

GAHC010148882018



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

Case No. : WP(C)/4652/2018

DIPU KUMAR DAS
S/O MR. RATISH CHANDRA DAS
R/O QUARTER NO. BAGESHREE 28,
NRL TOWNSHIP,
P.O. NUMALIGARH REFINERY PROJECT, P.S. GOLAGHAT,
DIST. GOLAGHAT, ASSAM, PIN - 785699,
MOBILE NO. 9435738719

VERSUS

UNION OF INDIA AND 7 ORS.
REP. BY ITS PRINCIPAL SECRETARY, MINISTRY OF PETROLEUM AND
NATURAL GAS, GOVT. OF INDIA, NEW DELHI-1.

2:NUMALIGARH REFINERY LIMITED

(A GOVT. OF INDIA ENTERPRISE)
REP. BY ITS MANAGING DIRECTOR

NRL TOWNSHIP
NUMALIGARH

P.O. NUMALIGARH
REFINERY PROJECT

DIST. GOLAGHAT
ASSAM

PIN - 785699.

3:MANAGING DIRECTOR

NRL TOWNSHIP
NUMALIGARH
P.O. NUMALIGARH REFINERY PROJECT DIST. GOLAGHAT
ASSAM
PIN - 785699.

4:DIRECTOR (TECHNICAL)

NUMALIGARH REFINERY LTD.
P.O. NUMALIGARH REFINERY PROJECT
DIST. GOALPARA
ASSAM
PIN - 785699.

5:CHIEF GENERAL MANAGER (OPERATIONS)

NUMALIGARH REFINERY LTD.
P.O. NUMALIGARH REFINERY PROJECT
DIST. GOLAGHAT
ASSAM
PIN - 785699

6:MR BHASKAR JYOTI PHUKAN
DIRECTOR (TECHNICAL)
NUMALIGARH REFINERY LTD.
P.O. NUMALIGARH REFINERY PROJECT
DIST. GOLAGHAT
ASSAM

PIN - 785699.

7:MR. DIGANTA CHANGMAI
DEPUTY GENERAL MANAGER

(DEVELOPMENTAL MAINTENANCE)
NUMALIGARH REFINERY LTD. P.O. NUMALIGARH REFINERY PROJECT
DIST. GOLAGHAT

ASSAM
PIN - 785699.

8:MR MRIGANKA KATAKI
MANAGER (OPERATIONS)

NUMALIGARH REFINERY LTD.
P.O. NUMALIGARH REFINERY PROJECT DIST. GOLAGHAT
ASSAM
PIN - 785699

Advocate for the Petitioner : MR. T H HAZARIKA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09.03.2023

Heard Mr. Dipu Kumar Das, petitioner-in-person. Also heard Mr. K. Gogoi, learned CGC for respondent no.1 and Mr. N. Deka, learned counsel for the respondent nos. 2 to 8.

2. A departmental proceeding was initiated against the petitioner on certain charges, referred to hereinafter. The Disciplinary Authority, on conclusion of the said proceeding, had imposed a punishment of "compulsory retirement" on the petitioner. The petitioner unsuccessfully preferred appeal against the punishment imposed upon him by the disciplinary authority. Consequently, on a review preferred before the competent authority, the punishment was altered to "reduction to a lower grade". Consequently, by filing

this writ petition under Article 226 of the Constitution of India, the petitioner has prayed, *inter alia*, to quash (i) the order of compulsory retirement dated 28.08.2017; (ii) appellate order dated 04.12.2017; (iii) order dated 11.05.2018, issued by the reviewing authority; and (iv) for a further direction to the respondents to reinstate the petitioner to his original rank and scale as on 28.08.2017.

