

\$~

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

Reserved on: 23rd February, 2018

Date of Decision: 25th October, 2018

+ W.P.(C) 248/2003

Dr. S.K. BANSAL

..... Petitioner

Through: Mr. Piyush Sharma, Adv.

versus

UOI & ORS.

..... Respondents

Through: Mr. J.P. Cama, Senior
Adv. with Mr. R.G.
Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

1. The petitioner was appointed as geophysicist, with the Oil and Natural Gas Commission (Respondent No. 2 herein and referred to, hereinafter, as “ONGC”), on 3rd April, 1984, and was posted at Dehradun. On 6th July, 1984, he was transferred, along with the post, to the Delhi office of the ONGC, vide Office Order dated 27th April, 1984.

2. Vide Office Order dated 27th March, 1987, the petitioner was re-transferred to Dehradun. According to the petitioner, during his stay at Dehradun, he developed kidney trouble, for which he was referred to the All India Institute of Medical Sciences (AIIMS), at Delhi.

3. As he was required, thereafter, to undergo periodical check-ups at the AIIMS, the petitioner applied, on 22nd April, 1987, for transfer to Delhi on compassionate grounds. He also pointed out that his wife was employed in a school of the Delhi Administration, and that it would be possible for her to take care of him, if he were to be posted at Delhi. The request for compassionate transfer to Delhi was reiterated, by the petitioner, *vide* representation dated 7th September, 1987.

4. On 7th November, 1987, the petitioner was transferred to the Mumbai Regional Business Centre (MRBC), Mumbai. The petitioner applied, on 24th November, 1987, for cancellation of the said order of transfer, on compassionate grounds. Acceding to the said request, the ONGC, *vide* Office Order dated 15th February, 1988, placed the decision to post the petitioner at Bombay in abeyance.

5. Vide Office Order dated 31st March, 1988, the petitioner was transferred to Delhi, where he joined duty on 11th April, 1988.

6. Vide Office Order dated 15th March, 1990, the petitioner was again transferred to the MRBC, Bombay, allegedly ignoring the fact that he was undergoing treatment at AIIMS, Delhi.

7. The petitioner represented, on 2nd April, 1990, to the Director (Exploration), ONGC, for cancellation of the order transferring him to the MRBC, Bombay, on health issues. The petitioner alleges, however, that the said request was not considered by the ONGC.

8. Subsequently, on a personal request being made by the petitioner's father, the transfer, of the petitioner, to Bombay, was deferred till 31st March, 1991.

9. On 11th March, 1991, the petitioner again applied to the Vice-Chairman of the ONGC, requesting for cancellation of the order transferring him to Bombay, again citing health and compassionate grounds. The said request was, however, rejected, by the ONGC, *vide* order dated 27th March, 1991.

10. The petitioner contends that, as, owing to various difficulties, it was not possible for him to proceed to Bombay, he requested for leave, due to him, for two months, from 1st April, 1991 to 31st May, 1991, *vide* an application sent by Registered Post to the Bombay office of the ONGC. This was followed by successive applications, dated 15th June, 1991, 8th August, 1991, 12th October, 1991, 7th December, 1991 and 7th April, 1992, in which leave was sought for the periods 1st June, 1991 to 31st July, 1991, 1st August, 1991 to 30th September, 1991, 1st October, 1991 to 30th October, 1991, 1st December, 1991 to 15th January, 1992 and 16th January, 1992 to 31st May, 1992. The petitioner submits that he received no response, to any of the said representations.

11. *Vide* communication dated 28th April, 1992, the respondents informed the petitioner that, as his leave had not been sanctioned by the competent authority, he had remained unauthorisedly absent from

work from 21st April, 1991. He was, accordingly, instructed to report for duty, failing which disciplinary action was threatened.

12. The petitioner, however, again requested, *vide* representation dated 28th May, 1992, for leave, without pay, for the period 1st June, 1992 to 31st August, 1992, citing domestic difficulties which, rendered it impossible for him to leave Delhi.

13. The respondents again communicated, with the petitioner, on 16th July, 1992, directing him to resume duties forthwith, failing which the petitioner would be deemed to have resigned from his services, and would cease to be in employment of the ONGC. Regulation 14(5) of the ONGC Leave Regulations, 1968 (hereinafter referred to as “the Leave Regulations”), was cited in this regard. The said sub-Regulation reads thus:

“ Where an employee fails to resume duty on the expiry of the period of extra-ordinary leave if the leave granted to him is the maximum that can be granted under this regulation or where an employee who is granted a lesser amount of extraordinary leave than the maximum admissible under this regulation, remains absent from the duty for any period which, together with extraordinary leave so granted exceeds the limit upto which he could have been granted leave under this regulation, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Commission, unless the Commission may determine otherwise, in view of the exceptional circumstances of the case.”

14. Undeterred, the petitioner again wrote, on 26th August, 1992, to the respondent, requesting for being sanctioned leave, without pay, for

the period 1st September, 1992 to 30th November, 1992, citing domestic difficulties.

15. On 21st September, 1992, the ONGC addressed a terse communication to the petitioner, rejecting the petitioner's request for cancellation of the order transferring him to Bombay and informing the petitioner that he was deemed to have resigned his post in the ONGC, applying Regulation 14(5) of the Leave Regulations (hereinafter referred to as the "Leave Regulations"), as he had remained absent from duty since 21st April, 1991 and had not returned to work despite the telegrams, from the ONGC dated 28th April, 1992 (*supra*) and 16th July, 1992 (*supra*).

