of Sumitomo Corporations and Snam Progetti with Shri. Nayyar. The petitioner who was Senior Manager (C&P) stated amongst other things, in unequivocal terms, the truth that the agents of Sumitomo (Mr. Lalit Suri) and Snam Progetti (Mr. Quattorochhi) were very close to the then C.M.D., Mr. Vineet Nayyar. Based on this investigation, Sumitomo was later blacklisted forever from doing business with India.

10. In the meanwhile, C.B.I. proceeded with the aspect of involvement and complicity of Vineet Nayyar as a public servant. The then C.M.D. got inkling regarding the statements of the petitioner against him during disposition to CBI who had made the petitioner their witness. Mr. Vineet Nayyar, the then CMD's giving undue favour to Mr. Ottavio Quattrocchi of Snam Progetti by including the name of this company even after expiry of the tender closing date for feasibility study of Tripura Gas Project, appeared in the Indian Express Newspaper on 22nd March, 1990 besides figuring in both Houses of Parliament and finally led to registration of CBI case against Mr. Nayyar.

11. It was for the reason that the then C.M.D., GAIL Shri Vineet

Nayyar unleashed series of wrath, vendetta and vindictiveness against the petitioner misusing the powers of the public office he held.

12. Accordingly, the petitioner in the first instance was vindictively posted out of Delhi for his honest, truthful conduct and disposition to CBI. The promotion order was made conditional to give effect to promotion only after he had gone out of the scene. It also stipulated that even after promotion, despite having put in over 20 years of service, he would again become a probationer in respondent no. 2. The promotion order contained one-year probation period, which was to be confirmed only after the probation period. The petitioner sought deferment of the transfer order for two months vide his application dated 02.02.1990 on compassionate and humanitarian grounds on account of the looming C.B.S.E examination of his only son, commencing from 15th March, 1990 i.e. just after a month. The request of the petitioner was not agreed to but as a disciplined officer, the petitioner joined his new place of posting on 13.02.1990. The petitioner after joining the new place of posting took leave to guide and tutor his son. The leave from 14.02.1990 to 30.04.1994 was duly sanctioned by the competent officer of Respondent No. 2 Project at Bijapur, (M.P.) where the petitioner had joined.

13. The sanctioned leave of the petitioner was abruptly cancelled on 28.03.1990 with intent to harass the petitioner. However, the petitioner on account of unending relentless mental and physical harassment unleashed by Mr. Nayyar, suffered multi –organ ailments. He was advised bed rest while under treatment of premier Govt. of India

owned hospitals like All India Institute of Medical Science, were on the panel of respondent no. 2.

14. The petitioner accordingly informed the concerned officer about the state of his health by his letter-dated 30.03.1990 annexing the copy of the Medical Certificate for rest, issued by Medical Superintendent, All India Institute of Medical Sciences. The day the petitioner was declared fit by hospital, he joined the duties of respondent no. 2 on 05.04.1991. On account of the vindictive attitude of the then C.M.D., the petitioner even during his sick leave with need for bed rest certified by AIIMS, was asked to report for duty and transferred from Bijapur (M.P.) to Lakwa, Assam where existed no project of respondent no. 2 either sanctioned or under construction. The petitioner had neither ever work nor had any relevant experience of construction and project management to merit his posting there. Moreover, he did not belong to the department of the specialization that dealt with projects in proposal or construction stage.

15. In the meanwhile, respondent no. 3 (Oil and Natural Gas Commission (ONGC)) based on an advance copy of petitioner's application and considering his qualification and experience, agreed to borrow the services of the petitioner on deputation basis for the post of Deputy General Manager ONGC, vide letter dated 30.03.91 which was sent through the respondent no.2. The offer also contained the detailed terms and conditions of the deputation (also called Foreign Service).

16. The petitioner, vide his letter dated 05.04.1991 to respondent no. 2 accepted unconditionally in writing, the offer of respondent no. 3

with all its terms and conditions. He submitted his unconditional acceptance of offer of respondent no. 3 to respondent no. 2 for forwarding the same to respondent no. 3. Therefore, the said letter by the petitioner also contained his request for relieving him from respondent no. 2 with immediate effect so as to enable him to join respondent no. 3 on deputation; therefore the offer dated 05.04.1991 of the respondent no. 3 stood unambiguously accepted by the petitioner.

17. The respondent no. 2, on receiving the letter of acceptance of the offer of respondent no. 3, the said respondent on 05.04.1991 relieved the petitioner so as to enable him to join the respondent no. 3 on deputation. The petitioner in pursuance of the relieving order of the respondent no. 2, reported to the respondent no. 3 on the same day i.e. on 10.04.1991. He submitted his Joining Report dated 10.04.1991 to the General Manager, ONGC, New Delhi.

18. Accordingly, the office of respondent no. 3 at Delhi where the petitioner reported and joined on 10.04.1991 informed its Headquarters, vide message no.DLH/ADM/11 (399)/91 dated 25.04.1991 intimating that the petitioner had joined ONGC on 10.04.1991 and sought specific allocation of duty on joining. In response to the same, the Senior Deputy Director sent a telex message dated 18.06.1991 to General Manager (Finance) intimating him that the petitioner had been posted to Management Audit Cell under General Manager at Dehradun. In the said message, a copy was even marked to the petitioner. Thereafter, respondent no. 3 sent a communication to the petitioner, which was actually never received by him, stating that

after his joining ONGC on 10.04.1991 at Delhi, he had been posted to Management Audit Cell under General Manager at Dehradun.

19. Respondent no. 2, vide letter dated July 03, 1991 sought the recovery from respondent no.3 of House Building Advance and Conveyance advance of Rs.30,712.85 made to petitioner by respondent no.2.