3. The petitioner in person has extensively referred to the following pleadings, viz., (i) writ petition; (ii) affidavit-in-opposition by the respondent nos. 2 to 5; (iii) affidavit-in-opposition by the respondent no.6; (iv) affidavit-in-opposition by the respondent no.7; (v) affidavit-in-opposition by the respondent no.8; (vi) affidavit-in reply against the affidavit-in-opposition by the respondent nos.2 to 5; (vii) affidavit-in reply against the affidavit-in-opposition by the respondent no. 6; (viii) affidavit-in reply against the affidavit-in-opposition by the respondent no.7; (ix) affidavit-in reply against the affidavit-in-opposition by the respondent no. 8; and (x) rejoinder affidavit by the petitioner. It was submitted by the petitioner-in-person that his argument is reiterated by way of his rejoinder affidavit. It was submitted that the alleged misconduct had the background of his personal life and his estranged relationship with his mother. It was submitted that he was agitated because his mother was shifted to the NRL Guest House in his temporary absence and that all the officials including the appellate authority had conspired together to jeopardize his service career. It was submitted that his alleged action was not during course of service and did not happen in office and thus, he was being victimized for

personal action and not his official function. It has been submitted that the appellate authority, having taken the decision to shift his mother to the NRL Guest House, ought not to have adjudicated his appeal and therefore, the appellate authority had become the judge of his own cause. It was submitted that petitioner was denied natural justice. It was also submitted that Clause 6 of Part-III of the Conduct, Discipline and Appeal Rules for Management Staff of NRL was not complied with.

4. In support of his submissions, reliance has been placed on the following cases, viz., (i) *A.U. Kureshi v. High Court of Gujarat & Anr., Civil Appeal 472/2009, decided by Supreme Court of India on 27.01.2009*, (ii) *Shridhar v. Nagar Palika, Jaunpur & Ors., AIR 1990 SC 307*, (iii) *Chanasma v. State, Civil Appl 17210/2005 decided by the Gujarat High Court on 18.04.2011*, (iv) *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., Civil Appeal 6767/2012, decided by Supreme Court of India on 12.08.2013*, (v) *Kuldeep Singh v. The Commissioner of Police & Ors., (no case number given), decided by Supreme Court of India on 17.12.1998*. On conclusion of the submissions made by the learned counsel for the respondents, the petitioner-in-person has advanced his submission-in-reply.

5. The Disciplinary Authority of Numaligarh Refinery Ltd. (NRL for short) had served the Memorandum of Charges on the petitioner, accompanied with (i) statement of articles of charges framed against the petitioner, (ii) statement of imputation of misconduct in support of articles of charges, (iii) list of documents, and (iv) list of witnesses. The gist of the charges against the

petitioner was to the effect that the mother of the petitioner, who was residing with him in the NRL Township went to the neighbour of the petitioner, namely, Sri Monikanchan Das, Deputy Manager (Commercial) and had complained that the petitioner had quarreled with her and assaulted her, upon which the mother of the petitioner was taken to NRL Hospital for treatment. Subsequently, the senior officials of NRL had met the petitioner and his mother and tried to sort out the problems between them and the petitioner was advised to maintain peace and tranquility. However, after 10 (ten) days, the petitioner had gone to the residence of the said Monikanchan Das and had heated argument with him over shifting of his mother to NRL Guest House. Therefore, for disturbing peace and harmony in the Township, which is in contravention of Clause 23 of the Township Rules, the petitioner was charged for misconduct on account of (i) acting in a manner prejudicial to the interest of the Company, and (ii) breach of laws applicable to the establishment or rules of the company; and for following misconduct, viz., (i) drunkenness or disorderly or indecent behavior in the premises of the company or outside such premises, where such behavior is related to or connected with the employment; (ii) commission of any act which amounts to a criminal offence involving moral turpitude; (iii) commission of any act subversive of discipline or good behavior; (iv) threatening, abusing or assaulting and/or obstructing employees in the discharge of their duties in instigating other employees to act against the company.

6. In his show-cause reply dated 24.01.2016, it is apparently clear that the petitioner has termed his mother as grouchy, arrogant, raising tantrum,

quarreling with his father, further alleging that his mother may be little bit mentally sick. The petitioner has also stated that he was surprised to know that his mother had complained that he had beaten up his mother causing severe chest pain. He has, however, stated that it was falsely alleged that he had entered into heated argument with the said Monikanchan Das. He has admitted that he came to know that his mother had been shifted to NRL Guest House. It was specifically admitted that the present situation had crossed his tolerance limit and that he is unable to keep his mother at his residence.

7. In support of the charges, the management had examined 4 witnesses, namely, (1) Monikanchan Das, Deputy Manager (Commercial), NRL, (2) Mriganka Kataki, Assistant Manager (Operation), NRL, (3) Sridip Sinha, Assistant Manager (T&I) NRL, and (4) Rupjit Baishya, Deputy Manager (Civil Maintenance), NRL. Out of these witnesses, while Mriganka Kataki had stated in his examination-in-chief that he and his wife were assaulted by the petitioner, it has come in the cross-examination of Sridip Sinha that he as well as Mriganka Kataki were both assaulted by the petitioner. All the witnesses have stated that the petitioner had gone to the house of Mriganka Kataki and the remaining two witnesses have stated that there was heated argument between the petitioner and Mriganka Kataki. Two witnesses had stated that the petitioner had banged the door of the house of Mriganka Kataki. In their cross-examination, the evidence to the effect that the petitioner had gone to the house of Mriganka Kataki and had assaulted him and his wife after heated argument could not be disproved by the petitioner.

8. From Annexure-15 to the Rejoinder affidavit filed by the petitioner, which is a copy of e-mail of the petitioner dated 20.02.2018, it is evident that from 10.12.2016 till 20.02.2018, the mother of the petitioner had been staying in NRL Guest House. Thus, it is apparent that while the petitioner had expressed his displeasure on the shifting of his mother from his residence to NRL Guest House on 10.12.2016, the petitioner had not only admitted in his show cause reply that he is unable to keep his mother at his residence, but his herein before referred e-mail dated 20.02.2018 is a testimony to the fact that the petitioner did not bring his mother back to his residence. However, this fact is not the subject matter of imputation of charges against the petitioner. The charge was that in violation of Clause 23 of the Township Rules, he had misconducted himself, which appears to be duly proved.

9. The petitioner has not been able to show that the departmental proceeding has been vitiated for (a) non compliance of principles of natural justice, (b) non-supply of materials on which evidence was led by the management; (c) consideration of irrelevant and/or extraneous materials; (d) non-consideration of any evidence or materials on record. It is only to examine such aspects that the disciplinary proceeding has been examined. It would not be out of place to mention that in his defence, the petitioner did not stand in the witness box and did not examine himself. Rather, he had examined his wife. Therefore, this is a case where the petitioner as a delinquent officer had not examined himself and therefore, the best evidence was withheld, which in the considered opinion of the Court, has vitiated the defence of the petitioner and

set it at naught and therefore there appears to be no error in the disciplinary authority discarding the evidence of the wife of the petitioner.

10. In his representation against the enquiry report, the petitioner has concentrated on his estranged relationship with his mother, which was not the charge against the petitioner. Moreover, the petitioner has alleged that he was not provided with any opportunity to cross examine two persons, namely, (i) Diganta Changmai, and (ii) his mother. This allegation has no legs to stand as the management had not examined the said two persons as their witnesses. Therefore, if the petitioner wanted to examine the said persons, he ought to have called the said persons as his defence witnesses.

11. Against the order of compulsory retirement, passed by the disciplinary authority, the petitioner had preferred an appeal before the appellate authority, addressed to Shri Bhaskar Jyoti Phukan. In the said appeal, the petitioner has not expressed his reservation that Shri Bhaskar Jyoti Phukan should not take up the appeal. The appellate authority, after considering the same, dismissed the appeal and upheld the punished ordered by the disciplinary authority.

12. However, in review filed against the appellate order, the petitioner has changed the focus to make allegations against the appellate authority. This, in the considered opinion of the Court, cannot be permitted because the petitioner had subjected himself to the appellate jurisdiction of Shri Bhaskar Jyoti Phukan by addressing the appeal in the personal name of the said

appellate authority. In review, once again grievance was raised that Diganta Changmai and Shri Bhaskar Jyoti Phukan were not examined as management witnesses. The reviewing authority, by taking into account the overall circumstances, had reduced the punishment of compulsory retirement to reduction to a lower grade.