16. The petitioner, thereafter, addressed yet another communication to the General Manager of the ONGC, on 15th October, 1992, requesting for further extension of his leave, and pointing out that his applications for leave, for over a year had met with no response from the ONGC. The petitioner protested against the stand of the ONGC, as reflected in the communication dated 21st September, 1992 (*supra*), that the petitioner was deemed to have resigned his services, submitting that the telegram, dated 16th July, 1992 (*supra*) was vague and did not specify any date with effect from which the petitioner was required to resume duties.

17. The ONGC responded, to the petitioner, on 3rd December, 1992, informing him that he was deemed to have resigned with effect from

13th August, 1991, after adjusting the entire leave available at his credit and on completion of 90 days of unauthorised leave thereafter.

18. On 25th January, 1993, the petitioner wrote to the ONGC, requesting that his case be reconsidered on humanitarian and compassionate grounds, and that the decision, communicated, to him *vide* letter dated 3rd December, 1992 (*supra*), be revoked.

19. This communication, from the petitioner, invited yet another Office Order, dated 26th February, 1993 by the ONGC, reiterating that the petitioner was deemed to have resigned his services with effect from 13th August, 1991, and stating that his name had been struck off the rolls of the ONGC.

20. The petitioner, still unfazed, wrote, on 26th August, 1993, to the ONGC, requesting for permission to resume his duties on 1st October, 1993.

21. On receiving no response from the ONGC, the petitioner moved this Court by way of CWP 1887/1994, praying that the order dated 26th February, 1993 (*supra*) be quashed.

22. The said CWP 1887/1994 was disposed of, by a learned Single Judge of this Court, *vide* judgment dated 15th July, 1998. Paras 28 to 31 of the said judgment deserve to be reproduced thus :

“28. The legal position that emerges out of the above exegesis is that the second respondent cannot dispense with the services of the petitioner without giving an opportunity to explain his position. The question of imposing

punishment would arise only after sufficient opportunity is given to the petitioner.

29. For these reasons, the impugned order is set aside and the second respondent is directed to issue show-cause notice to the petitioner in accordance with law and decide the issue after complying with principles of natural justice and then decide the imposition of penalty in the light of principles laid down by the Supreme Court in “*The Dahanu Taluka Environment Protection Group & Another v. Bombay Suburban Electricity Supply Company Ltd. & Others, JT 1991 (2) SC 1*”, which deals with the quantum of punishment to be imposed in the event of any officer being found guilty.”

23. The ONGC appealed against the aforementioned judgment, dated 15th July, 1998, by way of LPA 59/1999, which was disposed of by the Division Bench *vide* a short order dated 26th March, 2001. The Division Bench set aside the directions of the learned Single Judge, to the extent it directed grant of subsistence allowance to the petitioner. However, the direction, to issue show cause notice to the petitioner and proceed against him thereafter, was upheld, being innocuous in nature and issued in the interests of fairness in action. The ONGC was directed to implement the said order, of the learned Single Judge, within four months, reserving liberty to the petitioner to re-approach this Court in case the decision was adverse to him.

24. The petitioner re-approached this court, by way of CM(RA) 1117/2001, seeking a review of the aforementioned order dated 26th March, 2001. The said review application was withdrawn, on 12th April, 2002 with liberty to the petitioner to “take available pleas including invoking of Rule 23(4) of the Relevant Rules in case of any

fresh remedy being taken by the petitioner against order dated 19.03.2002, passed by the complainant authority”.

25. For ready reference, Regulation 33 of the ONGC (Conduct, Discipline and Appeal) Regulations, 1976 (to which the order dated 12th April, 2002 (*supra*), in CW (RA) 1117/2001 referred), is reproduced thus :

“33. Suspension:

(1) The Appointing Authority, or any other Authority, to which it is subordinate, or the Disciplinary Authority or any other Authority empowered by the Company by general or special order to impose a penalty as specified in Rule 34 may place an Employee under suspension:

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where, in the opinion of the Authority aforesaid, he has engaged himself in activities prejudicial to the interest or the security of the State; or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2)(a) Where an Employee is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, he shall be deemed to have been suspended with effect from the date of detention by an order of the Appointing Authority and shall remain under suspension until further orders.

(b) An Employee shall also be deemed to have been placed under suspension from the date of his conviction if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation:

A period of 48 hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermitted periods of imprisonment, if any shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an Employee under suspension is set aside in appeal or on review under these Rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an Employee is set aside or declared or rendered void in consequence or by a decision of a court of law and the Disciplinary Authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Employee shall be deemed to have been placed under suspension by the Appointing Authority from the date of the

original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)(a) An order of suspension made or deemed to have been made under this Rule may at any time, be modified or revoked by the Authority which made or is deemed to have made the order or by any Authority, to which that Authority is subordinate.

(b) Where an Employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Employee shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the Authority competent to do so.

(6) During the period of suspension, an Employee shall draw subsistence allowance at such rates as may be specified by the Company from time to time.

