

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 415 OF 2014

Ghanshyam Balaji Chichghare

-vs-

The Director (Marketing), Appellate Authority, HPCL, Mumbai and another

WRIT PETITION NO. 420 OF 2014

Yogeshwar Ninawe

-vs-

The Director (Marketing), Appellate Authority, HPCL, Mumbai and another

WRIT PETITION NO. 2179 OF 2014

Anil Bhanudas Nagrale

-vs-

The Director (Marketing), Appellate Authority, HPCL, Mumbai and another

WRIT PETITION NO. 6165 OF 2013

Arun Yadavrao Nandanwar

-vs-

The Director (Marketing), Appellate Authority, HPCL, Mumbai and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.C. Dharmadhikari, counsel for the petitioners.
Mr. N.W.Almelkar, counsel for the respondents.

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 20.07.2015.

Since the issue involved in these writ petitions is identical and the facts giving rise to the same are also common, they are heard together and are decided by this common order.

By these petitions, the petitioners had challenged the orders of the Disciplinary and Appellate Authorities, directing

the termination of services of the petitioners. The petitioners had sought a direction to the respondents to reinstate the petitioners in service with continuity of service and back wages.

The petitioners were appointed as clerk-cum-typist with the Hindusthan Petroleum Corporation Limited sometime in 1980s and their services were confirmed. The petitioners were working on the post of Senior Administrative Assistants in the plant of Hindusthan Petroleum Corporation Limited at Khapri, Nagpur District when it was noticed by the respondent-Corporation that an amount to the tune of Rs.44,00,000/- was misappropriated by the petitioners. According to the respondent-Corporation, though the petitioners had not secured the cheques from the distributors for the supply of L.P.G. cylinders and the distributors had never issued the cheques, it was shown by the petitioners in the software system that the said cheques were received and cylinders were distributed. According to the respondent-Corporation, since the action on the part of the petitioners had caused loss to the Corporation, an enquiry was conducted and the petitioners were found guilty of the charges levelled against them. The respondent No.3-Disciplinary Authority dismissed the petitioners from service in September, 2012. The petitioners filed separate appeals against the termination orders before the respondent No.3-Appellate Authority, but the appeals filed by the petitioners were dismissed.

A preliminary objection to the tenability of the writ petition was raised by the learned counsel for the respondent-Corporation on one of the previous dates of hearing. It was

stated by the learned counsel for the respondent-Corporation that since the petitioners were working on the post of clerk-cum-typist in the Hindusthan Petroleum Corporation Limited, the dispute of the petitioners could have been referred to the Central Government Industrial Tribunal. It was submitted that one of the employees, who was also chargesheeted along with the petitioners and whose services were terminated by the order of the respondent No.2 in September, 2012, has approached the C.G.I.T. It is stated that the petitioners should also avail the alternate remedy.

In view of the preliminary objection raised on behalf of the respondents, a statement was made by the learned counsel for the petitioners on the previous date of hearing that the petitioners would challenge the orders of termination before the C.G.I.T. and the prayers in the writ petitions would be restricted only in respect of the challenge to the order of the Appellate Authority on the ground that the Appellate Authority had not granted personal hearing to the petitioners. It was submitted that this Court may only decide the issue in regard to the correctness or otherwise of the orders of the Appellate Authority on the ground of violation of principles of natural justice and remand the matters to the Appellate Authority for a fresh decision after hearing the petitioners.

In view of the aforesaid, the prayer in the writ petitions is restricted only in respect of the challenge to the orders of the Appellate Authority on the ground that the Appellate Authority had not afforded an opportunity of personal hearing to the petitioner. The claim in the writ petitions is, therefore, restricted only to the issue whether the petitioners were required to be personally heard by the

Appellate Authority before deciding the appeals filed by the petitioners.

Shri Dharmadhikari, the learned counsel for the petitioners, submitted that though Standing Order No.35 of the Standing Orders for Marketing Establishments does not specifically provide for personal hearing, as some technical issues were involved in these cases, the Appellate Authority ought to have heard the petitioners before deciding the appeals. It is submitted that the petitioners wanted to prove that somebody had used the identity of the petitioners and had withdrawn the entries in respect of the cheques supplied by the distributors. It is submitted that though the appeal-provision does not specifically provide for an opportunity of personal hearing, in the circumstances of the case, the Appellate Authority ought to have heard the petitioners. The learned counsel for the petitioners relied on the judgments reported in (1993) 3 SCC 259 (D.K.Yadav v. J.M.A. Industries Ltd.), 1969 (3) SCC 868 (M/s. Travancore Rayon Ltd. v. Union of India) to substantiate his submission.

Shri Almelkar, the learned counsel for the respondents, submitted that an opportunity of hearing is not necessary in all the stages of the proceedings. It is submitted that the appellate provision does not provide for an opportunity of personal hearing. It is submitted by placing reliance on the judgments, reported in AIR 1967 Bombay 332 (Vithal Mahadeo v. Union of India) and AIR 1970 Delhi 171 (Labh Singh v. Union of India), which in turn refers to the judgments of the Hon'ble Supreme Court, reported in AIR 1960 SC 493 (S. Kapur Singh v. Union of India) and AIR 1957 SC 648 (F.N.Roy v. Collector of Customs) that personal

hearing was not necessary. It is submitted that the head office of the respondent-Corporation is situated at Mumbai and the Appellate Authority comprises of the Executive Directors of the Respondent-Corporation and / or the Directors of Marketing. It is stated that the situs of the Appellate Authority is at Mumbai. It is stated that the bottling plants, refineries and the Administrative Offices of the respondent-Corporation are located all over India, not only in cities, but also in towns. It is submitted that it is not possible for the Appellate Authority to personally hear each employee, who files an appeal before the same. It is submitted that some of the offices of the Corporation are located in Assam, Guwahati, Kerala, Karnataka, etc. It is stated that it is not possible for the Appellate Authority, in this background, to grant a personal hearing to the aggrieved employees. It is stated that in the instant case, the Appellate Authority has, by reasoned orders, considered each and every ground raised by the petitioners in the appeals. According to the learned counsel, no prejudice could be said to have been caused to the petitioners by not affording an opportunity of personal hearing to them. It is stated that personal hearing is not contemplated under the Standing Orders, as admitted on behalf of the petitioners, and since it is not possible for the Appellate Authority to grant personal hearing to each of the aggrieved employees in the offices located all over India, the petitioners cannot seek a remand of the matter to the Appellate Authority on the ground that the Appellate Authority has not granted personal hearing to the petitioners.

On hearing the learned counsel for the parties and on a perusal of the judgments referred to herein above, it

appears that the orders of the Appellate Authority cannot be set aside on the ground that the petitioners were not granted personal hearing before their appeals were decided. Standing Order No.35 which deals with the appellate provision reads thus –

35. Appeal -

1. *If a workman has been found guilty and awarded penalty is desirous to submit an appeal may do so separately in his own name to the Appellate Authority as shown in the schedule.*
2. *No appeal under the said rules shall be entertained unless it is submitted within a period of two months from the date on which the workman receives the order of punishment.*

The Standing Orders do not provide for any procedure to be followed while hearing an appeal. There is no other provision in the Standing Orders that relates to hearing of the appeal. On a reading of the aforesaid provision, the learned counsel for the petitioners has fairly stated that the appeal provision does not provide for a personal hearing to the employees. We have perused the orders of the Appellate Authority. The Appellate Authority has passed detailed orders in respect of each of the petitioners. Each of the grounds raised by the petitioners in the appeal has been recorded in the appellate orders. Each of the grounds has been separately considered and dealt with, by the Appellate Authority in the appellate orders and each of the grounds has been rejected by recording cogent reasons. The orders record that the appeals were decided after considering the documents mentioned in the appellate orders. The appellate

order firstly records the charges levelled against each of the petitioners and then records the grounds raised by the petitioners for the reversal of the order of the Disciplinary Authority. The appellate orders run into more than a dozen pages and we find that each and every ground raised by the petitioners before the Appellate Authority has been considered. The requirements of the principles of natural justice vary under different circumstances and situations. As rightly submitted on behalf of the respondent-Corporation, the Standing Order No.35 does not provide for an opportunity of personal hearing. It is held by the Hon'ble Supreme Court in judgments, reported in AIR 1960 SC 493. (S. Kapur Singh v. Union of India) and AIR 1957 SC 648. (F.N.Roy v. Collector of Customs) that there is no rule of natural justice which entitles a person to personal hearing at every stage. It is held by the Hon'ble Supreme Court in the aforesaid judgments that though statutory appeals and applications are disposed of by the competent authorities that are vested with the powers to dispose of the same, it cannot be held that in all events, the Authority should hear the appellants or applicants concerned. It appears from a reading of the judgments, referred to by the parties, that the requirement of the principles of natural justice is complied with, if a person is granted an opportunity to present his case. We have already mentioned herein above, that the petitioners had raised several grounds in the memorandum of their appeals, that each of the grounds was recorded by the Appellate Authority in the impugned orders and each of the same was dealt with, by giving cogent reasons. In this background, the orders of the Appellate Authority cannot be

said to be invalid only on the ground that the petitioners were not personally heard. We find that technical issues involved in this case have also been considered by the Appellate Authority in the impugned orders and the grounds raised by the petitioners on the technical issues were rejected after recording cogent reasons. In the aforesaid set of facts, it cannot be said that the impugned orders of the Appellate Authority are liable to be set aside on the ground that the petitioners were not personally heard. Some of the other employees, who were chargesheeted along with the petitioners, have filed the dispute before the C.G.I.T. and the same is pending. The petitioners could also avail the opportunity to prove their case by tendering evidence, oral and documentary, before the C.G.I.T.

Since the orders of the Appellate Authority cannot be interfered with, on the ground that the petitioners were not heard personally, the writ petitions are disposed of with no order as to costs.

The points raised in these petitions, except the point decided in these writ petitions and relating to the obligation on the Appellate Authority to grant personal hearing to the petitioners, are kept open. Order accordingly.

JUDGE

JUDGE