

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.10 of 2023

Subrata Debbarma,
son of late Nikhil Chandra Debbarma,
resident of Palace Compound, Akashbani
Gali, P.O. Agartala, P.S. East Agartala,
District- West Tripura,

..... **Petitioner(s)**

- V e r s u s -

1. **Oil and Natural Gas Corporation Limited,**
Represented by its Asset Manager, ONGC,
O/o Director (Onshore), 5th Floor,
Deendayal Urja Bhavan, 5 Nelson Mandela
Marg, Vasant Kunj, New Delhi-110070
2. **Oil and Natural Gas Corporation Limited,**
Represented by its Asset Manager,
ONGC, Badharghat, ONGC Complex,
Tripura Asset, P.O. ONGC Colony, P.S.
Amtali, West Tripura
3. **ED-Asset Manager,**
ONGC, Tripura Asset, Agartala, the
Disciplinary Authority, ONGC Limited,
Badharghat, Agartala
[The Disciplinary Authority, ONGC
Limited, BAdharghat, Agartala]
4. **The Director,**
ONGC, the Appellate Authority, O/o Director
(Onshore), 5th Floor, Deendayal Urja
Bhavan, 5 Nelson Mandela Marg, Vasant
Kunj, New Delhi-110070

..... **Respondent(s)**

For the Petitioner (s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv. Mr. K. Nath, Adv.				
For the Respondent (s)	:	Mr. S. Deb, Sr. Adv. Mr. A.L. Saha, Adv.				
Date of hearing	:	16.01.2025				
Date of delivery of Judgment & order	:	07.05.2025				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td></td></tr></table>	YES	NO		
YES	NO					

HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER

This petition has been filed by the petitioner for quashing the order dated 09.10.2018 issued by the ED, Asset Manager, ONGC and the order dated 01.11.2022 issued by the Director (Onshore), ONGC [Annexures-6 & 10 respectively], whereby the penalty of *'removal from service which shall not be a disqualification for future employment under the Government or the Corporation/Company owned or controlled by the Government'* was imposed upon the petitioner which was confirmed by the appellate authority vide order dated 01.11.2022.

[2] The petitioner being initially appointed as Technical Assistant, Grade-III (Chemistry) under the ONGC, joined in the service on 02.09.1992. Thereafter, he was promoted three times and lastly, he was holding the post of Assistant Superintendant (Chemistry) w.e.f. 01.01.2015. On 27.06.2017, he was placed under suspension contemplating a departmental proceeding. Then with the grievance that no subsistence allowance was being provided to him, he filed the writ petition being W.P.(C) No.657 of 2017 in this High Court which was disposed of by an order dated 24.08.2017 directing the respondents to pay the subsistence allowance to him.

[3] Thereafter, vide memorandum dated 25.09.2017, a departmental proceeding was initiated against him under Rule 36 of ONGC Conduct, Discipline Appeal Rules, 1994 (hereinafter referred to as 'the Rules of 1994') under the following three articles of charges:

"1. He is habitually irregular in attendance, wilfully and habitually absents himself from duty without leave and absents himself from his place of work after signing the attendance register whereby he remains absent from his appointed place of work without permission or sufficient cause. Latest example of his unauthorised absence is from 02.01.2017 to 30.04.2017.

2. He has neglected his duty and on various occasions, refused to perform his official assignments/jobs and thereby has disobeyed the lawful orders of his superiors and shown insubordination.

3. He has exhibited threatening, intimidating behaviour and has abused his superiors on being asked to perform his duty or when asked to submit leave applications to regularise his leave. He has also exhibited similar threatening, intimidating behaviour and has abused other regular/contractual employees of ONGC by using insolent, impertinent and unparliamentarily language."

