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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3394/2000

27th November, 2013

S.N.BHATNAGAR

.....Petitioner

Through: Mr. K.N.Balgopal, Sr. Adv. with Mr.
A.P.Mukundam and Mr. T.A.Prakash,
Advocates.

VERSUS

THE SECRETARY AND ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Originally when this writ petition was filed two reliefs were claimed, first for reimbursement of medical expenses and second for grant of monetary benefits/idle wages, however, the writ petition was allowed to be amended for seeking further relief in terms of the order of this Court dated 6.11.2000 in CM No. 10191/2000. The result of the amendment was that petitioner was allowed to challenge the order dated 16.8.2000 passed by the disciplinary authority imposing the punishment on the petitioner of removal from services.

2. The facts of the case are that petitioner was employee of Hindustan Insecticides Ltd, represented in this Court through its Chairman and Managing Director/respondent no.2. The unit of the employer at Delhi was closed due to orders passed by the Supreme Court with respect to polluting industries. The management of the company had issued transfer orders to various employees in the Delhi unit including the petitioner on 29.11.1996, however, petitioner was allowed to stay at Delhi and ultimately petitioner was issued a transfer order dated 17.12.1999 posting him to Bhatinda. Petitioner admittedly did not comply with the transfer order, and did not join his place of posting at Bhatinda. A charge-sheet dated 17.1.2000 was accordingly issued against the petitioner and which reads as under:-

“Ref. No. PM/Estt./99/2305
Shri S.N.Bhatnagar,
Dy. Engineering Manager, HIL,
C-301, Venue Apartment,
Sainik Vihar Near Rani Bagh,
P.O.Shakur Basti,
Delhi-110034.

Dated: 17.01.2000

CHARGE SHEET

It is reported against you that despite being the holder of post of a responsible Officer of the Company i.e. ‘Dy. Engineering Manager’, you are persisting in your conduct of willfully disobeying lawful and valid orders of the Management and using objectionable and disrespectful language in communications against your Superiors’, such acts and willful flouting of orders are unbecoming of a senior Officer of the

Company. Further, your said behavior is likely to cause gross in-discipline among the fellow Officers and workmen of the Company as well.

You were transferred to Rasayani Unit, vide this Office Memorandum dated 18.08.99 and were relieved from Delhi Unit with immediate effect. However, instead of reporting for duty at Rasayani Unit, you represented personally as also through Office Bearers of the Officer's Guild on various grounds and the said transfer order was revised and you were directed to report at Bathinda, vide Memorandum dated 17.12.99. However, instead of obeying the lawful orders of the Management, you raised several extraneous and irrelevant points, vide your letter dated 22.12.99, with a view to cloak your patent disobedience. Though the Management was under no obligation to respond to said points raised in your letter of 22.12.96, yet with a view to put the record straight, detailed clarifications were given, vide this office Memorandum dated 27.12.99. You were also specifically informed in the said Memorandum dated 27.12.99 that your continued, deliberate and willful defiance of the transfer orders is a clear act of willful insubordination and disobedience and amounts to misconduct under Clause 31(1), 31(26) and 31(28) of the Service Rules for Management & Supervisory Employees and as such you were directed to join duty at Bathinda forthwith.

In response to similar Memorandum dated 27.12.99, the other Officers whose transfers were made alongwith you, realising their erroneous approach and seriousness of the matter, reported for duty at Bathinda, whereas you have chosen to abstain from joining which is unbecoming of a senior Officer of the Company and sent a letter dated 01.01.2000 to the Chairman & Managing Director, raising further several unwarranted objections on your transfer. In your letter dated 04.01.2000, you have also criticized the functioning of the Company's Board of Directors/Management in a most irresponsible manner without any justification besides placing distorted interpretation upon the orders of the Hon'ble Supreme Court, which, in any case, are not applicable to you, and on the further developments thereafter in the Company. The way in which you have criticized the functioning of the Board of

Directors and the references made in your letter in that connection, reveal that you enjoy, or profess to enjoy, an unwarranted access to the confidential records of the Company, it is also observed that you are trying to dictate terms and ... your superiors, particularly with reference to your specific remarks that “now you are(not legible) to C.M.D of this Company, which clearly amounts to insubordination. In your above letter you have also mentioned certain uncalled-for opinions/suggestions of your such as “I am of the clear opinion that immediately all the remaining Officers including General Manager should be relocated at Bathinda with shifting bonus and if still there is any job left in Delhi Unit then Officers can be sent to Delhi on TA/DA from Bathinda, and “Needless to mention that I am entitled for Project Allowance also”.

In this connection you may recall that you were called for attending the duties, vide letters/memorandum/telegrams dated 29.1.99, 09.02.99, 01.03.99 and 30.7.99, so that the essential works related to dismantling of plant and equipment at Delhi Unit could be executed as per schedule. You always adopted the tendency of avoiding your duties on some excuses or the other. It is also observed that you are in the habit of criticizing the actions of the Management despite the fact that you also form part of the Management team and caused several hurdles in the progress of the works scheduled.

Your statement in your letter dated 04.01.2000 addressed to the Chairman & Managing Director of the Company that ‘my dependant aged father had a massive heart attack and paralytic stroke but due to denial of medical aid from my Company, I am facing steep financial hardship, the health of my father is also deteriorating gradually, if the mishap takes place, I shall hold you personally responsible for the same’, is nothing but an effort to blackmail the Management. It is not understood how you can personally hold C.M.D. responsible for ill-health of your father. It is also observed from the Personnel Records that you have never declared your father as your dependant and as

such the question of the company extending medical aid to him does not arise.

All the above acts of your constitute misconducts under Clauses- 31(1), 31(6), 31(25), 31(26) and 31(28) of the Service Rules for Managerial and Supervisory Employees, which are applicable to you. The said clauses are reproduces below for ready reference:

Clause-31

31(1) “Wilful in subordination or disobedience whether alone or in combination with others to any lawful and reasonable order or a superior”

31(6) “Negligence or neglect of duty malingering or slowing down of work”.

31(25) “Breach of any law or rules applicable to the works, factory, office or projects of the Company”.

31(26) “Any breach of these Service Rules”.

31(28) “Refusal on the part of an employee to work”.

You are therefore, hereby charged of having committed misconducts cited above under the Service Rules for Managerial and Supervisory Employees’ and as such you are hereby required to submit, within 15 days time, written statement whether you admit or deny any or all of the above charges, failing which further action will be taken in accordance with the Rules.

A list of documents based on which the above articles of charges are framed is enclosed.

(R.P.LUTHRA)

Officer-In-Charge”

3. An enquiry officer was appointed to go into the charges, and thereafter conduct the enquiry proceedings. Petitioner was served the notice of the enquiry proceedings. Petitioner appeared on some dates and did not appear on others, and ultimately, petitioner was proceeded ex parte while concluding the enquiry proceedings. Enquiry officer thereafter gave his report dated 28.7.2000 holding the petitioner guilty of the charges as stated in the charge-sheet. Following are the findings of the enquiry officer:-

FINDINGS:

Charged Officer was transferred to Bathinda unit of Hindustan Insecticides Limited vide Memo No. PM/Estt/99/2305 dated 17.12.99 (Annexure-15). According to Clause 10, Chapter II of HIL Services Rules for Managerial and Supervisory Employees, “ employees shall be liable to be transferred at the discretion of the management from one Factory, Establishment, Works, Department, Section or Job to another provided in effecting transfer the employee’s suitability for the particular work will be transferred to any place in India.” Further, it is also observed that as per the Terms of appointment (offer of appointment dated 20th October, 1987 issued to Shri Bhatnagar), he is transferable to anywhere in India (Annexure-16). Shri Bhatnagar did not comply the lawful transfer order of the management and raised a number of frivolous pleas regarding his entitlement to shifting bonus and regular project allowance before joining at Bathinda. Though the management is under no obligation to respond to several unwarranted and extraneous issues raised by Shri Bhatnagar, but, the same was appropriately responded by Memo No. PM/Estt/99/2305 dated 27.12.1999. (Annexure-17).

