

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

W.P.(C) No. 9283/2004

16th May, 2013

P.V.SUBRAHMANYAM

.....Petitioner

Through: Ms. S.Janani, Mr. Sunando Raha and Mr.
Deepak Goel, Advocates.

VERSUS

THE OIL & NATURAL GAS CORPORATION LTD. & ANR. Respondents

Through: Mr. M.N.Krishnamani, Sr. Adv. with Ms.
Ratna D.Dhingra, Ms. Bhawna Dhami, Mr.
Konark Tyagi and Mr. Shashank Shekhar
Parihar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner-Mr. P.V.Subramanyam praying for the quashing of the orders passed by the Departmental Authorities being the order of the Disciplinary Authority dated 4.8.2002 and the Appellate Authority dated 5.1.2004. Petitioner has been visited with penalty of dismissal from service.

2. The charges which were leveled against the petitioner were three-fold. The first was that a car loan amount of ₹ 1.2 lacs was sanctioned and taken by the

petitioner, but this car loan was not utilized for over one year. The second charge is that petitioner claimed that after he got converted the sanction of the new car loan to the purchase of an old car, petitioner manipulated documents whereby his own old car bearing no. AAV/1972 was shown by him for a few days with a person namely Sh. G.N.Vijendra and the same car allegedly was purchased by showing utilization of the loan. The third minor charge is utilization of maintenance allowance with respect to a car from a period from 16.1.95 to 21.2.95 during which period, the petitioner never owned any vehicle.

3. The Enquiry Officer by his detailed report running into over 35 pages has examined all the charges and found the petitioner guilty with respect to all the charges, however, the Enquiry Officer notes that charge-1 would stand diluted because subsequently there was sanctioned a loan for purchase of a second hand car. The Disciplinary Authority vide order dated 4.8.2002 accepted the report of the Enquiry Officer and imposed the penalty of dismissal from service against the petitioner. The Appellate Authority being the Board of Directors of the respondent-company dismissed the appeal and upheld the penalty order by its decision dated 5.1.2004.

4. Before I turn to the arguments as advanced on behalf of the petitioner, one may remind oneself of the parameters of the jurisdiction of this Court while

hearing a petition under Article 226 of the Constitution of India whereby orders of the Departmental Authorities are challenged. It is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not sit as an Appellate Court to re-appraise the findings and conclusions of the Departmental Authorities. Unless and until the findings and conclusions of the Departmental Authorities are perverse, the Court does not interfere with the findings and conclusions. The Court further interferes only if the orders of the Departmental Authorities are illegal/violative of rules of the employer-organization or there is violation of principles of natural justice. In view of the aforesaid parameters of law dealing with challenge to departmental proceedings, let us turn to the arguments advanced on behalf of the petitioner.

5. The following arguments have been urged on behalf of the petitioner:-

(i) Petitioner's defence was wrongly closed by the Enquiry Officer vide his order dated 8.10.2001 although, the petitioner had asked for adjournment first on the personal ground, thereafter by seeking change of venue from Hyderabad to Visakhapatnam and finally on the ground that he was on a sanctioned medical leave during the period from 10.9.2001 to 12.10.2001. It is argued that closing of the evidence of the petitioner/charged official (CO) is thus illegal and therefore, the

Enquiry Officer's report has to be quashed being in violation of the principles of natural justice.

(ii) The petitioner being successful in converting the new car loan into an old car loan, and for which necessary documents being the money receipt dated 30.3.1995 for ₹ 82,000/- of the seller Sh. G.N. Vijendra; cover note dated 20.10.1994; photocopy of Form-28 indicating transfer of car in his own name having been given to the respondents, the same shows that petitioner had given sufficient proof of purchase of a second hand car and thus had not faulted on the utilization of the loan, and thus the finding of the Departmental Authority otherwise is hence perverse.

(iii) Cross-examination of the various witnesses of the respondent was referred to in order to show that admissions were made by these witnesses with respect to loan having been properly utilized and that the petitioner had purchased the second hand car, and therefore, the findings of the Enquiry Officer have to be quashed which gives a finding that the documents are forged and fabricated and the car loan for purchase of a second hand car was not utilized.