(7) Leave shall not be granted to an Employee under suspension. “

26. Apparently in compliance with the aforementioned directions of this Court, Show Cause Notice dated 29th May, 2001 was issued, by the ONGC to the petitioner. It was alleged, in the said Show Cause

Notice, that (i) the petitioner had been transferred from Delhi to MRBC, Bombay, *vide* office order dated 15th March, 1990, (ii) the petitioner had applied for cancellation of the said transfer order *vide* letters dated 2nd April, 1990 and 11th June, 1990, (iii) the said request was not acceded to, by the ONGC, as was conveyed to the petitioner, (iv) the petitioner was relieved *vide* Office Order dated 30th June, 1990 from Delhi, with instructions to report to the MRBC, Mumbai, (v) the petitioner did not, however, report for duty at MRBC, Mumbai, (vi) *vide* order dated 29th October, 1990, the petitioner was given extension, till March, 1991, to join the MRBC, Mumbai, (vii) *vide* office order dated 20th April, 1991, the petitioner was relieved from New Delhi with instructions to report at MRBC, Mumbai, (viii) though, therefore, the petitioner ought to have joined MRBC, Bombay by 1st May, 1991, he did not do so, (ix) the petitioner, instead applied for leave on various pretexts, which was rejected by the ONGC, the rejection of which was intimated to the petitioner *vide* telegrams dated 20th April, 1992 and 16th July, 1992, directing the petitioner to report for duty at Mumbai forthwith, failing which disciplinary action under Regulation 14(5) of ONGC Leave Regulations, 1968 would be taken against him and (x) the petitioner still did not report for duty at Mumbai.

27. The Show Cause Notice alleged that the period of unauthorised absence of the petitioner had exceeded the maximum number of permissible days stipulated in Regulation 14(5) of the Leave Regulations and directed the petitioner, therefore, to show cause as to why he be not deemed to have resigned from services of the ONGC

with effect from 13th August, 1991 and his name be not struck off from its rolls.

28. The petitioner responded, *vide* communication dated 6th June, 2001, stating that, in view of the setting aside by this Court, of the order, dated 26th February, 1993 passed by the ONGC, the said order was first required to be revoked by the ONGC before any Show Cause Notice was issued to the petitioner. As such, the issuance of the Show Cause Notice, dated 29th May, 2001 (*supra*) was itself challenged, by the petitioner, as being illegal and *malafide*, and in defiance of the order passed by this Court. The petitioner, therefore, “requested” the ONGC to withdraw the said Show Cause Notice and issue order of reinstatement of the petitioner.

29. It is obvious, even at this juncture, that the stand of the petitioner, as taken by him in the aforementioned communication dated 6th June, 2001, had no sanction of the law whatsoever. Once the order dated 26th February, 1993 (*supra*), passed by the ONGC, had been set aside by this Court, there could be no question of any further order, revoking the said communication dated 26th February, 1993, requiring to be issued by the ONGC, before issuance of the Show Cause Notice in compliance with the directions of this Court. No case, therefore, for requesting the ONGC to withdraw the Show Cause Notice dated 29th May, 2001 (*supra*), therefore, existed.

30. The aforementioned communication, dated 6th June, 2001, of the petitioner, invited a response, from the ONGC, on 17th July, 2001,

correctly stating that the petitioner's contention that the ONGC, had by issuing the Show Cause Notice dated 29th May, 2001, infringed the directions issued by this Court, was *ex facie* misconceived. It was reiterated that the Show Cause Notice had been issued in accordance with the directions of this court, as contained in its judgment dated 15th July, 1998 in CWP 1887/1994 and 26th March, 2001 in LPA 59/1999. The petitioner, was therefore, requested to submit his response, to the Show Cause Notice, within seven days, failing which it would be presumed that the petitioner did not choose to avail the opportunity to do so.

31. Without responding to the Show Cause Notice, the petitioner again wrote, on 21st July, 2001, to the ONGC, asseverating thus :

“Sir,

In response to my letter dated 06.06.2001, I have received your reply vide your letter No. MRBC/Expln/1(1252)/92 dated 17.07.2001, which has been received by me today i.e. 21.07.2001. In this connection, I am to state as under:-

i) Hon'ble Justice K. Ramamurty in his judgement delivered on 15.07.1998 had set aside the impugned order of deemed resignation which has been affirmed by division bench of Hon'ble Delhi High Court on 26.03.2001. Therefore, it is implicit that I continue to be on the rolls of ONGC. Accordingly, I may kindly be reinstated with full consequential financial benefits from the date of issue of impugned order of deemed resignation by ONGC. This may kindly be looked into & I may be informed accordingly at an early date.

ii) In case you do not agree to comply with the orders of Hon'ble Delhi High Court. I shall be obliged if you could kindly intimate me my status in the ONGC, so as to enable me to initiate further action in the matter.”

32. The petitioner followed up the above letter, dated 21st July, 2001, with another communication, dated 16th August, 2001, to the respondent, defending the charges against him, as contained in the Show Cause Notice dated 29th May, 2001 (*supra*) on merits. The petitioner asserted, in the said reply, that his applications for leave were prompted by genuine and *bona fide* reasons, attributable to his domestic problems and that, therefore, there could be no question of deeming him to have resigned from his service. Regulation 14(5) of the Leave Regulations was challenged as being unconstitutional, discriminatory and arbitrary, and the petitioner castigated the decision of the ONGC to invoke the said sub-Regulation against him, instead of considering his case compassionately and sympathetically. The petitioner, therefore, requested that he be reinstated with all consequential benefits and that the Show Cause Notice dated 29th May, 2001, be revoked.

33. *Vide* order dated 20th November, 2001, the ONGC appointed an Inquiry Officer (hereinafter referred to as the “IO”) to enquire into the above matter, stating that the reply, submitted by the petitioner, to the Show Cause Notice dated 29th May, 2001, was not found to be satisfactory.

34. The petitioner responded, *vide* communication dated 1st December, 2001, addressed to the IO, stating that, as no charge-sheet had been issued to him till then, there could be no question of appointment of any IO. He also submitted that a departmental inquiry

could be conducted against him only if he was on the rolls of ONGC, and that this would, in its turn, entitle him to subsistence allowance till that date. The petitioner also requested for permission to engage a defence assistant, especially as the presenting officer of the ONGC was a legally trained person.

