

GAHC010134432022



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

Case No. : WA/281/2022

MIHIR KUMAR BISWAS
S/O LATE SUDHIR KUMAR BISWAS, R/O QUARTER O. 2379, SECTOR-II,
REFINERY TOWNSHIP, NOONMATI, GUWAHATI 781020, KAMRUP METRO
ASSAM.

VERSUS

THE INDIAN OIL CORPORATION LTD. AND 3 ORS.
REPRESENTED BY ITS CHAIRMAN, R.S. BUTALA, 3079/3, SADIQ NAGAR, J.B.
TITO MARG, NEW DELHI 110049

2:THE DIRECTOR

INDIAN OIL CORPORATION LTD.
REFINERIES DIVISION
CORE 2 SCOPE COMPLEX
LODHI INSTITUTIONAL AREA
NEW DELHI 110003

3:THE EXECUTIVE DIRECTOR

INDIAN OIL CORPORATION
GUWAHATI REFINARY
NOONMATI
GUWAHATI 781020
ASSAM.

4:THE GENERAL MANAGER

INDIAN OIL CORPORATION
GUWAHATI REFINERY
NOONMATI

GUWAHATI 781020
ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : MR. N DEKA

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER

(CAV)

Date of Hearing : 06.02.2024
Date of judgment : 09.02.2024

(V. Bishnoi, CJ)

This intra-court appeal is filed by the appellant being aggrieved with the judgment and order dated 09.06.2022, passed by the learned Single Judge in Writ Petition (C) No. 2775/2013, whereby the writ petition filed by the appellant has been dismissed.

2. The appellant was initially appointed as a Materials Officer on 27.05.2003 in Guwahati Refinery, which is a company owned by the Indian Oil Corporation Ltd. (for short, "IOCL"). Later on, in the year 2011 the appellant was promoted to the post of Deputy Materials Manager and subsequently to the post of Deputy Manager (Training & Development) in the month of November, 2011. While working as Deputy Manager, a charge-sheet was served upon the appellant on 17.06.2011, wherein it was alleged that in the month of November, 2010, he collected an amount of Rs. 49,000.00 from one IOCL vendor for investment in a non-banking financial company with assured return of 10%, by pressurising the said vendor in his capacity as SMTO (Purchase). It

was also alleged that he had collected money between October to December, 2010 by acting as a local agent of a non-banking financial company (Unipay/VISAREV). The other allegation levelled vide the charge-sheet dated 17.06.2011 was regarding possession of assets disproportionate to his income. Later on, another charge-sheet was served upon the appellant on 24.02.2012, wherein it was alleged that the appellant had abused his official position by creating a number of Vendor Codes on-line in the SAP at his own discretion without supporting documents and approval of the competent authority with ulterior motive and for personal gain. Another allegation was that requests for quotation for various items were sent to seven vendors whose vendor creation details were not available and out of them two were awarded purchase orders. The next allegation was that the appellant had manipulated PAN number of certain firms for creation of Vendor Codes. The fourth charge against the appellant was that he had created Vendor Code unethically for a casual worker, and the last charge in this second charge-sheet was that the appellant had dropped five vendors recommended by the Mechanical Maintenance Committee for procurement of Hydraulic Hand Trolley and included five other vendors for the same.

3. In respect of the first charge-sheet dated 17.06.2011, enquiry report was submitted on 02.03.2012 and in counter to that the appellant filed his representation on 20.04.2012. However, the Disciplinary Authority, while concurring with the findings recorded by the Enquiry Officer, inflicted the penalty of removal from service. In respect of the second charge-sheet, the Enquiry Officer submitted its report on 16.10.2012 and in counter to that the appellant submitted his representation on 30.10.2012. However, the Disciplinary Authority passed the order dated 09.01.2013 inflicting the penalty of removal from service against the appellant.

4. Being aggrieved with the same, the appellant preferred a joint appeal on 16.01.2013 before the Appellate Authority. However, the said appeal came to be dismissed by the Appellate Authority vide order dated 22.04.2013, against which the appellant preferred a review petition. However, during pendency of the said review

petition, he approached this Court by way of filing a writ petition, which came to be dismissed vide the impugned judgment. Hence this appeal.

5. Mr. P. K. Roychoudhury, learned counsel appearing for the appellant, without questioning the correctness of the findings recorded by the Disciplinary Authority as well as the findings recorded by the Appellate Authority, has raised a submission to the effect that the Disciplinary Authority was not justified in imposing the penalty of removal of the appellant from service. It is submitted that the penalty of removal from service imposed by the Disciplinary Authority in the two enquiries is disproportionate to the offence and, in such circumstances the Disciplinary Authority was required to impose a lesser penalty upon the appellant.