20. Mr. P.P. Khurana, Ld. Sr. Advocate, appearing for petitioner submitted that petitioner was surprised and shocked to see that while he was away on deputation with respondent no. 3 after getting duly and properly relieved with all clearances from respondent no. 2, three months back on 10.04.1991, the respondent no. 2 by its office order dated July 15, 1991, reverted him to the post of Senior Manager from the post of D.G.M., without assigning any reason and even without giving any opportunity to the petitioner to know the reason, improve or defend himself against the grounds that could lead to his demotion. Respondent no. 2 had never brought out to the petitioner any shortcoming in his performance as Dy. G.M. The respondent no. 2 had no opportunity or scope of appraisal of the performance of petitioner as Dy. General Manager as the petitioner had worked as Dy. GM at respondent no. 2 for only five days between 05.04.1991 to 09.04.1991 and after that he was sent on foreign service/deputation.

21. The petitioner having joined ONGC on 20.07.1991, was further surprised and shocked to see the letter of ONGC cancelling its offer of appointment for deputation itself on the ground that the petitioner had not accepted the ONGC's offer and also had failed to join ONGC at

Dehradun against a posting order that was allegedly handed over to him.

22. The petitioner immediately on receipt of letter of cancellation sent a telegram to respondent no. 3, dated 30.07.1991 clearly bringing out that he had submitted the acceptance of ONGC in accordance with requirement of proper channel and also because the offer was made by ONGC to him through GAIL.

23. The vindictiveness of the GAIL reached its zenith from this letter of termination of petitioner's service on alleged voluntary abandonment of service as stipulated in GAIL Leave Rules. It was alleged on 09.08.1991 that the petitioner had remained absent for a period of more than 10 days from the service of respondent no. 2, which under GAIL Leave Rules amounted to voluntary abandonment of service.

24. The petitioner having suffered intentional infliction submitted a detailed Representation to Ministry of Petroleum and Natural Gas, Government of India, i.e. the Respondent no. 1, being the Administrative Ministry that owned GAIL and also being the next higher authority over GAIL. The petitioner, as an aggrieved party, brought out to the notice and specifically sought the proper redressal from the proper avenue for justice against termination of his service that was illegal, unlawful and unconstitutional being utter violation of Principles of Natural Justice.

25. The petitioner had joined the services of O.N.G.C. on

10.04.1994 and had given his written acceptance of all the terms and conditions of the offer of ONGC to GAIL, through whom the ONGC actually made the offer.

26. Respondent no. 2, in order to foreclose and pre-empt the issue of reinstatement of the petitioner that was under consideration of the respondent no. 1, without even a request from the petitioner sent to the petitioner a cheque for amount which the respondent no. 2 arbitrarily computed as payable on termination of his service.

27. On account of repeated reminders and persistent efforts by the petitioner on his representation to the respondent no. 1, respondent no. 3 on directions of the respondent no. 1 issued letter no. 1 (130)/91-EI dated 30.04.1994 restoring deputation of petitioner from GAIL but on lower post, which clearly shows that the petitioner was being taken on deputation from GAIL.

28. Respondent no. 3 took the aforesaid decision in the light of direction of the respondent no. 1 is clear from the letter dated 30.04.1994 of respondent no. 3. The respondent no. 3 informed the respondent no. 1 vide letter dated 02.05.1994 that the respondent no. 2 was not complying with the direction of the respondent no. 1.

29. The petitioner on account of his normally outstanding and impeccable performance earned ONGC's Certificate of Merit even while working under humiliating conditions at ONGC.

30. The petitioner continued to represent, while working at respondent no. 3 on deputation, to all concerned authorities to take him

back in GAIL. The respondent no. 2 sent a communicated letter dated 11.11.1996 stating that the termination order had been passed under the provisions of Rule 22 of GAIL Leave Rules presuming that the petitioner had no interest in the employment of GAIL.

31. Further, it is submitted by Learned counsel for the petitioner that for the first time after order of termination, the respondent no. 2 came out with its erroneous presumption on applicability of its own Leave Rule by stating in this letter that “in any case, even during deputation GAIL Leave Rules were applicable to you”, as against actual provision in the GAIL Leave Rule that it was not applicable to persons on deputation. By this letter, GAIL also revealed its ignorance of agreed terms and conditions of deputation despite having a copy of the same that the person continues to be on deputation until he resumes charge in the parent department.

32. In the meanwhile, ONGC by office order dated 23.15.1996 relieved the petitioner on completion of his deputation in ONGC with effect from 16.05.1994 to 31.12.1996.

33. The petitioner approached the Administrative Ministry of GAIL and ONGC i.e. Ministry of Petroleum at whose instructions his deputation in ONGC was restored, as GAIL refused to accept his joining report on completion of his deputation at ONGC.

34. Learned counsel further submitted that the joining report was submitted to GAIL, personally by the petitioner, on 07.01.1997 but GAIL refused to accept it.

35. On enquiry by the respondent no. 1, respondent no. 2 in its letter dated 20.02.1997 informed the respondent no. 1 that the petitioner had neither joined ONGC nor reported back to respondent no. 2 and for this reason respondent no. 2 had presumed that the petitioner had voluntarily abandoned the service of GAIL with effect from 8th August, 1991 under Rule 22 of GAIL Leave Rules.

36. Vide letter dated 5th January, 1998, the respondent no. 1 in its letter to the respondent no. 2 categorically held that no opportunity of hearing has been given to the petitioner and in the same letter further directed the respondent no. 2 to give the petitioner opportunity to defend himself before terminating his services.

37. Ld. Sr. Counsel further submitted respondent no. 1 vide letter dated 10th February, 1998, directed the respondent no. 2 to review its earlier decisions of striking the name of the petitioner and reverting him to a lower post, as the same had been done without following proper disciplinary proceedings.

38. Respondent no. 1 passed successive orders for restoration of the service and inter-se seniority of the petitioner with the respondent no. 2. The Hon'ble Minister of respondent no.1 ordered reinstatement of the petitioner within 24 hrs and Secretary termed action of respondent no.2 as meditated malice with equivocation found in macbeth. All orders and directions of respondent no.1 though being its Administrative Ministry was ignored by the respondent no. 2 arbitrarily and without any just cause but out of unprecedented vendetta and vengeance.

39. Again, vide order dated 07.10.1998, the respondent no. 1 directed the C.M.D. of the respondent no. 2 to reinstate the petitioner on its rolls, as striking off the name of the petitioner from the rolls of the respondent no. 2 was a violation of the Principle of Natural Justice.

40. The Board of Directors of the respondent no. 2 in its 131st Meeting vide agenda no. 10 held on 05.11.1998 decided to reinstate the petitioner on the rolls of respondent no. 2 as Senior Manager, (C&P). This clearly established that respondent no. 2 at its Board level, which is the highest level, admitted termination of petitioner's services by the respondent no. 2 was void ab-initio incorrect and complied with the decision of respondent no. 1 to restore the services of the petitioner.

41. Repeatedly, the respondent no. 1 conveyed to the respondent no. 2 that its CMD should decide the case keeping in consideration that he was relieved by GAIL and joined ONGC on deputation as DGM on 10.04.1991. His demotion and termination of service by GAIL, while he was on deputation to ONGC, were resorted to without notice, holding enquiry or giving opportunity to defend and provisions of GAIL rules notwithstanding the principles of natural justice as enunciated recently by the Supreme Court and High Courts, were violated.

42. Mr. Khurana further submitted that the respondent no. 1 out of desperation and exasperation due to respondent no. 2 not implementing its numerous orders and with a view to settle the legal aspect of the case once and for all, sought legal opinion of Ministry of Law and Justice, Govt. of India regarding the legality of the matter. After

obtaining the opinion of Ministry of Law & Justice, respondent no. 1 directed both the respondent no. 2 and respondent no. 3, to immediately pass orders in conformity and in line with the opinion given by the Ministry of Law and Justice. The letter contained the actual findings of Ministry of Law and Justice were that the termination of service of the petitioner without affording him any opportunity would be bad in law and is liable to be set aside. Respondent no. 1 again vide letter dated 25th March, 2003 inquired from the respondent no. 2 regarding the implementation of the directions of the respondent no. 1.

43. The petitioner finally retired on 31st December, 2003 from his service on attaining the age of superannuation. Till his retirement he had been running from pillar to post seeking justice and there are numerous representations on record with regard to the same.

44. Learned counsel for the petitioner has relied upon the case of **Uptron India Ltd. Vs. Shammi Bhan and another AIR 1998 Supreme Court 1681** and held as under:-

“1.Respondent 1 was appointed as an operator (Trainee) on 13.6.1980 in the petitioner's establishment. On completion of training, she was absorbed on that post with effect from 13.7.1981 and was confirmed on 13.7.1982. She thus acquired the status of a permanent employee.

8. Before examining Clause 17(g) of the Certified Standing Orders, we may point out that the

concept of employment under industrial law involves, like any other employment, three ingredients:

(i) management/industry/factory/employer, who employs or, to put it differently, engages the services of the workman;

(ii) employee/workman, that is to say, a person who works for the employer for wages or monetary compensation; and

(iii) contract of employment or the agreement between the employer and the employee whereunder the employee/workman agrees to render services to the employer, in consideration of wages, subject to the supervision and control of the employer.

9. The general principles of the Contract Act applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for example, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the States have already, by legislation, prescribed positive obligations for the employer towards his workmen, as, for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948;

Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 etc.

45. Also placed relied upon the case of **AIR 1998 SUPREME COURT 1686 M.K. MUKHERJEE AND K.T. THOMAS. JJ State of Gujarat, Appellant Vs. Mohammed Atik and others, Respondents** and held as under:-

On the other hand Mr. Chinnasamy has relied upon the case of [Uptron India Ltd. vs. Shammi Bhan and Anr.](#) reported in 1998 (6) S.C.C. 538. In this case it was held that such a standing order conferred a discretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It was held that the discretion had to be based on an objective consideration of all circumstances and material which may be available on record. It was held that questions which would naturally arise are what circumstances compelled the employee to proceed on leave, why he overstayed leave, was there any just and reasonable cause for overstaying leave, whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime fallen ill. It was held that such questions could only be answered by the management provided it was inherent in the provision that the employee against whom action was proposed to be taken on the basis of such a provision was given an opportunity of hearing. It was held that principles of natural justice had to be read into such a clause and the principles of natural justice had to be complied with. It was held that the employee had to be informed of the grounds for which action was

proposed to be taken against him for overstaying the leave. It was held that a Standing Order which provided for automatic termination of service of a permanent employee would be bad if it did not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically. It must be mentioned that the authority in Scooters India's case (supra) was cited before this Court. In respect of that case it was held as follows: "22. Learned counsel for the petitioner has placed strong reliance upon a decision of this Court in Scooters India v. Vijay E.V. Eldred, 1996 (6) S.C.C. 549, in support of his contention that any stipulation for automatic termination of services made in the Standing Orders could not have been declared to be invalid. We have been referred to a stray sentence in that judgment, which is to the following effect:

"It is also extraordinary for the High Court to have held clause 9.3.12 of the Standing Orders as invalid."

This sentence in the judgment cannot be read in isolation and we must refer to the subsequent sentences which run as under:

"Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."

23. In view of this observation, the question whether the stipulation for automatic termination of services for overstaying the leave would be legally

bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that:

"Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order."

This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place."