35. Again, it may be noted, here, that the petitioner's insistence on issuance, to him of a formal charge-sheet before inquiry proceedings were commenced, could also not sustain, as the direction of this Court, as contained in its judgment dated 26th March, 2001 in LPA 59/1999, was for a Show Cause Notice to be issued to the petitioner and a formal inquiry to follow thereupon. The ONGC, was, therefore, well within its rights in asserting that, in issuing the Show Cause Notice and appointing IO, thereafter, it was acting in accordance with the directions of this Court.

36. There may have been substance in the petitioner's submission that the order dated 26th February, 1993, deeming him to have resigned from his services, having been set aside, the petitioner ought to have been reinstated. If, however, the ONGC did not do so, the remedy that the petitioner had, was to move this Court in that regard, and not to refuse to respond to the Show Cause Notice dated 29th May, 2001 (*supra*), or ask for the Show Cause Notice to be withdrawn.

37. On 10th December, 2001, the IO again wrote to the petitioner, informing him that hearing in the inquiry proceedings would be held on 26th December, 2001 at 3 p.m. and requesting him to appear before

the IO on the said date with complete documents. The request, of the petitioner, for engaging a defence assistant was also accepted by the IO.

38. On 15th December, 2001, the petitioner responded to the above notice dated 10th December, 2001, reiterating his request that a formal charge-sheet be issued to him, informing him of the charges against him so as to enable him to defend himself in a proper departmental proceeding. He also reiterated the request that he be permitted to remain on the rolls of the ONGC and, therefore, be granted subsistence allowance.

39. On 26th December, 2001, it was noted that the petitioner appeared without any defence assistant. On a query being put to him, by the IO, regarding applicability of Regulation 14(5) of the Leave Regulations, the petitioner refused to respond, insisting that, first, his status, in the ONGC, be confirmed and a formal charge-sheet be issued to him. The IO pointed out that, as the direction, of the learned Single Judge, in his judgment dated 15th July, 1998, to pay subsistence allowance to the petitioner, had been set aside by the Division Bench in its judgment dated 26th March, 2001, the request, of the petitioner, for being paid subsistence allowance, could not be granted. Inasmuch as the petitioner doggedly refused to advance any submissions on merits, the IO, taking into consideration the submissions of the presenting officer, observed that ample opportunity had been given, to the petitioner, to resume duties at Bombay and that, as the petitioner had not done so, the ONGC was entitle to invoke Regulation 14(5) of

the Leave Regulations. It was, therefore, opined by the IO, that the acts of the petitioner had left the ONGC with no option but to invoke Regulation 14 of the Leave Regulations and treat the case of the petitioner as one of deemed resignation.

40. On 20th February, 2002, the aforementioned inquiry report, of the IO was communicated to the petitioner, under cover of a memorandum, which directed the petitioner to submit his comments/submissions in response thereto.

41. The petitioner, responded vide communication dated 26th February, 2002, which read thus :

“26-02-2002

From

Dr S.K. Bansal
Senior Geophysicist CPF No. 62103
61, NPL Aptt,
Vikaspuri,
New Delhi – 110 018

To

The Director (Expln),
Oil and Natural Gas Corporation Limited,
Jeevan Bharati Bldg, Tower-II,
124, Connaught Circus,
New Delhi-110001

Sub:- Enquiry into deemed resignation case

Sir,

I am in receipt of your OM no MRBC/Expln/1 (1252)/92-Vol. III dtd. 22-2-2002 on the subject cited above.

I do not agree with the report of the inquiry officer. I would however like to submit as under: –

In accordance with the orders of Hon'ble High Court dtd. 26-3-2001 the ONGC was directed to issue show cause notice to me and grant an opportunity of being heard and then pass appropriate orders in the matter. I was accordingly issued show cause notice by the ONGC. Further, I was informed by ONGC that Sh. A.N. Saxena Ex. Jt. Sec. MOP & NG was appointed as inquiry officer & Sh. Sundarrajan P & AO as presenting officer.

I requested inquiry officer to issue me chargesheet & inform me of my status in ONGC to enable me to participate in the inquiry. I had also requested him to allow me to bring my defence assistant with me to help in the defence. Though I was allowed to bring defence assistant but regret to point out that no charge-sheet was given to me and even my status in ONGC was not informed to me. In the absence of proper chargesheet it would not have been possible for me or my defence assistant to have participated in the inquiry. It is not correct to say that I did not participate in the inquiry since the principles of natural justice was not followed by issuing proper chargesheet and defining my status in ONGC. I fail to understand that even when I was not issued a chargesheet in the matter how I could have defended myself. The very fact that I attended both the meetings called by inquiry officer shows my willingness to participate in the inquiry. Therefore, the inquiry was merely an eye wash.

I would therefore request that if the ONGC wants to follow the orders of court in the full spirit, then a proper chargesheet should be issued against me and I should be given an opportunity to defend myself.

I assure that I will appear in the inquiry along with my defence assistant if all the necessary formalities such as issue of proper chargesheet and defining of my status in ONGC are fulfilled.