As per the Hon'ble Supreme Court order dated 8.7.96 and 11.12.96, Civil Writ Petition No.4667 of 1985 (Under Article 32 of the Constitution of India) shifting bonus is only payable to workmen as defined under the Industrial Dispute Act, 1947. Charge sheeted employee is not a workman. Therefore, insistence on payment of shifting bonus is wholly wrong, untenable and unwarranted and aimed to disregard and disobey the lawful transfer order of the management. He was earlier transferred to Rasayani unit HIL (Annexure-2.1), but, he did not join there also. It is apparent that instead of following lawful transfer orders of the management, Shri Bhatnagar continued to indulge in malicious and unwarranted correspondence, making frivolous allegations against the management. Even the good gesture shown by E.O. was misinterpreted by Charged Officer. Charged Officer's continued, deliberate and wilful defiance of the transfer order is a clear act of willful insubordination and disobedience and amounts to misconduct under Clause 31(1), (25), (26) and (28) of HIL Service Rules for Managerial and Supervisory Employees.

So far, charges under Clause 31(6) of HIL Service Rules for Managerial and Supervisory Employees are concerned, Charged Officer has slowed down the progress of the work at Bathinda unit by not joining there. This is also a neglect of duty assigned to him. For not joined duty at Bathinda, he has brought several issues like "I understand that said Bathinda Project is meant for hundred employees and hence I apprehend that I will be treated there as surplus. So kindly clarify my status after relocation is over i.e whether I will be absorbed there or not? Please also spell-out the clear 'Promotion Policy' as well as seniority status after relocation job is over." This is absolutely a delaying tactics for not joining at Bathinda and to confuse the issue of transfer in the name of 'Promotion Policy' absorption and seniority status (Charged Officer's letter dated 31.1.2000, Annexure-18).

Inspite of all reasonable opportunities given by the Enquiry Officer, **The Charged Officer failed to avail and**

produce any evidence before the E.O., to the effect that the charges are false.

Charged Officer vide his letter dated 29.12.1999 (Annexure-19) conveyed that his father Shri G.N.Bhatnagar is residing with him and is totally dependant on him. As his father was in service and at this stage to show him (his father) as dependant on him, he should have given the information to the management in the prescribed declaration form, based on which the particulars are incorporated in the Medical Identity Card (Annexure-20). But, he has not done so. Enquiry Officer, vide his letter dated May 15,2000 total dependency may be justified, but, he did not reply and rather wrote back (Annexure-9) that Enquiry Officer's conduct is "indecently biased".

CONCLUSION:

Based on the facts narrated above, duly supported by the documentary evidence, all the charges leveled against Shri S.N.Bhatnagar under Clauses 31(1), (6), (25), (26) and (28) of the Service Rules for Managerial and Supervisory Employees, which are applicable to him are held proved beyond any reasonable doubt.

(Dr. Kawal Dhari)

Enquiry Officer."

4. Before me on behalf of the petitioner the following grounds are urged in support of the reliefs claimed in the writ petition:-

(i) Even if the petitioner did not join duty, yet, petitioner was entitled to necessary medical reimbursement with respect to the illness of his father and wife as per the rules.

(ii) Petitioner was illegally and malafidely transferred to Bhatinda on account of the petitioner raising the issues against the management and especially the CMD of the company.

(iii) Enquiry officer wrongly proceeded ex parte against the petitioner by the order dated 20.7.2000, inasmuch as the order dated 20.7.2000 only states that the proceedings of the day were concluded and the said order does not have any observation of the petitioner as being proceeded ex parte. The report of the enquiry officer is therefore argued to be hit by the principles of natural justice.

5. So far as the first relief of grant of medical expenses reimbursement is concerned I may note that on 19.9.2000 a learned Single Judge of this Court noted the fact that a sum of Rs. 52,000/- stands paid to the petitioner towards medical expenses, and so far as balance claimed by the petitioner is concerned, it is being looked into and certain documents have been asked for from the petitioner. Therefore, a part of the medical expenses has already been reimbursed to the petitioner. Accordingly, since the removal of the petitioner by the order of the disciplinary authority dated 16.8.2000 can only be construed for removal of services of the petitioner w.e.f 16.8.2000, if there is any amount due to the petitioner on account of

medical bills, then company will now look into this aspect and inform the petitioner with respect to whether any further amounts are due or not by giving reasons in support thereof. However, since this is an old matter, I direct that petitioner will once again within a period of four weeks from today submit a detailed claim with respect to medical bills pertaining to the illness of his wife and his father supported by the requisite documents, and the employer-company/Hindustan Insecticides Ltd. will consider and pass appropriate orders with respect to the medical bills within a period of 8 weeks thereafter and which will be communicated to the petitioner.

6. So far as the claim towards payment of idle wages are concerned, in my opinion, petitioner will be hit by the doctrine of 'no work no pay' and also his contumaciousness of not joining his place of posting, I would not like to exercise my extra-ordinary jurisdiction under Article 226 of the Constitution of India to give any wages to a recalcitrant employee who chooses not to work and gives excuses and reasons for not joining his place of posting. I may also note the submission made in the counter-affidavit of respondent no.2 that for a period of as much as three years, petitioner has received idle wages and in which period no work was taken from the petitioner and which was simply because the Delhi unit had to close

down on account of orders being passed by the Supreme Court. Therefore, the claim towards idle wages/monetary benefits is also rejected.

7. That takes us to the argument with respect to the validity of the order of the disciplinary authority dated 16.8.2000. The issue is that whether this order is against the principles of natural justice and whether the petitioner was correctly proceeded ex parte by the order dated 20.7.2000 of the enquiry officer.

8. In order to appreciate the arguments urged on behalf of the petitioner, it is necessary to reproduce the gist of the various orders passed from time to time by the enquiry officer, and which are accordingly stated in the report of the enquiry officer, and this synopsis of the proceedings read as under:-

<u>“27.3.2000</u>	Charge Sheeted employees did not attend the hearing on medical grounds. E.O. and P.O. waited upto 11.45 A.M.(Annexure-3).
<u>17.4.2000</u>	Shri S.N.Bhatnagar did not attend the hearing. However, P.O. attended the hearing. (Annexure-4).
<u>24.4.2000</u>	Shri S.N.Bhatnagar submitted a letter addressed to Enquiry Officer stating therein that “I am in the firm opinion that without getting financial assistance whatsoever (Medical, Salary etc.) the proposed enquiry is illegal as per law.” and requested E.O. to intervene in the matter to ensure his legitimate dues to be released to enable him to attend the enquiry proceedings. E.O. is not supposed to look into this matter. (Annexure-5).
3.5.2000	Shri S.N.Bhatnagar attended the hearing. P.O. had gone to Delhi factory alongwith HIL Functional Directors due to some pressing

work. E.O. called on phone the P.O. to come to Head Office immediately, but, Shri Bhatnagar submitted that he cannot wait for more time as his wife has been admitted in a hospital. (Annexure-6).

15.5.2000

Shri Bhatnagar denied all the charges, which were read to him. Based on the discussions of the enquiry proceedings dated 15.5.2000 (Annexure-7), E.O. wrote a letter on 15th May, 2000 advising Shri Bhatnagar to provide the following information: (Annexure-8).

1. Sufficient and legal grounds to prove that your transfer order to Bathinda by HIL management is illegal.
2. What benefits your father is entitled after retirement so that his dependence on you may be legally proved.

5.6.2000

Next date of hearing was fixed for 5.6.2000, but, Shri S.N.Bhatnagar vide his letter 3.6.2000 (Annexure-9) faxed on 5.6.2000 at 10.45 A.M. communicated to E.O. that "You have no business to do the role of Presenting Officer" and "You are indulging in roving enquiries" and gave copies to Secretary, Ministry of Chemicals & Fertilizers, Chairman and Managing Director, HIL to change the Enquiry Officer as his conduct is "indecently biased". He forwarded the copy of this letter to C.V.O. for compliance and to National Human Right Commission for kind information.

Enquiry Officer gave a reply to above mentioned letter of Shri S.N.Bhatnagar on June, 2000 (Annex.10).

13.7.2000

Next date of hearing was fixed on 13.7.2000, but, Shri S.N.Bhatnagar vide his letter dated 11.7.2000 (Annexure-11) faxed on 13.7.2000 at 10:16 A.M. communicated that "I may not be in a position to participate in the inquiry for the next four months." Enquiry proceedings of 13.7.2000 are placed at Annexure-12, wherein P.O. expressed that charge sheeted officer is simply avoiding participation in the inquiry by one reason or the other and, therefore, no more opportunity should be given to him. However, E.O. decided to give another opportunity to attend the enquiry and the next date of hearing was fixed on 20.7.2000.