46. Learned counsel for the petitioner has further relied upon the case of **D.K. Yadav Vs. J.M.A. Industries Ltd (1993) 3 Supreme Court Cases 259** and held as under:-

“The principle question is whether the impugned action is violative of principles of natural justice. In A.K. Kriapak and Ors. v. Union of India & Ors., [1969] 2 SCC 262 a Constitution bench of this court held that the distinction between quasi judicial and administrative order has gradually become thin. Now it is totally clipped and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India & Anr. [1971] 1 SCR 791. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice necessary implication from specific provisions in the Act like Ss.25F; 25FF; 25FFF; etc, the need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service are completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of s. 25F resort could be had to retrench the employees in conformity therewith particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural

justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Art. 14. 941 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative. inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial

enquiry and not to administrative enquiry. It must logically apply to both.

47. On the other hand, Mr. Rajeev Nanda, Sr. Advocate appearing on behalf of respondent No.3/ONGC has submitted that the present petition is highly belated and barred on the principle of laches. In the present petition, relief sought against respondent No. 3 is for issuance of a writ of certiorari quashing the order dated 20.07.1997 cancelling the deputation of the petitioner by the answering respondent. The relief sought against the respondent No. 3 is concerning order passed on 20.07.1991 in the year 2005. The reasons for not approaching the court earlier for a period of over 14 years is also not explained in the petition. Therefore, the petition is liable to be dismissed on that ground alone.

48. It is further submitted that the petitioner has not come to the court with clean hands as the entire case of the petitioner is that he never received communication dated 18.06.1991, which required him to report to Group General Manager (MM), ONGC, Tel Bhawan Dehradun. The petitioner has not disclosed as to how he has got the copy of this letter dated 18.06.1991.

49. It may be noted that the petitioner received the copy of the telex message dated 18.06.1991, as Sh. G.C. Kudasiya, General Manager (F&A), ONGC has telephonically intimated with regard to telex message having been conveyed to the petitioner on 21.06.1991. Therefore, this petition deserves dismissal on this ground also.

50. Ld. Sr. Counsel further submitted that the application dated 10.04.1991, purported to be an advance copy of the petitioner's

application for considering him for appointment on deputation was received by the answering respondent but as will be apparent from the letter dated 10.04.1991 of GAIL, the said application dated 18.03.1991 was not routed through GAIL, apparently this was done by the petitioner to avoid giving of any relevant information from GAIL to the ONGC(answering respondent) with regard to memos having been issued to the petitioner calling for his explanation. The answering respondent for the first time from the aforesaid letter dated 10.04.1991 became aware of the conduct of the petitioner with regard to not routing of the application through GAIL as is being claimed.

51. It is further submitted that the purported advance copy of the application submitted by the petitioner was considered by the respondent No. 3 for deputation and its acceptance was conveyed vide letter dated 30.03.1991 through his employer i.e. GAIL, as per the rules and procedure. It was mentioned in the said letter that his request has been approved and he may indicate his willingness to join the respondent No. 3 on the stipulated terms and conditions which were enclosed with the letter dated 30.03.1991. The copy of the letter was sent to GAIL. The petitioner was also asked to intimate the date of joining the respondent No. 3 on deputation so that the requisite formalities could be completed prior to his joining the respondent No.3

52. However, the petitioner without conveying categorical acceptance of the terms and conditions of his deputation, and without waiting for being intimated place of posting submitted joining report dated 10.04.1991 at Delhi office and not at the Head office at

Dehradun from where the offer of deputation was made vide letter dated 30.03.1991 and formal order of his posting was to be made. The Delhi office of the answering respondent is not competent to accept the joining report or to take any decision on it unless specifically authorized to that effect by the head quarters at Dehradun. The joining of the petitioner with answering respondent could have only been accepted by given him an order of posting.

53. The answering respondent therefore vide telex dated 18.06.1991 addressed to the General Manager (Finance) ONGC, New Delhi, intimated him about being posted to Management Audit Cell under GP-Gen. Manager (MM)-T at Dehradun. The said telex message was communicated to the petitioner by Sh. Kudasiya. The relevant noting made on 29.06.1991 reads as under:-

“Spoke on telephone to Sh. Kudasiya at Delhi who confirmed that the communication has been passed on to Mr. Sharan on 21.06.1991. Sh. Sharan has not joined at Delhi. St/- 29.6.91.”

54. Mr. Nanda has pointed out that the petitioner, though, did not join at Dehradun in compliance with the telex dated 18.06.1991. A perusal of Para VI shows that the letter dated 05.04.1991 was sent by the petitioner to the respondent No. 2 only, no copy of the said letter was sent to the answering respondent. Therefore, it is incorrect to say that there was an acceptance of offer made by the answering respondent vide letter dated 05.04.1991.

55. The case of the petitioner is that he submitted a letter dated 10.04.1991 to the office of the answering respondent at New Delhi

which was purported to be joining report. It is submitted that the petitioner did not submit any acceptance of offer or joining report at the head office of the answering respondent at Dehradun. The respondent no. 3 on coming to know with regard to petitioners having submitted his purported joining report at Delhi, sent a telex message dated 18.06.1991 intimating with regard to his posting at Dehradun. The said posting order was communicated to the petitioner on 21.06.1991 but the petitioner did not comply with the same.

56. Since the petitioner did not join at Dehradun inspite of communications made to him by the answering respondent, it was left with no other option but to cancel the offer of deputation vide this letter dated 20.07.1991. A perusal of some of the representations made by the petitioner shows that he did not want to leave Delhi. This is also apparent as he refused to act on the communication delivered to him regarding his posting at Dehradun.