6. So far as the first argument urged on behalf of the petitioner of violation of principles of natural justice is concerned, let me at this stage reproduce the observations of the Enquiry Officer in his report pertaining to conduct of the

departmental proceedings by the petitioner, inasmuch as these observations will show that the petitioner was using tactics and strategies to cause unnecessary delay in conduct of the departmental enquiry. The relevant observations contained in the Enquiry Officer's report dated 4.3.2002 reads as under:-

“The preliminary hearing was held on 4.2.01, when PO handed over to CO at my instance, copies of listed documents. I gave time to CO upto 22.2.01 to nominate his defence assistant and to submit his lists of defence documents/witnesses by 22.2.01. In his letter dated 8.2.01, the CO requested Shri P.K.Mishra Dy. G.M. to be his defence assistant. However, P.K.Mishra's consent to work as DA was never received by me. I reminded CO in order sheets dated 27.2.01, 12.3.01, 25.4.01, about sending the lists and getting consent of PK Mishra. (It was as late as on 28.8.01 during regular hearing that CO gave his list dated 28.8.01 of defence documents) But PK Mishra spoke to me to say that he does not want to be DA of CO(see order sheet of 28.6.01). Vigilance Division replied to CO in letter of 6.7.01 that as PK Mishra is also a Charged Officer, he can not work as DA under CDA rules. Regular hearing was held on 30.7.01 & 31.7.01 when PO was present but not CO. The hearing were held exparte for the reasons recorded. After I returned after the above hearings, I received CO's letter dated 24.7.01, to which I have given detailed reply in my order sheet dated 2.8.01. In his fax dated 13.8.01, CO informed me that he could not attend hearing on 30-31/7/01 as he was admitted to hospital. He never informed this to me before 30/31/7/01. However, in my order sheet of 16.8.01, I agreed to his request to recall PW-1 to PW-3(who were examined on 30-31/7/01) for cross-exam by CO in the next hearing. In the next hearing held on 28-29/8/01, CO cross-examined PW-3 and PW-2. For further cross-examination of PW-2 and two other PWs, another date was fixed namely, 8-10 Oct. 2001. CO wrote letter dated 26.9.01 requesting that venue of hearing on 8-10 Oct. may be at Vizag instead of Hyderabad, to which I did not agree (see order sheet of 3.10.01). In the next hearing held on 8-9 Oct. 2001, the CO again remained absent and for the reasons recorded in order sheets of these dates, the CO again remained absent and for the reasons recorded in order sheets of these dates, the CO lost opportunity to further cross-examining PW-2 who was recalled at CO's request and was present. The PO dropped

KL Verma a P.W... PW-1 was recalled to enable CO to cross-examine him but as CO was absent, cross-exam of PW-1 by CO went by default of CO's absence. The CO had sent summons to his defence witness K. Krishna Rao Devtt. Officer Oriental Insurance Company to be present on 9.10.2010. K. Krishna Rao DW was present but not the CO himself. Nil deposition K. Krishna Rao DW was recorded. CO had informed that address of his other DW GN Vijendra is not known to CO. So the case on behalf of defence was deemed to be closed."

7. A reading of the aforesaid para shows that the petitioner even before his right was closed on 8.10.2001 had sought repeated adjournments. His right to cross examine the witnesses of the respondent no.1 was closed, but was again reopened to give him the benefit of cross examining the witnesses. The witness who was summoned on behalf of the petitioner was present on 8.10.2001 but the petitioner himself did not appear. Therefore, the Enquiry Officer, in my opinion, was fully justified in closing the right of the petitioner to lead evidence as per order dated 8.10.2001.

8. The issue then to be addressed is that whether the petitioner was justified in not appearing before the Enquiry Officer because he was sanctioned medical leave from 10.9.2001 to 12.10.2001. Counsel for the petitioner has drawn my attention to the certificate issued by the King George Hospital at Vishakhapatnam showing petitioner was admitted because he was suffering from Bronchial Asthma, however, the counsel for the petitioner could not point out to

me any proof of the fact that the petitioner in fact had a sanctioned medical leave during this period. Surely, it is not the privilege of the employees to automatically claim medical leave inasmuch as employer is fully justified in examining the validity of the request for medical leave. This is all the more so in the present case because the petitioner was being subjected to departmental proceedings and which were being delayed on account of the strategies and tactics adopted by him. If there was duly sanctioned leave of the petitioner for the stated period then surely petitioner would have some documentary proof, including a specific letter to the petitioner sanctioning the leave, however, there is nothing on record that the petitioner did have sanctioned medical leave in the period for which leave is claimed ie from 10.9.2001 to 12.10.2001. I therefore reject the argument that the petitioner was entitled not to appear before the Enquiry Officer because the petitioner had sanctioned medical leave for the period which included the date of 8.10.2001.