Thanking you,

Yours faithfully,

DR S.K. BANSAL”

42. On 19th March, 2002, the Director (Exploration) in the ONGC issued an order, the relevant passages of which read thus :

“A perusal of the enquiry proceedings/report shows that Dr. Bansal was specifically asked if he had anything to say about mala fide or lapse of procedure on the part of ONGC but he refused to say anything in this regard. It was shown by the Presenting Officer of the management that out of 7 years’ career in ONGC, Dr. Bansal remained posted at Delhi for almost 5 years 10 months and for the remaining 14 months at Dehradun and Dr. Bansal was reluctant to move out of Delhi on his transfer. The Presenting Officer further submitted that keeping in view his personal problems, Dr. Bansal’s transfer to Bombay was deferred up to 31.03.1991, but Dr. Bansal did not join at Bombay on his transfer as Sr. Geophysicist. (Surface) after almost a year inspite of having been relieved from Delhi on 20.04.1991 even after having been called upon to resume duties at his new place of posting. Dr. Bansal was specifically asked by the Inquiry Officer whether he had to say anything in this regard but he did not offer any explanation. The reason for his long unauthorised absence and for not reporting for duty have not been explained by Dr. Bansal in spite of the opportunities given to him.

The Inquiry Officer has dealt with the matter in detail and has submitted his report. As I have stated earlier, I find Dr. Bansal has not explained his conduct and reasons nor he has given any justification for long unauthorized absence from duty in spite of several opportunities having been given to him from the beginning till the conclusion of the enquiry.

I have considered every aspect of the matter, gone through the records of the case and the enquiry proceedings/report. I find that Dr. Bansal unauthorizedly absented himself from the duty for quite long duration as alleged in the show cause notice without any justification and failed to report for the duty in spite of having been called upon to

do so. As such, the provisions of Regulation 14(5) of ONGC Leave Regulations, 1968 are fully attracted and he is deemed to have resigned from the services of ONGC w.e.f. 13.08.1991. I, therefore, agree with the findings and report of Inquiry Officer. I further record that this was an enquiry under orders of the Hon'ble High Court of Delhi giving all opportunity to Dr. Bansal before passing final order and/or invoking Regulation 14(5) of ONGC Leave Regulations, 1968. ONGC CDA Regulations have no application in this matter. However, the enquiry has been held giving full opportunity and following the principles of natural justice. The contention of Dr. Bansal that there was no proper charge sheet, etc. is having no force and I do not agree with the same.

In view of the above I hold and conclude that the allegations against Dr. Bansal contained in the show cause notice stand established. Dr. Bansal has failed to show any justification or reasons for his long unauthorized absence and failure to resume duty at his new place of posting as called upon by the management of ONGC and accordingly Dr. Bansal is deemed to have resigned as Sr. Geophysicist (Surface) (Id. No. 62103) from the services of ONGC w.e.f. 13.08.1991 and his name struck off from the rolls of ONGC.”

43. It is in these circumstances that the petitioner has approached this Court by means of the present writ petition, praying that the order, dated 19th March, 2002 (*supra*), issued to him, be quashed and set aside, alongwith the inquiry proceedings, conducted by Respondent No. 4 against the petitioner, which culminated in the said order. Consequential directions, to declare the petitioner as continuing in the service of the respondent, with all attendant benefits, have also been sought.

44. I have heard learned counsel Mr. Piyush Sharma, for the petitioner, and learned senior counsel Mr. J.P. Cama, for the ONGC.

45. Mr. Piyush Sharma appearing for the petitioner has placed great reliance, on the judgment of a learned Single Judge of this Court in *Anil Chuttani v. O.N.G.C., 2010 (117) DRJ 433*. As such, detailed reference, to the said decision, is warranted.

Anil Kumar Chuttani v. ONGC

46. The petitioner Anil Kumar Chuttani (hereinafter referred to as “Chuttani”) impugned, before this Court, Office Order dated 5th November, 1996, issued by the ONGC, deeming Chuttani to have resigned from its services with effect from 25th November, 1995 and striking his name of its rolls, alleging that he had been unauthorisedly absent from 28th August, 1995. Regulation 14(5) of the Leave Regulations was, predictably, invoked by the ONGC. The ONGC contended, before this Court, that the petitioner had remained on unauthorised absence from 307 days, of which he explained only 182 days of absence. It was further contended, by the ONGC, that the petitioner had, by telegram, been requested to join duty, informing him that failure, on his part, to do so, would result in initiation, against him, of appropriate action, and that this was followed by memoranda dated 18th November, 1995 and 8th March, 1996, to Chuttani, to show cause as to why action, in accordance with the Regulation, be not taken against him. The ONGC further contended that it was only after issuing a public notice in the newspaper, on 13th August, 1996, that

Office Order, dated 5th November, 1996, deeming Chuttani to have resigned from his service, was made. As such, ONGC contended that full opportunity of hearing had been granted to Chuttani, before passing the order impugned by him.

47. This court, speaking through the learned Single Judge, observed, in para 4 of its judgment, that the ONGC was not disputing the receipt of communications, from Chuttani, stating the reasons for his absence and seeking extension of leave. It was noted that Regulation 14(5) (*supra*), while providing for deemed resignation, was hedged in with a caveat, permitting the ONGC to “determine otherwise in view of the exceptional circumstances of the case”. This Court observed that the order dated 5th November, 1996 (*supra*) which was impugned by Chuttani, was silent in this regard, and did not refer either to the communication of Chuttani, explaining the reasons for his absence and requesting for extension of leave, nor recorded that no exceptional circumstances, within the meaning of Regulation 14(5) (*supra*) existed. To a query as to whether any inquiry, into whether exceptional circumstances within the meaning of Regulation 14(5) exist or did not exist, had been conducted, learned counsel, appearing for the ONGC, conceded that the ONGC was willing to hold an inquiry, if so directed by this Court.