20.7.2000

Shri S.N.Bhatnagar did not attend the hearing and filed a writ petition in the High Court of Delhi at New Delhi making E.O. also a party alongwith Secretary, Chemicals and Chairman and Managing Director, HIL as per communication of his Advocate dated 17.7.2000

Enquiry proceedings of 20.7.2000 are placed at Annexure-14 wherein P.O. expressed that in view of the fact that adequate number

of opportunities were given to Charged Officer, there is no reason to believe why further adjournment need to be given to Charged Officer since it will not serve any meaningful purpose and as such P.O. requested for expediting the enquiry proceedings depending on merits and the E.O. concluded the proceedings, of the day, accordingly.

In the light of the above submissions, non-cooperation of Charged Officer, delaying enquiry proceedings and derogatory remarks against Enquiry Officer are quite evident.”

9. A reading of the aforesaid synopsis of proceedings which transpired on various duties before the enquiry officer shows that the petitioner was least interested in contesting the proceedings on merits. Sometimes the petitioner attended and at other times he did not. The order of the enquiry officer dated 5.6.2000 shows that petitioner in a fax sent told the enquiry officer that the enquiry officer had no business to do the role of Presenting Officer and he was indulging in roving enquiry. Copies of this fax was sent to the enquiry officer and was also sent by the petitioner to the Secretary, Ministry of Chemicals and Fertilizers as also Chairman of the employer-company. The order dated 13.7.2000 of the enquiry officer records that petitioner by his letter dated 11.7.2000 told that he would not be in a position to participate in the enquiry proceedings for as many as the next four months. The enquiry officer gave opportunity and adjourned the hearing on 20.7.2000 on which date the petitioner failed to appear and therefore, the

enquiry proceedings were closed. The order dated 20.7.2000 reads as under:-

“Inquiry proceedings against Shri S.N.Bhatnagar, Dy. Engineering Manager, HIL, the Charge Sheeted employee, held on 20.7.2000, at Corporate Office.

Date	20.7.2000
Time	11.00A.M.
Present	Dr. Kawal Dhari, Inquiry Officer.

Shri B.C.Joshi,
Presenting Officer.

The Charged Officer Shri S.N.Bhatnagar has not turned up for hearing scheduled at 11.00 A.M. before the Inquiry Officer. However, the Management Representative Shri B.C.Joshi appeared as scheduled. The Management Representative requested the Inquiry Officer to wait for another half an hour so that Mr. Bhatnagar may turn up for hearing. However, Shri Bhatnagar has not appeared for the hearing. The Management Representative expressed that in view of the fact that adequate number of opportunities have already been given to the Charged Officer, there is no reason to believe why further adjournment need to be given since it will not serve any meaningful purpose and as such he has requested for expediting the inquiry proceedings depending on merits.

The Inquiry Officer has concluded the proceedings of the day accordingly.

(B.C.JOSHI)
Presenting Officer

(Dr. Kawal Dhari)
Inquiry Officer”

10. In my opinion, principles of natural justice are not like an unruly horse. Principles of natural justice are not inflexible hidebound rules.

The object of the principles of natural justice is to intimate a person for him to attend the proceedings and give him opportunity to present his case. If after repeated opportunities, a charge-sheeted employee does not choose to participate in the proceedings, surely, an enquiry officer is entitled to conclude the proceedings. No technical language is required for stating that the charge-sheeted officer is proceeded ex parte and it is enough to state that the proceedings have been concluded. Merely because in addition to stating that the proceedings have been concluded it is written in the order dated 20.7.2000, that proceedings have been concluded for the day, cannot help the petitioner because this order has been read in the light of the earlier orders which gave opportunities to the petitioner, but the petitioner failed to appear, and in fact, wrote a letter to the enquiry officer on 11.7.2000 (faxed on 13.7.2000) that for four months he will not be in a position to participate in the enquiry. These type of delaying tactics in my opinion cannot be condoned by the Court and therefore, I hold that principles of natural justice have not been violated and the petitioner was given full opportunity to participate in the enquiry proceedings which he did not utilize. In my opinion, therefore, there is no ground to set aside the order of the disciplinary authority dated 16.8.2000 which is passed on the basis of the report of the enquiry officer dated 28.7.2000.

11. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of.

NOVEMBER 27, 2013
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VALMIKI J. MEHTA, J.