9. The second argument urged on behalf of the petitioner was that the petitioner having filed the necessary documents with respect to purchase of the second hand car, the Enquiry Officer was unjustified in holding that the petitioner had manipulated documents for getting his existing car purchased and repurchased. I may state in this regard that Enquiry Officer has devoted considerable amount of

time and space in his report which shows gross manipulation and falsification of documents by the petitioner. The report of the Enquiry Officer shows that petitioner never purchased a second hand vehicle AAP 1872 because this vehicle was in fact a heavy transport vehicle and which was confirmed by the Enquiry Officer by entering into correspondence with the Road Transport Authority at Vishakhapatnam. Further, I note that though the petitioner filed three documents being money receipt, the cover note and Form 28, no photocopy of the registration certificate of the alleged purchased vehicle AAP 1872 was filed by the petitioner to show that the petitioner in fact had purchased this vehicle AAP 1872. Really therefore what the petitioner did was that he had an old FIAT car bearing registration No.AAV 1972, but by falsification of documents he tried to show as if he had purchased another old vehicle bearing registration No.AAP 1872. Some of the relevant observations of the Enquiry Officer in this regard read as under:-

“Shri Subrahmanyam submitted the following documents in support of the purchase of a second hand car by him, to P&A Section, ONGC, CRBC, Calcutta:-

- (i) Money Receipt defendant 30.3.1995 for Rs. 82,000/- from Shri G.N.Vijayendra at Exb. P-2.
- (ii) Photostat copy of Motor Vehicle Insurance Cover Note No. 280942 dt. 20.10.94 in the name of Shri G.N.Vijayendra , at Exb. P-3 and
- (iii) Photostat copy of Form 28 issued by RTA, Visskhapatnam indicating transfer of vehicle in Shri Subrahmanyam’s name on 25.4.95 at Exb. P-4”

“As regards Form 28 (NOC), I sent a letter defendant 12.3.98 to RTO, Visakhapatnam to verify the genuineness of Form 28 issued by RTO, Visakhapatnam dt. 25.4.95 for LMV Car Regn. No. AAP-1872(Fiat) and whether this vehicle is registered in the name of Shri Subrahmanyam. In response to my letter, I received a reply dated 17.3.98 at Exb. P-10 from RTO Vizag, RTO stated in this letter that the NOC particulars with regard to vehicle No. AAP-1872 on the first page of the NOC are not genuine, and the endorsement particulars noted in the second page of the NOC are genuine. This NOC was issued in respect of LMV Car AAV-1972, and vehicle bearing Regn. No. AAP-1872 is a heavy goods vehicle. This is also evident from extract of “B” Register in respect of the vehicle bearing Regn. No.AAP-1872 attached to Exb. P-10. Therefore, the Form 28 signed by Shri Subrahmanyam is in respect of HGV No. AAP-1872 and not in respect of LMV AAV-1972(Fiat Car). Tampering of this NOC has been done by Shri Subrahmanyam in order to mis-utilise the car advance as he was the sole beneficiary of it i.e he had not purchase the second hand car actually, but by submitting the NOC signed by him for the heavy vehicle, he wanted to show that he has purchased the LMV Fiat car with the loan taken by him. I wrote a letter defendant 2.6.98 to RTO. Vizag asking for particulars of LMV Car AAv-1972. I received a reply dt. 3.6.98 at Exb. P-11 from the RTO, enclosing the extract of “B” Register, which shows that LMV Car AAV-1972 was in the name of Shri Subrahmanyam from 30.9.85 to 15.1.95. The Register also shows that the above car was briefly transferred in the name of Shri G.N.Vijendra of Vizag from 16.1.95 to 21.2.95 and subsequently, the above car was transferred back in the name of Shri Subrahmanyam PV from 22.2.95 onwards. This shows that Shri Pv Subrahmanyam was owning the above car since 30.9.85 till today except for a brief period from 16.1.95 to 21.2.95.”