57. Ld. Counsel has further submitted that as admitted by the petitioner, he was considered for deputation as per direction of respondent No. 1 afresh and letter No. 1(130)/91-E.1 dated 30.03.1994 was issued. Ld. Counsel has pointed out that the letter was issued in view of the compassionate view taken by the ministry in anticipation of the decision on review of the dismissal order of the petitioner by the respondent no. 2 as per advice of respondent No. 1. The petitioner was stopped by his own action since he rejoined the respondent No.2. The fresh offer of deputation made vide letter dated 30.03.1994 came to an end on 23.12.1996. After a period of fourteen years, it is not open to

the petitioner to raise grievance with regards to order dated 20.07.1991, as he did not join at the place of posting in spite of order to that effect.

58. It is submitted that the petitioner was taken on deputation purely on the directions of respondent No. 1 and subject to clearances from respondent No. 2 w.e.f 16.05.994 which was extended up to 31.12.1996 in different spells. Since the respondent No. 2 did not give clearances and refused the petitioner to be on its rolls after dismissal of his services on 09.08.1991, the petitioner was relieved from the services of respondent no. 3 in the afternoon of 31.12.1996. The petitioner was paid total pay and allowances for the whole period from 16.05.1994 to 31.12.1996 of deputation by the answering respondent.

59. He further submitted that respondent No. 3 considered and accepted the advance request of the petitioner for deputation as per standard terms and conditions. These conditions were to be mutually agreed by respondent No. 2 and the petitioner. As stated vide letter dated 30.03.1991 to the petitioner, he was to indicate his probable date of joining the respondent No. 3 and copy of which was endorsed to respondent No. 3 to give their consent/acceptance and relieve the petitioner properly for joining the deputation.

60. However, the petitioner did not do so and directly submitted his purported joining report dated 10.04.1991 to Delhi office of answering respondent, which was not competent to accept the joining report or to take any decision on it unless authorized by the headquarters of the respondent No. 3.

61. Moreover, the respondent No. 2 i.e. lending department was not inclined to spare the services of the petitioner in view of certain misconduct and gross violations of their rules by the petitioner for which he was under charge sheet. Pending decisions in these cases and also clearances, the joining dated 10.04.1991 of the petitioner was not accepted. His claim for pay and allowances and seniority or otherwise is not legitimate and justified. Mere submission of joining report does not make any person an employee of the organizations.

62. The petitioner was taken on deputation on the direction of respondent No.1 in anticipation of settlement of the issues of dispensing with the services of the petitioner by the respondent No. 2. It continued from 16.05.1994 to 31.12.1996 and the petitioner was relieved by the answering respondent No. 3 to join back respondent No. 2.

63. Mr. Nanda submitted that order dated 21.07.1991 was made in view of the circumstances explained above. The petitioner himself was responsible for creating circumstance leading to passing of order dated 21.07.1991. The order passed by the answering respondent was in accordance with law, therefore, the petitioner is not entitled to any relief as claimed by the petitioner and the instant petition deserves to be dismissed.

64. The respondent No. 2(GAIL) also filed response to the instant petition and taken a preliminary objection that the petition is highly belated on the ground of laches as it seeks to challenge the reversion of the petitioner to the rank of Sr. Manager admittedly vide order dated

15.07.1991, the cancellation of deputation vide order dated 20.07.1991 and the name of the petitioner; being struck off from the rolls on account of his having abandoned the same effected by order dated 09.08.1991. It is further submitted that the present writ petition filed in the year 2005 after a period of 14 years and therefore the same is liable to be dismissed following the law laid down by the Apex Court in the judgment reported in *1998 (6) SCC 549-Scooters India v. Vijai E Eldred* which directly covers the issues raised in the present case.

65. The petitioner has made false averments in the Writ Petition and has indulged in concealment of material facts as will be pointed out hereinafter. It is submitted that during his probation, a vigilance enquiry was held against him for irregularities that he had sold a car hypothecated to the Company without following the Company's procedure. In the vigilance enquiry, it was concluded that the Petitioner had committed an offence of misappropriation and criminal breach of trust and it was proposed to refer the case to the CBI for further investigations. Thereafter, when the petitioner deputed an employee on official tour for his personal work, a show-cause notice dated 05.09.1985 was issued to him for the misconduct. The initial period of probation of the petitioner was extended for six months vide order dated 17.01.1986. However, he was subsequently notified to have completed his probation period as Senior Manager w.e.f. 29.12.1985.

66. It is further stated that the petitioner was promoted as Dy. General Manager (C&P) on probation for one year with retrospective

effect from 01.07.1989 vide Office Order dated 27.12.1989 and was posted to Bijapur (MP). Accordingly reported and assumed charge for the post of Dy. General Manager (C&P) on 13.02.1980. But thereafter, he left the place of his posting and proceeded on leave from 14.02.1990 itself and submitted a series of medical certificates from different hospitals in Delhi citing different illnesses as the reason for leave on medical grounds. In fact, period from 07.07.1990 to 03.09.1990 was not even covered by any leave application or medical certificate. The company had directed the petitioner under Rule 23.2 of its Leave Rules to appear before the Company's medical officer for an independent opinion regarding his alleged illnesses, but he refused to comply with the directive. He also refused to join his posting inspite of a clear direction from the then Director (Projects) to that effect. He further refused to accept official communications sent to him under registered post. He even refused to hand over the keys of the almira's containing official documents. The respondent no. 2 had in fact sent repeated notices including the one dated 16.04.1990 to the petitioner asking him to show cause within three days of receipt of the letter as to why action should not be taken against him in accordance with the Rules. During this period, the answering respondent also received communication dated 24.06.1990 marked "secret" addressed to the CMD from the Joint Secretary, Ministry of Home Affairs, Government of India in which it was stated that the petitioner was involved in leakage of certain classified information and that appropriate action be initiated against him for breach of confidentiality which was against the interests of national security.

67. In the meantime, he was transferred on 26.09.1990 to Lakwa in Assam to take charge of activities in respect of upcoming LPG plant at Lakwa. However, he refused to go there. Since, petitioner had not even worked for a single day after his promotion, there was no material to assess his performance on probation and accordingly his period of probation was extended only by six months i.e. up to 31.12.1990. Thereafter, his probation was extended by another six months.

