

GAHC010007292011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4036/2011

AJIT KUMAR KHATONIAR
GENERAL MANAGER T and D, OIL INDIA LTD, DULIAJAN,

VERSUS

OIL INDIA LIMITED and ORS
PLOT NO. 19, SECTOR - 16A, NOIDA, U.P., PIN-201301, REP. BY ITS
CHAIRMAN CUM MANAGING DIRECTOR,

2:THE CHAIRMAN CUM MANAGING DIRECTOR
CMD

OIL INDIA LTD
PLOT NO. 19
SECTOR -16A
NOIDA PIN-201301

3:CENTRAL VIGILANCE COMMISSION
REP. BY THE CENTRAL VIGILANCE COMMISSIONER
SATARKTA BHAWAN
GPO COMPLEX
INA
NEW DELHI-110023

4:UNION OF INDIA

REP.BY THE SECY. MINISTRY OF LAW AND JUSTICE LEGISLATIVE DEPTT
NEW DELHI
PIN-11000

For the Petitioner(s) : None appears

For the Respondent(s) : Mr. K. Kalita, Advocate
: Ms. G. Swami, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 01-08-2023

1. The Petitioner is aggrieved by the imposition of penalty vide the order dated 15.02.2008; the rejection of the appeal as well as the review by the Board of Directors of the Respondent Company and as such has filed the instant writ petition challenging the said orders.

2. It appears on record that pursuant to a vigilance proceedings initiated by the Vigilance Department of the Respondent Company, a charge sheet was served upon the Petitioner on 29.09.2005 whereby certain charges were framed against him regarding placement of orders, grant of extension of delivery time etc. The Petitioner replied to the said charge sheet stating inter alia that it was on account of a collective decision, the order was placed as well as extension of time was granted. However, the Disciplinary Proceedings was initiated and an enquiry was held against the Petitioner and others. The Inquiring Authority/Officer (IA) conducted an enquiry by examining 4 PWs including one from the Vigilance Department. Pursuant to the completion of the enquiry, on 05.02.2007, the Inquiring Authority submitted an enquiry report dated 20.12.2006 holding that the Petitioner was guilty of 2 (two) charges and partly guilty of one out of the 5 charges. Thereupon, on the basis of the said enquiry report, the impugned order dated 15.02.2008 was passed

by the Disciplinary Authority i.e. the Chairman-cum-Managing Director of the Respondent Company thereby imposing a minor penalty of withholding of promotion for 2 (two) years. The Petitioner being aggrieved has preferred an appeal before the Board of Directors and the Board of Directors vide an order dated 25.05.2009 rejected the Petitioner's appeal. The Petitioner therefore preferred a review before the Board of Directors. The said review proceedings was also dropped vide an order dated 18.08.2010. It is under such circumstances, the instant writ petition has been filed assailing the orders dated 15.02.2008 passed by the Disciplinary Authority, the order dated 25.05.2009 passed by the Board of Directors in Appeal as well as the order dated 18.08.2010 whereby the review so filed by the Petitioner was also rejected.

3. From a perusal of the writ petition, it transpires that it is the case of the Petitioner that the Disciplinary Authority did not have the jurisdiction inasmuch as on 25.05.2007, an amendment was made to the OIL Executives' Conduct Discipline and Appeal (OECD) Rules, 1982 wherein for Grade (G), the Disciplinary Authority was the Executive Director, the Appellate Authority was the Functional Director and the Reviewing Authority was the Chairman-cum-Managing Director. It is the further case of the Petitioner that the Disciplinary Authority had exonerated the Petitioner from all allegations contained in the articles of charges against him and he was only punished for negligence. It is the further case of the Petitioner that there was no negligence on his part inasmuch as all the actions were taken as per the prevailing practice and procedure only and also in time. Further to that the Petitioner has also assailed the imposition of penalty on the ground that there was no allegation of negligence charged against him in the Charge Memo. The Petitioner further

stated that there was no loss to the company and the supplier did not derive any benefit whatsoever arising out of his actions. On the question of proportionality of the punishment, it was the case of the Petitioner that the punishment so imposed was disproportionate to the charges so proved inasmuch as the punishment of stoppage of promotion by 2 (two) years over the left over service period of about 3 (three) years 6 (six) months at the end of the Petitioner's career was the hardest amongst the 5 Officers alleged for receipt/issue of defective pipes. It was further submitted that in respect of other officers, the punishments ranged from censure to only one year stoppage of promotion. It was further the case of the Petitioner that the Memo of Charges were served upon the Petitioner on 29.09.2005 and the report of the domestic enquiry was submitted to the Disciplinary Authority on 20.12.2006. The punishment was imposed upon the Petitioner on 15.02.2008 i.e. almost after 13 months and this delay has greatly affected the Petitioner's chances of promotion for no fault of the petitioner but was purely for administrative delays.

4. On the other hand, Mr. K. Kalita, the learned counsel appearing on behalf of the Respondent Oil Company submitted that at the time when the Show Cause notice was issued and the Disciplinary Proceedings was initiated, the Disciplinary Authority for Grade (G) employees, for minor punishment was the Functional Director and for all punishment was the Chairman-cum- Managing Director. He further submitted that from an order passed by the Disciplinary Authority, an appeal lies to the Board of Directors and the Reviewing Authority is also the Board of Directors. The amendment which was brought into effect on 25.05.2007 would not affect the said enquiry proceedings taking into account that the Charge Memo was issued in the year 2005. He further

submitted that the Petitioner herein was afforded all reasonable opportunities by the Inquiring Authority and in respect to the charges which have been proved against the Petitioner, only a minor punishment have been imposed. Referring to the Charge No.3, the learned counsel submitted that on account of the Petitioner who was the Head of the Department in question, the Respondent Oil Company had to suffer a loss to the tune of Rs.1,10,51,204.63p. He further submitted that there is no perversity in the said findings and as such the question of any interference to the impugned order passed by the Disciplinary Authority dated 15.02.2008 as well as the Appellate order and the review order does not arise.

5. This Court has perused the materials on record. From a perusal of the materials on records, it clearly shows from Annexure-Z to the writ petition wherein the Disciplinary/Appellate/Reviewing Authorities were mentioned under Rule 24.1 of the OIL Executives' Conduct Discipline and Appeal Rules, 1982. From the said and taking into account that the Charge Memo was issued in the year 2005 and the document enclosed as Annexure-Z was holding the field at that relevant point of time, it is the opinion of this Court that there is no jurisdictional error by the Chairman-cum-Managing Director of the Respondent Oil Company in exercising the powers of disciplinary authority. In the same way, the Board of Directors were also the appropriate authority to decide the appeal.

6. Be that as it may, this Court also finds no prejudice which have been caused to the Petitioner taking into account that no remedy of the Petitioner have been taken away as was alleged in the writ petition.

7. Now coming to the merits of the case, it is seen that the Inquiring

Authority had duly afforded the reasonable opportunities to the Petitioner and there is a clear finding that on account of Petitioner's negligence and acting beyond his authority without taking the specific permission from the Respondent Company, a Third Party Agent was appointed for which the Respondent Oil Company had to suffer a loss of amount of Rs.1,10,51,204.63p. It is further seen that the Petitioner has been only imposed a minor punishment of withholding two promotions.

8. Taking into account the above facts and the limited jurisdiction of this Court under Article 226 of the Constitution whereby interference can be made to the orders passed by the Disciplinary Authority in respect to cases which are unreasonable, arbitrary and have occasioned manifest injustice, this Court is of the opinion that the Petitioner has failed to make out any case for interference under Article 226 of the Constitution.

9. Considering the above, the instant petition lacks merit for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant