

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: September 06, 2017

+ **LPA 581/2017& C.Ms. 32229-30/2017**

ARUN SHARMA

..... Appellant

Through: Mr. P.P. Khurana, Senior Advocate
with Mr. Ishann Verma, Advocate

Versus

INDIAN OIL CORPORATION & ANR.

..... Respondents

Through: Mr. Manjula Gandhi, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The appellant's grievance is that the learned Single Judge had rejected his claim for direction to the Indian Oil Corporation (IOC) to implement its directive for employing him in one of its joint venture companies on a regular basis in letter and in spirit. The appellant was employed under the prevailing sports quota in the Indian Oil Corporation (IOC). He was at the relevant time, a Cricketer. His services were terminated in 2002. It was asserted in a letter that he had relied upon a certificate that was not genuine. On 16th February, 2004, pursuant to the appellant's representation, the Government of India requested the IOC to reconsider its decision and see if he could be employed in the sports

quota. After reconsideration, the Board of the IOC rejected the request on 8th June, 2004. Again, the appellant approached the Ministry of Petroleum and Natural Gas. By detailed letter of 12th May, 2005, the Private Secretary to the Minister expressed his opinion that the appellant appeared to have been unfairly treated even while persons with less merit were retained in service. He therefore expressed that *“IOC might take a sympathetic approach in suitably accommodating Shri Arun Sharma in its workforce.”*

2. Again, the IOC through its Board of Directors on 26th May, 2006, rejected the claim. Once again in the third round, the appellant approached the Central Government, which by letter dated 25th January, 2010, addressed to the Chairman of the IOC, *“advised to consider, once again, the case for reinstatement of Shri Arun Sharma in IOC or any of its subsidiaries”*. This letter was followed up by another letter dated 5th May, 2010. Eventually, on 22nd June, 2010, IOC recommended the appellant’s name for employment with Assam Petroleum Limited, a contractor. Apparently, the appellant joined the services with the Contractor but his employment was for a limited period of one year. The appellant again approached IOC, which on 30th March, 2012 requested *“Petronet LNG Limited to consider to grant suitable employment in the company”*. The parameters sought by it could not be fulfilled by the appellant. In these circumstances, he approached this Court by filing W.P.(C) 3985/2015. The said writ petition was not entertained: the appellant was permitted to withdraw it and pursue his remedies provided there existed sports quota in the IOC.

3. In the second round of litigation, which has led to the impugned

order, the decision of the IOC and its JV company, was characterized as unfair. It was contended that the Government of India had issued repeated advisories and directives, which were intentionally ignored and that this has resulted in extreme hardships to the appellant. It was also contended that the letter of the Government of India, especially the one dated 12th May, 2005, clearly showed a discriminatory and biased approach on the part of the IOC, which was duly taken note of. Learned senior Counsel for the appellant emphasized that the appellant had stated the circumstances and the manner in which he was terminated from employment, which was a cause of concern, as the Government of India had sports quotas and this was the reason why he did not approach the Court for litigation; because, he expected that justice will prevail on the advice and directions of the Government. Instead, IOC chose to disregard his interests and continued to give a lukewarm response, which amounted to no relief at all.

4. The learned Single Judge, by his detailed impugned judgment, in the face of history of litigation, was of the opinion that whatever be the state of record, every company including the JVs associated with the IOC, were independent entities and entitled to enforce their recruitment and employment policies. The learned Single Judge had concluded as under:-

“8. The plea of the learned Counsel for the petitioner that two Joint Venture companies have not responded to the communication made by the respondent No.1 would be immaterial when this Court is, of the view that the respondent No.2 could not have advised to the respondent No.1 to consider the reinstatement of the petitioner in other Joint Venture company contrary to the Rules &

Regulations. The petitioner having accepted his termination has no right to seek the prayers as made in the writ petition. It is not for the respondent No.1 to look for an employment of the petitioner commensurating his qualifications and experience like an Employment Exchange. I may record, the submission of the learned Counsel for the respondent No.2 that the letter dated January 25, 2010 by the respondent No.2 to respondent No.1 was not a direction but in the nature of an advice. In other words, he would state, it was not mandatory direction for the respondent No. 1 to reinstate the petitioner.”

5. Mr. P.P. Khurana, learned Senior Counsel for the appellant, relied upon correspondence exchanged between the IOC and the Government of India and emphasized that the appellant had received Government's recommendation, especially letter dated 12th May, 2005 and stated that some other less merited were retained in service for no consideration or extraneous consideration, whereas the appellant was terminated from employment even though he was initially deemed to be eligible. Learned senior Counsel for appellant submitted that even though the initial termination of the year 2002 was not challenged, the appellant was justified in doing so, since the Government intercepted on his behalf repeatedly and therefore, the appellant quite reasonably expected that the IOC as a responsible public authority would heed the advice and directions of the Union of India.

6. It is evident from the factual narrative that the appellant's service was terminated way back in May, 2002. He had worked first as an Apprentice Trainee for a year and thereafter, as a Trainee Sports Person. The record no doubt testifies that the Union Ministry of Petroleum and

Natural Gas intercepted on his behalf not less than four times. The most detailed consideration of his case is apparent from the following extract of the Government's letter dated 12th May, 2005, which reads as follows:-

"2. The examination of the case is not found adequate for the following reasons:-

- a) The statistics of Shri Sharma's performance in 12 games played by him in three years (1999-2001), when the IOC team is understood to have played more than 40 games, has been given by IOC at page 9/corr. A fair, unbiased judgment on Shri Sharma's performance cannot be given without similar information on other Trainee cricketers played by IOC during the above period- This important statistics has never been provided by IOC.*
- b) At page 63-61/corr. Shri Sharma has pointed certain issues of discrimination/ favouritism etc. meted out to players in the IOC team. In particular, the following issues may be relevant for the case:*
 - i) While all other trainees taken on Cricket Sports Quota were confirmed after completion of one year of service, Shri Sharma was continued as a trainee for 3 more years. Was it because IOC found Shri Sharma has good cricket potential but has been under performing? Did IOC's Sport Management provide enough exposure to Shri Sharma in comparison with other players to test his full potential before coming to the conclusion that his services be terminated?*
 - ii) Shri Sharma has named Shri Mayur Kaderekar and Shri Mustaq Khan who never played a Ranji Trophy match before confirmation in their jobs but have been absorbed as officers in IOC. Was their performance based on same exposure (as was given to Shri Sharma) far superior to Sharma's?*
 - iii) Two Senior Managers of IOC gave chance to their relatives, Shri Ashish Saxena (related to then ED (HR) and Shri Kanji Desai (related to Shri Mehta,*

DGM (A&W) who had been employed outside the Sports Quota and they were given more exposure at the expense of Shri Sharma, duly recruited under Sports Quota and both were promoted.

- iv) *A letter of caution was issued to Shri Sharma by Shri Mehta, DGM on 7.3.2002, and after two and half months, Shri Sharma's services were terminated. The reasons for such a swift decision by the IOC authority concerned has not been provided by IOC to the Ministry.*

7. In addition to the repeated letters written by the Government of India, which have been relied upon for relief, the learned Single Judge had observed that even the IOC's acceptance and request to its JV partners was a half-hearted measure because none of them were willing to offer permanent employment but rather only contractual service. It is a matter of record that appellant's termination was not challenged by him. He expected relief to be given in the light of the Government's letter for a reasonable time, which is something that can be expected of every citizen. However, once the IOC showed its reluctance repeatedly, he should have approached the Courts and challenged his termination on the grounds available to him in the law. Instead he is premising his claim on compassionate grounds and some kind of discretionary employment on the basis of the Government's letter. We must inform that the reasoning given by the Government of India in turn is based upon the conduct of the IOC in retaining others in employment though in its perspective they were on lesser merit and suspicion that the appellant was dealt with unfairly because he was cautioned and then removed / terminated from service within 2½ months. This in the opinion of the Court cannot be the

basis of judicial review. It has been repeatedly held that Article 14 of the Constitution of India does not confer a negative right. In the sense that if a State or its agency is known to have violated the norms, it cannot offer positive relief of a similar kind. Likewise, without dwelling on the causes that led to the termination of the appellant within 2½ months after issuance of an advisory or word of caution, it cannot be concluded that there was an assumption of unfairness. These grounds being the foundation and the so-called discretion, their enforcement in judicial review after repeated reiteration with nothing more, is clearly impermissible. In this view of the matter and given that the appellant never directly challenged his termination on the grounds of *mala fides*, unfairness or violation of settled norms, the claim that he ought to be somehow given the benefit of discretion under the same policy which was initially given, was correctly rejected by the learned Single Judge. The appeal in our opinion lacks merit and is therefore dismissed along with pending applications with the clarification that the termination of the appellant's service would not carry any stigma to disentitle him to future employment.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

SEPTEMBER 06, 2017

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