68. Further, the petitioner brought letter dated 30.03.1991 from Deputy General Manager (DGM) (Personnel) of respondent No. 3 to the effect that he was given appointment as DGM in that organisation on deputation basis for a period of one year. It is relevant to mention that neither petitioner's application to ONGC nor ONGC's offer of appointment to him was routed through the answering respondent. No application had been forwarded by the answering respondent to ONGC also. In spite of this, the answering respondent issued letter dated 10.04.1991 and his repatriation and he was required to join with GAIL at Lakwa (Assam). Letter dated 15.07.1991 sent by the answering respondent to petitioner through respondent no. No. 3 to which he was on deputation intimating his reversion to the post of Sr. Manager was returned unserved by respondent No. 3 vide their letter dated 17.07.1991 informing that petitioner had not joined ONGC also. Respondent no. 3 also later informed that his offer of appointment in ONGC had therefore, been cancelled.

69. Eventually in view of his failure to join his posting under the answering respondent despite repeated notices and communications,

etc. and the information given by ONGC that he had not joined on his posting there also, therefore petitioner's name was struck off from the rolls of the answering respondent w.e.f. 08.08.1991 by order dated 09.08.1991 in accordance with Rule 22 of the Leave Rules. Copy of order dated 09.08.1991 was also forwarded to respondent No. 3 as also to the petitioner.

70. Thereafter, during 1994, a meeting was held in the office of the then Secretary, Ministry of Petroleum and Natural Gas, Government of India in which Directors (Personnel) of both respondents No. 2 and 3 were present. The Secretary of the said Ministry desired that petitioner should be taken by one of the organizations. Since the petitioner's name had been struck off from the rolls of answering respondent, it expressed inability while respondent No. 3 agreed to take him and accordingly issued letter dated 13.04.1994 offering him the post of Additional Director (Materials Management) on deputation for a period of one year with posting at Nazira (Assam). This was accepted by the petitioner. However, since the petitioner was no more on the rolls of the answering respondent, respondent No. 3 was replied by respondent No. 2 vide letter dated 19.04.1994 that there was no question of the petitioner's deputation to another organization.

71. Thereafter, the issue was placed before the Board of Directors of the company on the basis of letter dated 07.10.1998 received from the Ministry. The Board decided that the petitioner be reinstated as Sr. Manager and thereafter the management may proceed against him departmentally as suggested by the Ministry.

72. Again on the basis of letter dated 26.05.2000, the matter was put up to the Board of Directors in its 151st meeting on 28.06.2000 which upheld the decision of the Management and decided that the petitioner need not be reinstated and it was confirmed in its subsequent meeting.

73. It is submitted that respondent no. 2 also sent a detailed reply dated 22.08.2001 to letter dated 06.06.2001 of the Ministry. This fact was again communicated to the Ministry vide D.O. letter dated 15.04.2002 sent in reply to their letter dated 05.04.2002. The Ministry sent another letter dated 17.10.2002 reiterating the request and this was duly replied by the answering respondent vide its letter dated 14.11.2002.

74. Thereafter, again on the suggestion of the Ministry, matter was referred for opinion of the then Attorney General of India. He opined that sufficient opportunities had been granted to the petitioner which he did not avail of, and therefore, there was no violation of natural justice in the action taken against him. This was communicated to the Ministry by the answering respondent vide its letter dated 08.08.2003, therefore, the instant petition is liable to be dismissed with heavy costs being imposed upon the petitioner.

75. Ld. Counsel for the respondent no. 1 has relied upon a case of *State of Punjab & Ors. V. Gurdev Singh, (1991) 4 SCC 1*, wherein it is held as under:-

“First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of limitation was intended to

provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence, Section-2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(J) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by

legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See: (i) Mt. Bole v. Mt. Koklam and Ors., AIR 1930 PC 270 and (ii) Gannon Dunkerley and Co. v. The Union of India, AIR 1970 SC 1433).

In the instant cases, the respondents were dismissed from service. May be illegally. The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have not been paid their salary from that date. They came forward to 'the Court with a grievance that their dismissal from service was no dismissal in law.' According to them the order of dismissal was illegal, inoperative and not binding on them. They wanted the Court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in. service. For the purpose of these cases, we may assume that the order of dismissal was void inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is

declared to be void or nullity by a competent body or Court. In Smith v. East. Elloe Rural District Council, [1956] AC 736 at 769 Lord Redcliffe observed:

"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

76. Ld. Counsel for the respondent has relied upon a judgment of **2008 (10) SCC 115 titled as C. Jacob v. Directorate of Geology and Mining and another**, wherein it is held as under:-

Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge

the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation

given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.

77. He has further relied upon case of **Suresh Chandra Singh & Ors. V. Fertilizer Corpn. Of India Ltd. & Ors. (2004) 1 SCC 592** wherein it is held as under:-

“It is urged on behalf of the appellants that the OM dated 13.05.1998 by itself increased the retirement age and the policy set out therein is mandatory and binding on FCIL to enhance the retirement age. This OM is applicable only to employees in government civil services and not to employees in the public sector enterprises. Hence, by reason of this OM, the appellants cannot content that they are entitled to continue in service till they attain the age

of 60 years. It is only by OM issued by the Department of Public Enterprises dated 19-05-1998 the said policy was made applicable to be effective from the date of modification of the relevant rules regarding the same.

By OMs dated 25.01.1991 and 08.04.1991, the Ministry of Programme Implementation and Department of Public Enterprises made it clear that all instructions / guidelines issued by the Government of India would be of two kinds: (a) directives issued in the name of the President of India, and (b) guidelines. Directives would be issued by the Administrative Ministry in the name of the President while all other instructions issued by the Department of Public Enterprises or by the Administrative Ministry are only advisory which the Board of Directors of the public sector undertakings concerned may in their discretion adopt or not for reasons to be recorded in writing.”