13. The case of *A.U. Kureshi (supra)*, does not help the petitioner in any manner, as the petitioner has not been able to demonstrate that the appellate authority, namely, Bhaskar Jyoti Phukan was a judge of his own cause, merely, because he had approved that the mother of the petitioner be shifted to the NRL Guest House, moreover, when the relationship between the petitioner and his mother is not the charge against the petitioner in the disciplinary proceeding. The petitioner has not been able to show anything from the record that principles of natural justice has not been complied with and therefore, the case of *Shridhar (supra)*, *Chanasma (supra)*, *Deepali Gundu Surwase (supra)*, do not help the petitioner. The petitioner has not been able to demonstrate that the disciplinary authority, appellate authority and the reviewing authority acted in an arbitrary manner or the proceeding was not impartial, which is not even alleged in appeal. The case of *Kuldeep Singh (supra)*, also did not help the petitioner in any manner. It may be mentioned that although the 5 (five) cases referred to above have been annexed to the rejoinder affidavit as Annexure-7 to 11, but the complete judgment is available only in respect of the case of *A.U. Kureshi (supra)*. However, in respect of the 4 (four) remaining cited cases, full text of judgment has not been provided for the reasons best known to the

petitioner and as such the facts on which the said cases has been decided is not known.

14. The learned counsel for the respondent nos. 2 to 8 has submitted that although the status of the petitioner has been reduced in rank, but his reporting authority is not his ex-junior, as projected and moreover, his last pay has also been protected.

15. The petitioner-in-person has not been able to demonstrate that the finding of the disciplinary authority, appellate authority as well as the reviewing authority is vitiated in any manner whatsoever. No submission has been advanced to demonstrate that the decision by any of the said three authorities is vitiated by perversity. No attempt has been made to show that the petitioner could not have been punished for violating Clause 23 of the Township Rules. No attempt has been made to demonstrate how Rule 6 of Part III of the Conduct, Discipline and Appeal Rules for Management Staff of NRL was not complied with and how it was relevant and/or applicable for his case.

16. In a disciplinary proceeding, the standard of evidence is not proof beyond reasonable doubt but disciplinary proceeding can be decided on the basis of preponderance of probability. Thus, when the evidence of Mriganka Kataki could not be demolished that he and his wife were beaten up at his home, coupled with the evidence of Sridip Sinha that he and Mriganka Kataki were both assaulted, the charge against the petitioner of disturbing peace and tranquility in the Township has been established. The change in stand in review

in so far as making allegations against the appellate authority is concerned, is not sustainable on facts and in law as because in his show cause reply, no adverse stand had been taken against the impartiality of the said appellate authority.

17. We may refer to the case of *Union of India & Anr. v. P. Gunasekaran*, (2015) 2 SCC 610, cited by the learned counsel for the respondent nos. 2 to 8, the Supreme Court of India has laid down that the High Court in exercise of its powers under Article 226 and 227 of the Constitution of India, cannot venture into reappreciation of evidence or interfere with the conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability or adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct the error of fact however, grave it may be, or go into proportionality of punishment unless it shocks the conscience of the Court. Thus, it is open to the Court only to examine (i) as to whether the enquiry held by the competent authority was in accordance with procedure established by law; (ii) whether principles of natural justice has been complied with; (iii) whether proceedings was vitiated by considering irrelevant and extraneous materials; (iv) whether there was exclusion of relevant materials; (v) whether finding was wholly arbitrary and capricious, based on no evidence; and (vi) whether finding is such that no reasonable man could arrive at. This writ petition, the Court is constrained to hold, fails on all the said points. This Court in exercise of jurisdiction under Article 226 of the Constitution of India is not an appellate authority.

18. Resultantly, the petitioner has not been able to make out any case for interference with the orders impugned in this writ petition and accordingly, this writ petition stands dismissed. However, the parties are left to bear their own cost.

JUDGE

Comparing Assistant