“Regarding the Insurance Cover Note No. 280942, at Exb. P-3(1), it shows that the Cover Note is in respect of vehicle No. AAP-1872 in the name of Shri G.N.Vijendra of Vizag for the period from 20.10.94 to 19.10.95. In fact, as per “B” Register at Exb. P-10, vehicle No.AAP-1872 is a heavy goods vehicle registered in the name of Sh. P.Guneswararao of Vizag. Hence, Cover Note No. 280942 at Exb. P-3 (1) submitted by Shri PV Subramaniam is a fake one. In this connection, attention is invited to Oriental Insurance Co.’s letter at Exb. P-7 and P-8 and deposition of representative of that Company. This shows that the above Cover Note was transferred by Shri P.V.Subrahmanyam in order to justify that he has purchased a second hand car.

Based on the above position in respect of Form 28(NOC) and Insurance Cover, my Conclusion was that the Money Receipt dt. 30.3.95 for Rs.82,000/- at Exb. P-2 submitted by Shri PV Subrahmanyam for purchase of second hand car AAP-1872 was false.”(underlining added)

10. There are further findings and conclusions of the Enquiry Officer in this regard with respect to cover note that the said cover note is forged and fabricated. Similar again are the observations with respect to Form 28. All in all, the alleged purchased documents submitted by the petitioner were found to be forged and fabricated documents because there was never a car bearing no. AAP 1872 in existence, which was in fact a heavy vehicle, and which vehicle also was never purchased by the petitioner. At this stage, I may state that this Court is not entitled to quash the findings and conclusions of the Enquiry Officer unless and until the findings are wholly perverse. Not only there is no perversity, I am inclined to completely agree with the findings of the Enquiry Officer with respect to falsification of documents by the petitioner and in fact not utilizing the car loan at all because the papers of the petitioner's own old car were manipulated by him to show as if a new vehicle AAP 1872 was purchased, and which was never purchased.

11. So far as the third argument is concerned, in my opinion, the same would also stand rejected in view of my conclusions with respect to argument (ii) that unless and until the findings and conclusions are wholly perverse or against law, this Court cannot interfere under Article 226 of the Constitution of India. The findings and conclusions of the Enquiry Officer are well reasoned and based on documentary evidence. Once there is documentary evidence showing the falsification of documents submitted by the petitioner, some alleged oral admissions made in the cross examination by the witnesses of the respondent cannot change the final findings and conclusion that the documents submitted by the petitioner were forged and fabricated documents because there was no car of the registration No.AAP 1872, and which was in fact a registration number of a heavy transport vehicle.

12. Before concluding I must state that after a prima facie hearing on 11.4.2013, I persuaded the learned senior counsel for the respondents that considering the nature of charges let the petitioner be given some monetary compensation, without the same being called under any specific head of gratuity etc, and learned senior counsel for the respondents states that he had convinced the respondent-employer that petitioner may be given a sum of Rs.2 lacs, of course, without prejudice to the rights of the respondents and without in any manner

admitting the case as set up by the petitioner in the writ petition. Counsel for the petitioner however states that petitioner is not interested in this amount of Rs.2 lacs. I may also note that in the present case petitioner even after the dismissal order is having the benefit of pension, provident fund payment and leave encashment payment. The only disentitlement of the petitioner was to gratuity, (roughly 50% of which being Rs. 2 lacs was being offered to the petitioner), and which the petitioner is denied on account of the subject penalty order of dismissal from service. Two other benefits being medical benefits and transportation charges on retirement of the petitioner which the petitioner also does not get because of the subject penalty order. All in all, I do not find that the petitioner was justified in his actions whether for wrongfully keeping sanctioned loan amount taken for a new car by not utilizing the same for one year, committing gross forgery and fabrication of documents for setting up a false case for purchase of vehicle which is found to be quite clearly an illegal adventure because the so called vehicle purchased was not a car but a heavy transport vehicle, and which was also not purchased by the petitioner but the petitioner's old car was kept by himself by taking as being purchased by alleged utilization of the loan taken for a second hand car.

13. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 16, 2013
ib

VALMIKI J. MEHTA, J