78. Article 127 of Memorandum of Articles of Association of GAIL (India) Limited prescribes as under:-

“127. Notwithstanding anything contained in these Articles the President may, so long as he holds 51% or more of the paid up Equity Share Capital of the Company from time to time issue such directives of instructions as may be considered necessary in regard to conduct of business and affairs of the Company and in like manner may vary and annul any such directive or instruction. The Directors shall give immediate effect to the directives of instruction so issued. In particular, the President will have the powers:

- 1) To give directives to the Company as to exercise and performance of its functions in matters involving*

national security or substantial public interest.”

79. On perusal of the aforesaid memorandum and Articles of Association of respondent no. 2, it is clear that Minister is not President as defined in Article 53 of the Constitution of India, therefore, respondents No. 2 and 3 were not bound to comply the dictate of respondent No. 1.

Article 53 of Constitution of India reads as under:-

“53. Executive power of the Union

(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority;

or

(b) prevent Parliament from conferring by law functions on authorities other than the President”

80. I have heard learned counsel for the parties.

81. After going through the said petition and after considering the submissions of learned counsel for the parties, it has emerged that respondent no. 2 on receiving the letter of acceptance of the offer of respondent no. 3, relieved the petitioner on 05.04.1991 to enable him to join the respondent no. 3 on deputation. However, the petitioner instead of reporting at Headquarters, Dehradun, he intentionally reported on the same day i.e. on 10.04.1991 at Delhi office instead of Dehradun. Accordingly, the office of respondent no. 3 at Delhi informed its Headquarters vide message no. DLH/ADM/11 (399)91 dated 25.04.1991 that the petitioner had joined ONGC on 10.04.1991 at Delhi. In response to the same, the Senior Deputy Director sent a telex message dated 18.06.1991 to General Manager (Finance) intimating him that the petitioner had been posted to Management Audit Cell under General Manager at Dehradun. A copy of the telex message dated 18.06.1991 sent to the petitioner and Sh. G.C Kudasiya, General Manager (F&A), ONGC was also telephonically intimated with regard to the aforesaid telex message.

82. The application dated 10.04.1991, purported to be an advance copy of the petitioner's application for considering him for appointment on deputation was received by respondent no. 3 directly and not routed through respondent no. 2 (GAIL). The petitioner intentionally avoided giving of any relevant information from GAIL to ONGC with regard to the memos having been issued to the petitioner calling for his explanation. In the absence of the same, the application of the petitioner was considered by respondent no. 3 for deputation and

its acceptance was conveyed by letter dated 30.03.1991 through his employer i.e. GAIL, respondent no. 2, as per the rules and procedures. Vide this letter, also communicated stipulated terms and conditions as enclosed with the letter dated 30.03.1991. The copy of the same was also sent to GAIL, respondent no.2. However, the petitioner without conveying categorical acceptance of the terms and conditions of his deputation, and without waiting for being intimated place of posting, submitted joining report dated 10.04.1991 at Delhi Office and not at the Head Office at Dehradun from where the offer of deputation was made vide letter dated 30.03.1991 and formal order of his posting was to be made. The Delhi office of the respondent no. 3 was not competent to accept the joining report or to take any decision on it unless specifically authorized to do so.

83. Despite the posting order was communicated to the petitioner on 21.06. 1991, he did not join at Dehradun and left respondent no. 3 with no other option but to cancel the offer of deputation vide its letter dated 20.07.1991. Additionally, respondent No.2 (Parent organization) dismissed the petitioner from service vide its order dated 09.08.1991.

84. As submitted by Mr. Nanda, Senior Advocate that respondent no. 3 was under the tremendous pressure of respondent no. 1, Ministry of Petroleum and Natural Gas, a fresh letter dated 30.03.1994 was issued in view of the compassionate view taken by the Ministry in anticipation of the decision on review of the dismissal order of the petitioner by the respondent no.2 as per advice of respondent no.1. The petitioner was stopped by his own action since he rejoined the

respondent no.2. The fresh offer of deputation made vide letter dated 30.03.1994 came to an end on 23.12.1996.

85. The petitioner was taken on deputation purely on directions of respondent no.2 and subject to clearances from respondent no.2 w.e.f 16.04.1994 which was extended up to 31.12.1996 in different spells. Since the respondent no.2 did not give clearances and refused the petitioner to be on its rolls after dismissal of his services on 09.08.1991. Therefore, the petitioner was relieved from service of respondent no.3 in the afternoon of 31.12.1996.

86. Moreover, the respondent no. 2 i.e. lending department was not inclined to spare the services of the petitioner in view of certain misconduct and gross violations of their rules by the petitioner for which he was under charge-sheet. Admittedly, the petitioner was again taken on deputation, after being released on 20.07.1991, on the direction of respondent no. 1, Ministry, in anticipation of settlement of the issues of dispensing with the services of the petitioner by the respondent no. 2. It continued from 16.05.1994 to 31.12.1996 and the petitioner was relieved by the answering respondent no.3 to join back respondent no. 2.

87. It emerges from the above discussion that the petitioner himself was responsible for creating circumstances leading to passing of Order dated 20.07.1991. Respondent no.2 (GAIL), vide Order dated 12.07.1991, cancelled the deputation of the petitioner and also struck off his name from the rolls on account of his having abandoned the same effected by order dated 09.08.1991.