6. It is contended that the allegation against the appellant of collection of money within the premises of the IOCL without the permission of the competent authority is, though proved, but the facts and circumstances, under which the appellant had collected money within the premises of the corporation, have not been taken into consideration. It is submitted that the appellant had only advised some persons for investment of their money in the said scheme and, therefore, in such circumstances it cannot be said that the act of the appellant was so grave which invited the penalty of his removal from service.

7. It is further submitted that in respect of the second charge-sheet, the Disciplinary Authority has not taken into consideration that the appellant had no intension to misuse his authority and whatever he has done was *bona fide* and if any irregularity has been committed, that was on account of the crowding of applications. Learned counsel for the appellant has further submitted that the learned Single Judge has also not taken into consideration the said aspect in right perspective and has erroneously passed the impugned order affirming the findings recorded by the Disciplinary Authority in relation to the punishment.

8. Per contra, learned counsel appearing for the respondents has argued that the

learned Single Judge has not committed any irregularity in passing the impugned order and, in the facts and circumstances, no case for interference is made out.

9. While considering the arguments made on behalf of the appellant regarding disproportionate punishment, the learned Single Judge has observed as under:

“17. The only question to be decided now is with regard to the prayer of the petitioner’s counsel to remand the case back to the Disciplinary Authority to take a decision, as to whether a lesser penalty can be imposed upon the petitioner, as the penalty of removal is disproportionate to the offence. In the case of Naresh Chandra Bhardwaj (supra), the Apex Court has held that limited judicial review is available for interfering with the punishment imposed by the Disciplinary Authority, i.e, only in cases where such penalty is found to be shocking to the conscience of the Court. Even in such a case, when the punishment is set aside as shockingly disproportionate to the nature of charge framed against the delinquent employee, the appropriate course of action is to remit the matter back to the Disciplinary Authority or the Appellate Authority with a direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case. The only exception to the principle would be in those cases, where the co-delinquent is awarded lesser punishment even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges.

18. In the case of S. Muthu Kumaran (supra), the Apex Court had modified the penalty of dismissal from service into that of discharge, by keeping in view the fact that the delinquent officer therein did not have any blemish in his long service record. As such, to enable the said person to get the benefits of gratuity and other attendant benefits for the service rendered by him, the penalty imposed was modified.

19. In the case of V. Ramana vs. A.P. SRT C & Others, reported in (2005) 7 SCC 338, the Apex Court has held that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, there is no scope for interference.

20. In the present case, the petitioner has been found to be engaging in trade or business and collection of money without permission of the competent authority. The petitioner has also been found to have created vendor codes without the approval of the competent authority for personal gain and manipulated the PAN number of one Shri Rajib Sarma. It is settled law that the Disciplinary Authority is the sole judge of facts and there is nothing to show that the findings of Enquiry Officer are wholly perverse or legally untenable. Further, the petitioner will be able to receive retirement benefits as applicable to him, due to the petitioner being imposed with the penalties of removal imposed upon him in both the disciplinary proceedings. On considering the above facts, this Court does not find that the punishments/penalties imposed upon the petitioner, on the basis of the two disciplinary proceedings, to be shockingly disproportionate

and neither does it shock the conscience of this Court. Accordingly this Court does not find any ground to exercise it's discretion in the present case."

10. We have carefully scrutinised the material available on record and find that there is no procedural illegality in the disciplinary enquiry and the findings of the disciplinary authority are based on cogent material. The appellant, while working as an employee of the respondent corporation was involved in trade and business for pecuniary gains and had also generated Vendors Code for the entities who were not even vendors. The said action on the part of the appellant was clearly in violation of the provisions of the Conduct, Discipline & Appeal Rules, 1980 of the IOCL. We are of the view that looking to the nature of allegations, which are proved in the disciplinary enquiry, re-instatement of the appellant in service was not warranted as the punishment imposed by the disciplinary authority cannot be said to be shockingly disproportionate to the nature of charge framed against the appellant.

11. Another aspect, which is to be taken into consideration is that till passing of the impugned penalty orders by the disciplinary authority, i.e. 09.01.2013, the appellant had not completed 10 years of service as the date of initial appointment of the appellant in the service was 27.07.2003. Thus, the penalty of compulsory retirement from service cannot be imposed upon the appellant.

12. In view of the above discussions, we are of the considered view that the order passed by the learned Single Judge does not warrant any interference. The present appeal is, therefore, dismissed being devoid of merits.

JUDGE

CHIEF JUSTICE

Comparing Assistant