48. This court, thereafter, noted the fact that Regulation 14(5) of the Leave Regulations had been considered in the present petitioner’s writ petition, *vide* judgment dated 15th January, 1998 (*supra*), reported as **1998 (46) DRJ 490 (S.K. Bansal v. UOI)**. It was observed that this

Court had, in the said judgment, directed the ONGC to issue a Show Cause Notice to the petitioner and comply with the principles of natural justice before imposing any penalty on him. The learned Single Judge also observed that “not only this court but the Gujarat High Court in *ONGC v. D.C. Shukla*, *MANU/GJ/0108/1999* also held the aforesaid Regulation 14(5) to be violative of Articles 14, 16 and 21 of the Constitution of India and directed reinstatement of the employee in that case with 60% back wages”.

49. Expressing its strong disapproval at the failure, on the part of the ONGC, and its learned counsel, to cite these decisions, i.e. the decision in the petitioner’s case and in *D.C. Shukla (supra)*, before him, the learned Single Judge went on to rely on the judgment of a Division Bench of this Court in *Shakuntala’s Export House (P) Ltd v. Secretary (Labour)*, *MANU/DE/0541/2005* and *MCD v. Begh Raj*, *117 (2005) DLT 438*, as well as the judgments of the Supreme Court in *D.K. Yadav v. JMA Industries Ltd.*, *(1993) 3 SCC 259*, *Lakshmi Precision Screws Ltd v. Ram Bahagat*, *AIR 2002 SC 2914* and *V.C., Banaras Hindu University v. Shrikant*, *AIR 2006 SC 2304*, to opine that, even if a provision, deeming an employee to have abandoned service, was to be treated as permissible in law, it could not be applied, save and except in accordance with the principles of natural justice, which required a proper inquiry to be held. The Show Cause Notice which had been issued to Chuttani, it was opined, amounted only to lip service with the principles of natural justice, as Chuttani ought to have been afforded an opportunity of hearing prior to treating him as having resigned from service. It was also observed, in

conjunction therewith, that the explanation furnished by Chuttani, for his absence, had not been considered by the ONGC, and that no reasons were forthcoming, in the order deeming Chuttani to have resigned from service, supporting the said conclusion.

50. Mr. Sharma, learned counsel for the petitioner, understandably seeks to capitalise on the observation of this Court, in *Chuttani (supra)* that Regulation 14(5) of the Leave Regulations had been struck down by the Gujarat High Court in *D.C. Shukla (supra)*.

51. In that view of the matter, a brief reference to the said judgment of the High Court of Gujarat in *D. C. Shukla (supra)* would also be apposite.

ONGC v. D.C. Shukla

52. The petitioner D.C. Shukla (hereinafter referred to as “Shukla”) had, like Chuttani and the present petitioner, been terminated by the ONGC, invoking, for the purpose, Regulation 14(5) of the Leave Regulations. The learned Industrial Tribunal, Ahmedabad (hereinafter referred to as “the learned Tribunal”) had not replied to two of the applications of Shukla, for leave, before removing him from service. Neither, it was noted, had any Show Cause Notice been issued to Shri Shukla. The paragraphs of the said judgement of the High Court, which contain its reasoning and the operative portion of the decision arrived at pursuant thereto, may be reproduced for ready reference as under :

“11. As regards the termination of services of the permanent employee, according to the leave regulation or the standing order or under the service rules providing automatic termination, the apex Court has held in case of *Uptron India Ltd. v. Shammi Bhan* reported in 1998 (1) Guj LH 760 : (1998 Lab IC 1545), that the termination of service under service rules or standing orders providing for automatic termination without giving opportunity of hearing is invalid. In the said decision, the apex Court has considered the earlier decision reported in 1985 (3) SCC 116 : (1985 Lab IC 885), 1986 (3) SCC 156 : (1986 Lab IC 1312); (1986) JT 586 : (1987 Lab IC 25), (1990) 3 JT (SC) 725 : (1991 Lab IC 91). In another decision of the apex Court reported in (1993) 3 JT (SC) 617 : (AIR 1993 SCW 1975), it has been held that where the rule provided for termination of service of an employee who over-stays the leave is violative of Arts. 14, 16 and 21 of the Constitution of India. It was also held that if any action was taken on the basis of such rule without giving opportunity of hearing to the employee, it would be wholly unjustified on the part of the employer. In another decision in case of *Bharat Cooking Coal Ltd. v. Babulal* reported in (1997) 2 Lab LJ 926, it was held that to terminate the contract of employment of three months' notice or pay in lieu of notice is violative of Art. 14 of the Constitution. It was also held in the said decision that it was necessary to hold inquiry to give opportunity to the workman before taking any disciplinary action for the alleged dereliction of duty. It has been also held in case of *Wasim Beg v. State of Uttar Pradesh* reported in AIR 1988 SCW 1159 : (1998 Lab IC 1233), it was held that in case of discharge of confirmed employee, natural justice would require that the authority should give opportunity to the employee for explaining himself and, therefore, principles of natural justice should be complied with. It is held in the said decision that the law must therefore, be now taken to be well settled that the procedure prescribed for depriving a person of livelihood, must meet the challenge of Art. 14 and such law would be liable to be tested and the orders affecting civil rights or resulting in severe consequences would have to answer the requirement of Art. 14. So, it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between quasi judicial function and the administrative function for the purpose of principles of natural justice. The aim of both, the administrative inquiry as well

as judicial inquiry is to arrive at a just and fair decision. It is difficult to say that it should be applicable only to quasi judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, in view of the aforesaid settled legal position of law laid down by the apex Court and after considering the detailed reasoning given by the tribunal, I am of the opinion that the tribunal has not committed any error much less an error apparent on the face of the record. The tribunal has discussed each and every aspect in detail in paragraph 13 of the impugned award and has also taken into consideration the undisputed position and also appreciated the evidence on record and has come to a correct, legal and valid decision which does not call for any interference of this Court in exercise of the powers under Art. 226 and/or 227 of the Constitution of India. As held by the apex Court in the decision reported in *MANU/SC/0782/1997*, this Court cannot exercise the powers like appellate Court, and, therefore, I am of the opinion that the impugned award passed by the tribunal is legal, valid and correct award, in consonance with the law laid down by the apex Court in various decisions. The petition is, therefore, required to be dismissed.