88. Moreover, during his probation, a vigilance enquiry was held against him for irregularities that he had sold a car hypothecated to the Company without following the Company's procedure. In the vigilance enquiry, it was held that the petitioner had committed an offence of misappropriation and criminal breach of trust and it was proposed to refer the case to the CBI for further investigations. Thereafter, when the petitioner deputed an employee on official tour for his personal work, a show-cause notice dated 05.09.1985 was issued to him for the misconduct. The petitioner left the place of his posting and proceeded on leave from 14.02.1990 itself and submitted a series of medical certificates from different hospitals in Delhi citing different illnesses as the reason for leave on medical ground. In fact, period from 07.07.1990 to 03.09.1990 was not even covered by any leave application or medical certificate. Despite, the company directed the petitioner under Rule 23.2 of the Leave Rules to appear before the Company's medical officer for an independent opinion regarding his alleged illnesses, but he refused to comply with the directive. He also refused to join his posting inspite of a clear direction from the then Director (Projects) to that effect. He further refused to accept official communications sent to him under registered post. He even refused to hand over the keys of the almirahs containing official documents. The respondent no.2 had, in fact, sent repeated notices including the one dated 16.04.1990 to the petitioner asking him to show cause within three days of receipt of the letter as to why action should not be taken against him in accordance with the Rules. Meanwhile, he was transferred on 26.09.1992, Lakwa in Assam to take charge of activities

in respect of upcoming LPG plant at Lakwa. However, he refused to go there. Thus, the petitioner had not even worked for a single day after his promotion, there was no material to assess his performance on probation and accordingly his period of probation was extended only by six months i.e. up to 31.12.1990. Therefore, his probation was extended by another six months.

89. Even, thereafter, during 1994, a meeting was held in the office of the then Secretary, Ministry of Petroleum and Natural Gas and the Secretary desired that petitioner should be taken by one of the organisations. Since the petitioner's name had been struck off from the rolls of respondent No.2, it expressed inability while respondent no.3 under the pressure of respondent No.1, Ministry, agreed to take him and accordingly issued letter dated 13.04.1994 offering him the post of Additional Director (Materials Management) on deputation for a period of one year with posting at Nazira. Despite being accepted this offer, since he was no more on the rolls of the answering respondent, respondent no.3. Respondent no.2 vide letter dated 19.04.1994 communicated that there was no question of the petitioner's deputation to another organization since he was no more on the rolls of the respondent no.2 (parent organisation).

90. Thereafter, the issue of the petitioner was placed before the Board of Directors of the company on the basis of letter dated 07.10.1998 again received from the Ministry, respondent no.1. The Board decided that the petitioner be reinstated as Sr. Manager and

thereafter the management may proceed against him departmentally as suggested by the Ministry.

91. Finally, on the basis of the letter dated 26.05.2000 of respondent No.1, Ministry, the matter was put up to the Board of Directors in its 151st Meeting on 28.06.2000 which upheld the decision of the Management and decided that the petitioner need not be reinstated and it was confirmed in its subsequent meeting.

92. From the above discussion, it emerged that the respondent no.2 and respondent no.3 were under the immense pressure of the Ministry, therefore, they changed their decisions invariably though not implementing their own decision due to the fact that respondent no.2 struck off his name from the rolls. Respondent no.3 had no choice to keep him on deputation.

93. Additionally, the case of the petitioner by giving all events happened in the past and that on the suggestion of the Ministry, matter was referred for opinion to the then Attorney General of India. He opined that sufficient opportunities had been granted to the petitioner which he did not avail of and therefore, there was no violation of the natural justice.

94. I am convinced by the submission of respondent no. 2 that the Minister is not the President under Article 127 of Memorandum and Articles of Association that only the President have powers (under Sub-Clause 1 of Article 127) to give directives to the Company as to exercise and performance of its functions in matters involving national security or substantial public interest.

95. Law has been settled in case of *C. Jacob (supra)* that the courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to consider. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action, but by treating the rejection of the representation. The High Courts / Tribunals entertain such applications/petitions ignoring the huge delay preceding the representation and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the latches gets obliterated or ignored.

96. Law has also been settled on termination without notice in case of *Gurdev Singh (supra)* that if the employee is dismissed from service, may be illegally, the order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. He was not been paid his salary from that date, then the said person came forward to the court with a grievance that their dismissal from service was no dismissal in law. He wanted the court to declare that his dismissal was void and inoperative and not binding on him and he continued to be in service. But, it was held that if an Act was void or ultra vires, it is enough for the court to declare it so and it collapses automatically. It need not be set aside. A declaration merely declares the existing state of affairs and does not quash so as to produce a new state of affairs. Therefore, in such a situation, the aggrieved party has to approach the

court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for

97. It is clear from the dictum in case of *Suresh Chandra Singh (supra)* that the instructions/guidelines of the Administrative Ministry and of the Central Government would be to two types (a) directives issued in the name of the President of India, and (b) guidelines. The directives would be issued by the Administrative Ministry in the name of the President while all other instructions issued by the Department of Public Enterprises or by the Administrative Ministry are only advisory which the Board of Directors of the public sector undertakings concerned may in their discretion adopt or not for reasons to be recorded in writing.

98. Moreover, relief sought against the respondent no. 3 is against the Order dated 20.07.1997 and the instant petition has been filed in the year 2005. No plausible reasons have been given in the instant petition for delay and laches for over a period of 14 years. He continued to approach the Ministry and because of his good rapport, he continued to get the instructions from the Ministry. However, respondent nos. 2 and 3 being the autonomous and independent bodies, did not succumb to the Ministry's direction to that extent. The petitioner did not work even for a day. He continued to sit at home either on alleged medical problems or for other reasons, however, not worked either for the

respondent no. 2 or respondent no. 3. Therefore, I found no merit in the instant petition and same is also dismissed on delay and latches.

99. Accordingly, the instant petition is dismissed with no order as to costs.

100. In view of the above, CM 5224/2005 become infructuous and dismissed as such.

SURESH KAIT, J

JULY 4, 2012
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