[4] In the statement of imputation in support of such article of charges, the details of his unauthorized absence in respect of article of charge no.1, disobedience to the lawful orders of his superiors and shown insubordination in respect of charge No.2 and also the details of threatening, exhibiting intimidating behaviour and abusing of his seniors etc. regarding charge No.3 were mentioned in Annexure-II of the said memorandum dated 25.09.2017 alongwith reference of several documents.

[5] Mr. S.K Deb, learned senior counsel appearing for the respondents-ONGC has placed the file of departmental proceeding which shows that such memorandum, article of charges, statement of imputation of misconduct, list of documents, list of witnesses and the documents as stated in the list (30 documents in 34 pages) etc. were received by the petitioner under his own signature on 03.10.2017. In the list of witnesses, the departmental authority cited 5[five] Nos. of witnesses to be examined in the proceeding. The Enquiry Officer, after recording the evidence of witnesses and

also considering the related documents, finally submitted the report on 08.05.2018, arriving at the following conclusions:

"On careful consideration of evidence adduced during enquiry and on perusal of documents on the record of the enquiry, it is evident that Shri Subrata DebBarma, Asstt. Supdt. (Chem.) is a habitual absentee, shirked his responsibility neglected his duty. He has also disobeyed the lawful orders of his superior officers. He has exhibited threatening, intimidating behavior and has abused his superiors on being asked to perform his duties or when asked to submit leave application to regularize his absence. He also tried to assault Shri SP Dewan, DGM(Chem.) for his perceived grievances. The CO has also behaved indecently with doctors of Medical section of ONGC, Agartala. He has also abused and threatened other regular/contractual employees of ONGC. He is therefore liable for disciplinary action for misconduct under the provisions of Rule 4 (1) (a), (b)&(c), 4(2)(c), 5(2) read with Sl. no. 1,5,9(ii), 16,17,30,32 & 37 of Schedule II to Rule 3 (j) of ONGC CDA Rules, 1994(amended 2011).

Therefore the charges framed against Shri Subrata DebBarma, Asstt. Supdt. (Chem.), CPF No.78138 mentioned in the Article of Charges at Sl. No. 1, 2, and 3 annexed to Memorandum No. AGT/HR-ER/SD/2017 dated 25.09.2017 stand established."

[6] On consideration of the said enquiry report, finally the disciplinary authority passed the impugned order on 09.10.2018, imposing penalty of removal from service which would not be a disqualification for future employment under the Government or the corporation/company owned or controlled by the Government. It appears from the records that the said enquiry report was provided to the petitioner vide memorandum dated 17.08.2018 (received by him on 29.08.2018) but as stated, he did not submit any representation against the same.

[7] Thereafter, challenging the order of penalty as imposed upon him, the petitioner without filing any departmental appeal, preferred W.P(C) No.1192 of 2018 and a Coordinate Bench of this

Court vide judgment dated 21.11.2019, disposed of the matter in the following terms:

"17. While considering the inquiry report [part of Annexure-4 to the writ petition] this court did not find that the adequate materials were disclosed to the petitioner at the time of forming articles of charge 2 and 3 [as emphasized] even though some witnesses have come to prove the abusive conduct of the petitioner, but those conducts having not specified or not disclosed in the memorandum of charge enabling the petitioner to represent against it cannot be made basis of any disciplinary action. Those charges are vague, unspecified and instrumental to put the delinquent officer in quandary. If the charge is formed in that manner those cannot be sustained on the ground of vagueness and incomprehensiveness. This court therefore by brushing aside the technical objection of maintainability for not filing the appeal, despite the specific rules accommodating the adequate provision for filing the appeal, would interfere the charges (2) and (3) in the memorandum dated 25.09.2017 [Annexure-B to the reply filed by the respondents]. Accordingly, the articles of charges (2) and (3) are set aside and quashed. But this court finds sufficient materials to hold the article of charge (1) on absenteeism or neglecting the duties well substantiated. But the penalty on that charge appears to be shockingly disproportionate. Hence, the order of penalty is interfered with and set aside. The disciplinary authority shall pass the fresh order of penalty after taking the proportionality vis-a-vis the mis-conduct in consideration. At the time of passing the order of penalty in terms of this direction the authority shall consider the long twenty five years of service as rendered by the petitioner. It is made abundantly clear that the disciplinary authority may impose any penalty lesser than the penalty of removal or dismissal. Such order shall invariably be based within a period of two months from the day of receipt of a copy of this order in accordance with the rules, subject to what has been observed as above."

[8] The learned Writ Court thereby quashed the article of charges No.2 & 3 but found sufficient materials in respect of article of charge No.1 regarding absenteeism or neglecting the duties and expressed the opinion that the penalty of removal from service on that charge appeared to be shockingly disproportionate. Therefore, the order of penalty was interfered with. The disciplinary authority was directed to impose any other lesser penalty under said charge no.1. The learned Bench also directed the disciplinary authority to consider the long twenty five years of service as rendered by the petitioner while reconsidering the matter of penalty.

[9] Challenging the said order, the respondents preferred the Writ Appeal No.184 of 2020 and a Division Bench of this Court disposed of the matter vide judgment dated 12.08.2022 in the following terms:

"13. Accordingly, the same stands remitted and the petitioner is directed to submit representation before the departmental Appellate Authority. The said Appellate Authority shall decide the representation made by the petitioner without being influenced by any of the observations made here-in-above by this court. But the observation of the learned Single Judge that the penalty of removal of the petitioner from service passed by the Disciplinary Authority is quite disproportionate to the charge brought against him must be taken into consideration by the Appellate Authority particularly when the penalty of removal from service appears to be in contra to the relevant provision of ONGC (Conduct) Rules as the articles of charges do not relate to any financial irregularities. As such, the Appellate Authority should proceed in accordance with law keeping in mind the above observation made by this court. It is made clear that the Appellate Authority shall be at liberty to examine the findings of the Disciplinary Authority on all the charges.

14. As a sequel, the judgment and order passed by the learned Single Judge as aforesated, stands set aside and quashed. It is directed that the petitioner shall submit his representation within a period of two weeks from today and the Appellate Authority after receipt of the representation, shall dispose of the same with a reasoned order within a period of four weeks thereafter."

[10] Thus, practically by the said judgment, the Division Bench of this Court upset the findings of the learned Writ Court and the decision on the charge nos. 2 & 3 were left with the appellate authority. However, simultaneously the Division Bench also conceded with the observation of the Ld. Single Judge that penalty of removal of the petitioner from service was quite disproportionate and therefore, direction was given to the appellate authority for taking such observation into consideration while deciding the appeal/representation.

[11] In terms of the direction of the Division Bench, the petitioner submitted his appeal on 24.08.2022 and the appellate authority vide impugned order dated 01.11.2022 dismissed the said appeal by affirming the penalty of removal from service as was imposed by the disciplinary authority.

[12] Mr. P. Roy Barman, learned senior counsel appearing for the petitioner submits that the petitioner was not furnished with the copy of charges and he learnt the contents of the charges from the enquiry report. Referring to the previous judgment passed in W.P.(C) No.1192 of 2018, Mr. Roy Barman, learned counsel submits that already the Writ Court had held that the charge Nos.2 & 3 were vague and the said finding was not disturbed by the Division Bench of this Court. Learned senior counsel continues to submit that the documents as relied on by the department in the departmental proceeding were furnished during the inquiry but not at the initial stage of the proceeding. According to Mr. Roy Barman, learned senior counsel, the authority took into consideration some instances of absence of the petitioner from duty which were very remote in time and after those absences also, the petitioner was given promotions one after another taking into account his outstanding nature of service rendered towards the department. Mr. Roy Barman, learned senior counsel further submits that the inquiring authority as well as the departmental authority took into consideration several materials which were beyond the charges but the appellate authority failed to consider the same.

[13] Mr. Roy Barman, learned senior counsel contends that all the points as raised by the petitioner in the appeal were not discussed and considered by the appellate authority and even going beyond the decision of the Division Bench, again affirmed the punishment of removal from service of the petitioner. In this context, Mr. Roy Barman, learned senior counsel also relies on Rule 51 of sub-Rule 2 of Rules of 1994 stating that the appellate authority failed to act in accordance with the provisions of said rule. For reference, said sub-Rule 2 of Rule 51 is extracted hereunder:

"51. (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 34 or enhancing or reducing a penalty imposed under the said Rule, the Appellate Authority shall consider:

(a) whether the procedure herein prescribed in these Rules had been complied with and the principles of natural justice observed.

(b) whether the findings of Disciplinary Authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced or reduced penalty imposed is adequate, inadequate or severe; and pass orders:

(i) setting aside, reducing confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed or enhanced or reduced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that:

(a) the Appellate Authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose:

(b) no order imposing an enhanced penalty shall be passed unless the appellant is given a reasonable opportunity of making any representation which he may wish to make against such enhanced penalty; and

(c) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clause (vii) to (xi) of Rule 34 and inquiry under Rule 36 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 41, itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceeding of such inquiry and after giving the appellant a reasonable opportunity of making any

representation which he may wish to make against such penalty, pass such orders as it may deem fit.”

[14] Mr. Roy Barman, learned senior counsel further submits that the age of the petitioner is now 54 years and has already completed 25 years of service but the said facts were also not considered by the appellate authority. Finally, Mr. Roy Barman, learned senior counsel relies on 2[two] decisions of the Hon'ble Apex Court rendered in **B.C. Chaturvedi vs. Union of India & Ors., (1995) 6 SCC 749** and **Union of India & Anr. Vs. G. Ganayutham, (1997) 7 SCC 463.**

[15] In **B.C. Chaturvedi's** case it was observed that the judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. It was also further observed therein that the High Court has the jurisdiction to modify the punishment/penalty by moulding the relief, which power is undoubtedly as in of the long line of decisions of the Apex Court. It was further observed by the Hon'ble Apex Court that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if, moulding of relief would do complete justice between the parties, the same cannot be ordered.

[16] In **Ganayutham's** case, the proposition of proportionality in the administrative law was discussed in the following lines:

31. ****

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, is *left open*, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Article 19, 21 etc. are involve and not for Article 14.

[17] Mr. S.K. Deb, learned senior counsel appearing for the respondents strongly argues that the petitioner has adopted falsehood inasmuch as he had received the copy of the charges in due time and also gave a reply against the same but now he is denying the same before the Court. By placing the file of departmental proceeding, Mr. Deb, learned senior counsel also tries to show that the petitioner received the documents on 03.10.2017, whereas an inquiry officer was appointed on 10.11.2017. Mr. Deb, learned senior counsel further argues that in the departmental proceeding, the petitioner did not adduce any evidence and even declined to cross-examine some of the witnesses of the prosecution. Mr. Deb, learned senior counsel also contends that the scope for submission of the due representation against the enquiry report was also provided to the petitioner but he denied to submit any

representation. Therefore, there was no procedural lapses requiring any judicial interference.

[18] According to Mr. Deb, learned senior counsel, the Division Bench's decision nowhere prevented the appellate authority from imposing penalty of removal. In respect of challenge as to the vagueness of charges, Mr. Deb, learned senior counsel submits that in the written statement, the petitioner never raised the issue that the charges were vague and even in his appeal also, he never tried to show as to how the charges were vague. Referring to Rule 34 of Rules 1994, Mr. Deb, learned senior counsel contend that nowhere it prevents the departmental or appellate authority from imposing penalty of removal from service in any case other than the case of disproportionate assets. According to Mr. Deb, learned senior counsel now at this stage, considering the background facts as surfaced, the judicial scrutiny is now confined only to consider the proportionality of the penalty imposed and nothing more than that. Learned senior counsel also submits that the petitioner has claimed only infringement of a legal right but not a fundamental right and therefore, the writ petition is also not maintainable.

[19] Finally, Mr. Deb, learned senior counsel refers the following decisions which would be discussed in the next paragraph of the judgment:

(i) Associated Provincial Picture Houses, Ltd. vs. Wednesbury Corporation, 1947 (2) ALL ER 680.

(ii) Council of Civil Service Unions and others vs. Minister for the Civil Service., 1984(3) All ER 935.

(iii) R vs. Secretary of State for the Home Department, ex parte Daly, 2001 (3) All ER 433.

(iv) OM Kumar & Others vs. Union of India, (2001) 2 SCC 386.

(v) Chairman and Managing Director, United Commercial Bank & others vs. P.C. Kakkar, (2003) 4 SCC 364.

(vi) State of U.P. vs. Sheo Shanker Lal Srivastava & others, (2006) 3 SCC 276.

(vii) State Bank of India & others vs. Ramesh Dinkar Punde, (2006) 7 SCC 212.

(viii) Prestige Lights Ltd. vs. State Bank of India, (2007) 8 SCC 449.

(ix) Biplab Kr. Ghosh vs. Union of India, (2014) 1 TLR 245.

[20] In the above said **Wednesbury Corporation's** case basically the principle of *Wednesbury rule* was originated. It was observed by Lord Greene that the exercise of 'discretion' by the executive must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. When a decision by an executive authority on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the court can interfere. It was also observed that the court may very well have different views from those of an executive body on matters of high public policy, but Court is not to act as an arbiter of the correctness of one view of another.

[21] In **Council of Civil Service Unions** case, Lord Diplock has observed that to qualify a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other persons either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him some benefits or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. It was also further observed that under three heads the grounds on which administrative action is subjected to control by the judicial review are illegality, irrationality and procedural impropriety. His Lordship also expressed the view of possible adoption of the principle of proportionality in English Law in future which was already recognised in the administrative law of European Economic Community.

[22] In **R vs. Secretary of State for the Home Department's** case, Lord Steyn further discussed the principle of proportionality with the words that the intensity of review is somewhat greater under the proportionality approach and the

doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions and also that the proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations. The said principle of proportionality was also explained by the Apex Court in **OM Kumar's** case in the following lines:

"28. By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the *legislature and the administrative authority* 'maintain a *proper balance* between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."

[23] Further, in Paras-66 & 67, the followings were also observed in said case regarding the zone of judicial review in India when an administrative actions are challenged:

"66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying 'proportionality' and is a primary reviewing authority.

67. But where, an administrative action is challenged as 'arbitrary' under Article 14 on the basis of *Royappa : (1974) 4 SCC 3* (as in cases where punishments in disciplinary cases are challenged), the question will be whether the

administrative order is 'rational' or 'reasonable' and the test then is the *Wednesbury test*. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary."

[24] In **P.C. Kakkar's** case, the Apex Court held that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. It was further observed that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. It is also held that to shorten litigations, the Court may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is found disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

[25] In the similar line, the Apex Court in above said **Sheo Shanker Lal Srivastava's** case also reiterated that doctrine of proportionality can be invoked only under certain situations and that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

[26] In **Ramesh Dinkar Punde's** case the principle that High Court should not act as the appellate authority while exercising the judicial review, was reiterated.

[27] The other two decisions i.e. **Prestige Lights Ltd.** case and **Biplab Kr. Ghosh's** case, as relied on by Ld. Senior Counsel Mr. Deb, it was observed that when a party approaches the High Court, he must place all the facts before the court without any reservation or suppression and to avoid placing of twisted facts, otherwise same may disentitle the justice seeker from any relief from the court.

[28] It is established principle of law that the power of the court in the judicial review is narrower than that of the power of an appellate authority. In case of a judicial review in the matter of disciplinary action taken by the administrative authority, the court cannot sit as an appellate authority to re-appreciate the evidence and to replace the findings of the disciplinary authority by its own findings. However, the court can interfere the same on the touchstone of Wednesbury's principle of law or on the principle of proportionality as discussed in the earlier paragraphs. Where the administrative act appears to be illogical or it suffers from procedural impropriety or is shocking towards the conscience of the Court, or is in defiance of logic or moral standards, the Court can interfere and mould the relief accordingly.

[29] Now, coming to the case in hand, it appears that the Coordinate Bench of this Court in W.P.(C) No.1192 of 2018 dealt with the allegation of vagueness of charges and other attending facts and circumstances that were raised before the court by the petitioner and finally, observed that the articles of charge Nos.2 & 3

were vague and consequently, those were set aside. The Coordinate Bench also found sufficient materials to hold the article of charge No.1 established but the penalty on that charge appeared to the court to be shockingly disproportionate and therefore, it was interfered with and set aside. Other challenges of the petitioner on the factual issues of said departmental proceeding, such as non-furnishing of copy of article of charges, non-furnishing of copies of documents in time etc. are concerned, the proper stage for agitating the same was when the said W.P.(C) No.1192 of 2018 in the first round was filed. There is no scope for the petitioner to reopen all these issues again, when he accepted the judgment of said writ petition and also the subsequent judgment passed by the Division Bench of this Court in W.A. No.184 of 2020 without any challenge. The normal inference would be that either he had raised all these issues in the said writ petition and after considering the same, the writ petition and the subsequent appeal were decided. I agree with the submission of Ld. Senior Counsel, Mr. Deb that now only the matter of challenge as to the penalty as imposed is left for consideration.

[30] As stated above, in said W.P.(C) No.1192 of 2018, the Coordinate Bench held that the charge Nos.2 & 3 were vague and therefore, those were set aside, with further observation that the penalty that was imposed on charge No.1 was shockingly disproportionate. It was also further observed that while passing the order of penalty, the authority shall consider the long 25 years of service of the petitioner and it was also made clear that the

disciplinary authority may impose such penalty lesser than the penalty of removal or dismissal.

[31] In the appeal, the Division Bench, however considering all aspects while upsetting the order of the Writ Court directed the petitioner to submit representation before the appellate authority and the appellate authority was directed to decide the representation without being influenced by any observation made by the Division Bench in the judgment but simultaneously it was also categorically directed that the observation of the learned Single Judge that the penalty for removal of petitioner from the service passed by the disciplinary authority was quite disproportionate to the charge brought against him, must be (*emphasis laid*) taken into consideration by the appellate authority. It was also made clear that the appellate authority shall be at liberty to examine the findings of the disciplinary authority on all the charges. Thus, the contention of the petitioner that the charge Nos.2 & 3 were vague, was not accepted by the Division Bench and therefore, now it is permissible for the disciplinary authority or the appellate authority to impose penalty on above said 2(two) charges too. None of the parties had challenged the said decision of the Division Bench of this Court in the higher forum and therefore, the same is undoubtedly binding on them.

[32] While disposing the representation submitted by the petitioner before the appellate authority, ultimately said authority affirmed the penalty of removal from service as was imposed by the disciplinary authority. The relevant paragraph of the observations

and decision of the appellate authority upholding such quantum and nature of penalty is extracted hereunder:

11. As per directions of the Division Bench of the Hon'ble High Court, I have given much thought and attention to the question as to whether the penalty imposed vide Order dated 09.10.2018 on the Charged Officer/ Appellant is harsh and disproportionate to his acts of misconducts. I have dispassionately considered this issue. The service record of the Charged Officer makes it clear to me that the Charged Officer/ Appellant is not worthy to be in the service of a Government Company like ONGC. Habitual absence from duty; neglect of duty; refusal to perform duty; cheating the Company by signing the attendance register but not attending the office; frequently remaining absent from office without any information and permission; refusing to apply for leave even after joining duty; misbehaving and using abusive language; threatening and intimidating colleagues and seniors; these are all acts of grave misconducts even in isolation. The worst part is that the Charged Officer/Appellant habitually and repeatedly displayed this behaviour continuously for years and did not heed to any advice/ warning from seniors/authorities. I have also perused his Performance Appraisal Reports for the period 2013 onwards. The comments of his controlling officers also substantiate that the Charged Officer/ Appellant was a habitual offender and non-performer. In the facts and circumstances of the case, I fully agree with the findings of the Disciplinary Authority and see no reason to interfere with penalty imposed by him vide Order dated 09.10.2018. In fact, considering the habitual and persistent acts of misconducts of the Appellant, I feel that any penalty less than the penalty of removal from service as provided under Rule 34 (x) of the ONGC CDA Rules, 1994 (amended 2011) would be inadequate and would send wrong message in the organization and would be detrimental to the interests of the organisation. Hence, I am of the view that the penalty of removal from service as imposed by the Disciplinary authority vide order dated 09.10.2018 is just, proper, and not disproportionate to the acts of misconducts committed by the Appellant/ Charged Officer.

[33] The appellate authority also came to the conclusion that all the procedures prescribed in the Rules of 1994 were complied with in this case and the principle of natural justice was also observed during the departmental proceeding and the petitioner was given full opportunity to defend himself at each stage but he did not produce any oral or documentary evidence during such inquiry and failed to refute the charges levelled against him. The appellate authority has also discussed and gave findings on article of charge

Nos.1, 2 & 3. According to the appellate authority, the conclusion arrived by the inquiry officer was just and based on the evidence produced during inquiry proceeding. However, what is noticed by the court is that despite a specific direction of the Division Bench that the observation of the learned Single Judge that penalty of removal of the petitioner from service was quite disproportionate to the charge brought against him must be taken into consideration by the appellate authority, it was not given due consideration by the appellate authority.

[34] To say it in other words, the learned Division Bench of this Court affirmed the observation of the learned Single Judge that the penalty of removal from service was quite disproportionate in the present case and as already discussed, none of the parties challenged the said judgment, it became now obligatory for the appellate authority to give due weightage to such observation. The appellate authority failed to appreciate the basic spirit and import of the said direction of the Division Bench of this Court. The words 'must be taken into consideration' cannot and should not be understood and interpreted with such laxity and elasticity so as to enable the appellate authority to sit over such observation and to affirm the penalty as was imposed by the disciplinary authority, on the same set of facts based on which such observations were made by both the Ld. Single Judge and then by the Division Bench. The appellate authority should not subscribe its own view over the view of the Court on consideration of the same materials which were also under consideration of the court while passing such observations

and direction. Such grave departure by the appellate authority from the observation and direction of the courts regarding proportionality of the penalty in the manner as discussed above, itself manifests arbitrariness and unreasonableness of the authority while affirming the penalty as imposed upon the petitioner. Therefore, the penalty as imposed upon the petitioner is interfered with.

[35] In view of the above, the impugned order dated 01.11.2022 passed by the appellate authority is hereby quashed so far as it relates to the affirmation of the penalty imposed upon the petitioner. The appellate authority is directed to decide the matter of challenge of the petitioner asto the nature and quantum of penalty afresh strictly in terms of the observation and direction made by the Division Bench in said Writ Appeal no. 184 of 2020 as indicated in foregoing paragraphs and also taking note of the observations made by this Court hereinabove, more specifically in paragraph no.34 of the judgment. The appellate authority will decide the matter within 4[four] weeks on receipt of the copy of this judgment.

With such observation and direction, the writ petition is disposed of.

Pending application(s), if any, also stand disposed of.

JUDGE