16. I have considered the submissions made by Mr. Mehta and Mr. Supehia. I have also taken into consideration the decisions cited by Mr. Mehta at the Bar. In the facts and circumstances of the case, I am of the opinion that once the award passed by the labour Court is confirmed and when the petitioner Commission has not been able to point out any infirmity in the impugned award passed by the labour Court, reinstatement is the normal relief to which the respondent is entitled to. Therefore, reinstatement in service cannot be denied to the respondent workman. Therefore, the question that has remained to be considered is the question of back wages for the intervening period. The services of the respondent workman were terminated with effect from 9-4-1984 and the tribunal delivered the impugned award on 4th July, 1988 and, therefore, the respondent is entitled to full back wages for the said period. While admitting this petition, this Court granted ad interim stay of the impugned award subject to the compliance of the provisions of Section 17-B of

the ID Act. Therefore, during the pendency of the said petition from 21st April, 1989 it was the duty of the Commission to comply with the provisions of Section 17-B of the ID Act to pay the last drawn wages to the respondent workman from the date of the award till the disposal of the matter. In this regard, the apex Court has considered the very same aspect in the decision in case of ***HMT Ltd. v. Labour Court, Ernakulam*** reported in ***1994 (2) Cur LR 22***. In very same identical situation, the apex Court held that no party should be made to suffer on account of delay in the decision by the Court and taking into consideration the facts of the case, instead of full back wages, the apex Court awarded sixty percent of the back wages and accordingly modified the award passed by the labour Court to that extent in so far as the back wages were concerned. Now, it is the submission of Mr. Mehta that this Court should quantify some lumpsum amount towards back wages. I am afraid, I cannot accept the said submission of Mr. Mehta because without considering the pay packet of the respondent workman and without there being any information about the periodical revision in pay of the workman, this Court cannot quantify such lumpsum amount in lieu of back wages. It is, thus, difficult for Court to quantify and fix lumpsum amount in lieu of back wages in absence of the material as aforesaid. I am, therefore, not accepting the said submission of Mr. Mehta for fixing some lumpsum amount in lieu of back wages while ordering reinstatement of the respondent in service. However, in view of the decision of the apex Court in case of ***HMT Ltd. v. Labour Court Ernakulam (supra)***, I am of the opinion that for passage of sixteen years, the petitioner Commission alone should not be made to suffer. I am of the opinion that it is not a case of loss of confidence. In this case, there was some alleged unauthorized absence. In such cases where there was unauthorised absence for some days or number of days, the apex Court has taken a view that drastic penalty of termination cannot be warranted (***AIR 1994 SC 215 and 1999 SCC (Lab & Serv) 666 : (1999 Lab IC 2616)***). Therefore, prima facie, the order of termination is illegal, arbitrary and hit by Art. 14 of the Constitution. It was not a case of serious misconduct committed by the workman. Therefore, considering the matter from that angle also and on the facts and in the circumstances of the case, I am of the opinion that it would be just and proper and also in the interest of justice to award sixty percent of the back wages to the

respondent workman for the intervening period with continuity of service and other consequential benefit to which the respondent workman is entitled from the date of termination till the date of reinstatement. While considering sixty percent of the back wages, the petitioner Commission should take into consideration wages and salary and revisions therein from time to time and on that basis, amount shall be calculated from the date of termination till the date of reinstatement of the respondent and sixty percent thereof shall be paid to the respondent workman. It is clarified that after calculating the back wages aforesaid, it shall be open for the petitioner Commission to deduct/adjust the amount paid to the respondent workman in compliance of the interim direction of this Court for compliance of the provisions of S. 17B of the ID Act. The impugned award of the tribunal is required to be modified to the extent as aforesaid and the rest is required to be confirmed.

17. Accordingly, I pass the following final order :

18. Petition is partly allowed. The impugned award of the tribunal is modified in so far as it relates to the aspect of back wages. The petitioner Corporation is directed to reinstate the respondent workman in service with continuity of service and 60 percent of the back wages from the date of termination till the date of his actual reinstatement in service with all consequential benefits as if the services of respondent workman were never terminated. The Petitioner Commission shall reinstate the respondent workman in service and shall also make payment of sixty percent of the back wages to the respondent workman after adjusting the amount paid under Section 17B of ID Act, 1947 within three months from the date of receipt of the certified copy of this order. Rest of the award of the tribunal is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.”

53. A reading of the afore extracted passages from *D.C. Shukla (supra)* would indicate that the Gujarat High Court, had not, in fact, struck down Regulation 14(5) of the Leave Regulations. Nor, it is

obvious, had this Court struck down the said sub-Regulation in its judgment dated 15th July, 1998 (*supra*), in CWP 1887/1994 filed by the petitioner, or in the subsequent order dated 26th March, 2001, passed by the Division Bench in LPA 59/1999, filed by the ONGC thereagainst. All that has been directed is that, prior to invoking the said Regulation, a Show Cause Notice is required to be issued to the employee concerned and the principles of natural justice are required to be scrupulously observed.

54. Though there may be random observations, in the judgment of the learned Single Judge in *Anil Chuttani (supra)*, which convey the impression that this Court had treated Regulation 14(5) of the Leave Regulations as having been struck down, a holistic appreciation of the said decision would indicate otherwise. If, in fact, Regulation 14(5) of the Leave Regulations was treated by this Court as having been struck down, no occasion would arise, thereafter, for this Court to elaborate on the applicability of the principles of the natural justice, while invoking the said provision. That, however, this Court has chosen to do so, indicates that, in the ultimate analysis, this Court was of the view that invocation of the said sub-Regulation could be sustained provided it was preceded by scrupulous observance of the principles of natural justice and fair play, which would include issuance of a Show Cause Notice, grant of hearing etc.

55. In any case, this discussion, in the facts of the present case, is academic, in view of the order, dated 26th March, 2001, which bound the petitioner and the respondent equally, being a decision *inter*

partes, rendered by a Division Bench of this Court and entitled, therefore, even on that ground, to greater precedential value than the decision of the learned Single Judge, wherefrom it emanated, as well as the judgements in *Anil Chuttani (supra)* or *D.C. Shukla (supra)*. The Division Bench of this Court has in order to obviate any ambiguity, set out the operative portion of its order in quotes, thus:

“Impugned writ court direction requiring appellants to issue a show cause notice to respondent No. 1 and grant him an opportunity of being heard and then to pass appropriate orders in the matter is affirmed but the other direction or grant of subsistence allowance to the respondent is set aside. Appellants shall take steps to implement the first direction within four months from receipt of this order. It shall be open to respondent No. 1 to take to an appropriate remedy in case any adverse orders are passed against him.”

(Emphasis supplied)

56. All that was directed by the Division Bench of this Court, therefore, was that the petitioner be issued a Show Cause Notice and granted an opportunity of hearing.

57. Both these requirements were scrupulously observed, by the ONGC, in the present case. Show Cause Notice was issued, by the ONGC, to the petitioner, on 29th May, 2001, and the petitioner’s explanation, regarding his conduct, was requisitioned thereby. Instead of responding on merits, the petitioner chose to adopt an entirely unreasonable stand that, prior to responding to the Show Cause Notice, he be informed of his “status” in the establishment in the ONGC, as communicated by the petitioner to the ONGC on 6th June,

2001 and 21st July, 2001. It was only on 16th August, 2001, that the petitioner deigned to respond, on merits, to the Show Cause Notice. The said response, too, initially sought to assail the very vires of Regulation 14(5) of the Leave Regulations. Thereafter, the petitioner had sought to invoke the power of relaxation contained in Regulation 14(5).

58. Keeping in view the stand of the petitioner, and the directions issued by the Division Bench of this Court, the ONGC held a formal inquiry, by appointing an IO and calling upon the petitioner to participate therein. The petitioner, now, sought to take a stand that there could be no question of appointing any IO without issuing him, in the first instance, a charge-sheet. This stand, it may be reiterated, was totally unreasonable, being contrary, on the face of it, to the directions of the Division Bench of this Court as contained in its order dated 26th March, 2001 *supra*, which required only a Show Cause Notice to be issued, by the petitioner, followed by an opportunity of hearing. In fact, even the holding of a formal inquiry may not be possible to be read into the said direction; the petitioner ought, therefore, to have been grateful to the ONGC for having held a formal inquiry.

59. Instead of participating in the enquiry, however, the petitioner continued to raise frivolous objections such as non-issuance, to him, of a charge-sheet, non-communication to him, of his exact status in the establishment of the ONGC, and the like.

60. It is hardly necessary for me to recapitulate all the opportunities given by the ONGC to the petitioner, after issuance of Show Cause Notice and after the initiation of the formal inquiry proceedings. The petitioner chose to adopt a completely stoic stance, steadfastly refusing to answer the exact allegations against him and raising frivolous preliminary objections.

61. Grant of adequate opportunity is the *sine qua non* of the *audi alteram partem* principle; grant of adequate opportunity does not, however, imply grant of opportunities *ad nauseam*. Once the petitioner had made known, unambiguously, his intention not to respond, on merits, to the allegations against him, no fault could be found, in the final decision of the ONGC, in issuing the impugned order dated 19th March, 2002, invoking Regulation 14(5) of the Leave Regulations and deeming the petitioner to have resigned from its service.

62. Even if one were to examine the manner in which the petitioner had been conducting himself prior to moving this Court by way of CWP 1887/1994, the petitioner would be disentitled to any relief thereby, especially under Article 226 of the Constitution, in which equity is inherent. The petitioner as much as categorically refused to comply with the lawful directions, issued to him, to join duty at Bombay, despite the ONGC being more than unusually patient with the petitioner. It can hardly be gainsaid that an employee is not entitled to remain continuously absent from his place of posting, or to default in reporting at such place, merely by sending applications for

leave, without the said leave, as sought, being sanctioned by the authorities competent to do so. I find considerable substance in the stand, of the ONGC, that the petitioner was only interested in continuing to remain posted at Delhi, and was avoiding moving out of Delhi, on one pretext or another, for reasons best known to him. Such an attitude, especially from an officer of a senior rank such as the petitioner, could hardly be condoned.

63. It was clear, therefore, that the petitioner was not willing to obey the directions to join at Bombay and had effectively invited, on himself, the entire wrath and rigour of Regulation 14(5) of the Leave Regulations, the invocation of which, by the respondent, requires, in the facts of the case, to be treated as completely justified.

64. In the above circumstances, I find no reason, whatsoever, to interfere with the impugned order, dated 19th March, 2002, passed by the ONGC, deeming the petitioner to have resigned from its services.

65. The writ petition is accordingly dismissed.

66. There shall be no order as to costs.

C. HARI SHANKAR, J

OCTOBER 25, 2018/kr