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

+ LPA 744/2013

Reserved on : 10th November, 2017
Date of decision : 13th February, 2018

**OIL & NATURAL GAS CORPORATION
LTD & ORS.**

..... Appellants

Through: Mr. V.N. Kaura with Ms. Paramjeet
Benipal, Advocates.

Versus

B V SRIHARI RAO

..... Respondent

Through: Mr. D. Ashok Rajagopalan & Ms.
Madhu Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

The present appeal by the appellants assails order dated 2nd September, 2013 passed by the Learned Single Judge. The Oil and Natural Gas Corporation Ltd is appellant no. 1 (*for short*, 'ONGC') and the Director (Onshore) is appellant no. 2 (*for short*, 'Director (Onshore)') in the present appeal. By the impugned judgment, the writ petition filed by the respondent was allowed and his termination was set aside. The respondent was reinstated in service with consequential benefits, however without back wages. The operative portion of the impugned order reads as under:

"In the result, the writ petition is allowed on the grounds discussed above. The petitioner be reinstated

in the service and he shall be entitled to all consequential benefits, except the back wages.”

2. The genesis of the dispute was a call for strike by the Association of Scientific and Technical Officers (*for short*, ‘ASTO’) at the Rajahmundry premises of ONGC in January, 2009. ‘Services in any oil field’ was declared a public utility service by the Government of India vide Notification No.S-11017/10/97 dated 4th November, 2008. The strike call given by ASTO was ceased and the strike so commenced was declared to be ‘illegal’ under Sections 22 and 24 of the Industrial Disputes Act, 1947.

3. On 8th January, 2009, ONGC imposed penalty of removal from service on the respondent, along with 63 others, for taking part in the nationwide strike. On 12th January, 2009 the respondent made an appeal to the Chairman cum Managing Director (*for short*, ‘CMD’) of ONGC offering an apology and seeking reinstatement. On 29th January, 2009 the order dated 8th January, 2009 was set aside and the case was remitted to the Central Disciplinary Authority (*for short* ‘CDA’) for completion of disciplinary action against the respondent as per the Conduct, Discipline and Appeal Rules, 1994 (*for short*, ‘CDA Rules’). While setting aside the termination of the respondent, the respondent was placed under suspension with Rajahmundry as Headquarters. This order was issued after a decision of the Board of Directors of ONGC. On 17th February, 2009, the respondent was transferred from Rajahmundry to Bokaro with immediate effect. Disciplinary proceedings were commenced after the appointment of an Inquiry Officer. Between February, 2009 to June, 2009 several letters were issued to the respondent extending the date of relieving him from Rajahmundry and directing him to join at Bokaro. Since the respondent,

relying on a technicality that his suspension was never revoked and that he had to continue to face disciplinary proceedings at Rajahmundry did not report for joining at Bokaro, a formal order was issued by the Executive Committee of the Board of Directors of ONGC on 16th June, 2009, revoking his suspension and directing him to report at Bokaro. The respondent made repeated appeals to the CMD seeking cancellation of the transfer orders. In the meantime, inquiry proceedings against the respondent concluded at Rajahmundry on 12th October, 2009.

4. In April, 2010 the respondent had filed a writ petition before the Andhra Pradesh High Court challenging the suspension order dated 29th January, 2009 and the transfer order dated 17th February, 2009. The Learned Single Judge of the Andhra Pradesh High Court vide order dated 8th April, 2010 dismissed the writ petition filed by the respondent. Pursuant to the dismissal, repeated office memoranda were issued to the respondent directing him to join his new posting at Bokaro.

5. The disciplinary proceedings culminated in an inquiry report, submitted by the Inquiry Officer which was served upon the respondent on 18th May, 2010. As per the inquiry report, the respondent had committed 'gross misconduct'. The operative portion of the inquiry report is extracted below:

“Thus, Sh. B.V. Sirhari Rao, Superintending Geologist, failed to maintain complete devotion to duty and committed acts unbecoming of a public servant and prejudicial to the interest of the Company. He has thereby rendered himself liable for disciplinary action under provisions contained in Rule 4(1), Rule(10) read

with Sl. No. 9(ii), 14, 19, 30, 32 and 33 of Schedule II to Rule 3(j) of ONGC(CDA) Rules, 1994.”

An opportunity was granted to the respondent to file objections to the said inquiry report.

6. Meanwhile, on 29th July, 2010 in its 207th meeting, in view of the vacancy of the post of Director (HR), the functions of Director (HR) were entrusted to other Directors by the Board of Directors of ONGC. However, it was clarified that the ‘core responsibility’ for the functions of the Director (HR) would be entrusted to the CMD. An office order to this effect, titled “Re: Temporary Delegation of Powers of Director (HR)” was issued by ONGC on 3rd August, 2017.

7. The respondent, thereafter, challenged the order dated 8th April, 2010 passed by the Learned Single Judge of the Andhra Pradesh High Court before a Division Bench and vide order dated 16th August, 2010 the writ appeal was also dismissed. On 20th January, 2011, a review petition filed by the respondent seeking review of the order of the Division Bench also stood dismissed.

8. Despite the dismissal of the writ petition, dismissal of the writ appeal and the dismissal of the review petition, the respondent failed to report at Bokaro, thereby resulting in show cause notice dated 3rd November, 2010 being issued to the respondent for non-compliance with the transfer orders. The show cause notice contained a detailed narration of the factual background. The operative portion of the show cause notice is extracted hereinbelow:

“Now, therefore, in view of above, Shri BV Srihari Rao is directed to explain as to why he has been unauthorisedly absenting from duty with effect from 15.05.2009/24.05.2009 and as to why he disobeyed the orders of his superior authorities and further as to why action should not be taken against him under Rule 5(2), 4(1) (b), (c) and items Number 1, 5, 30 and 32 annexed to Rule 3(j) of ONGC CDA Rules, 1994 for his aforementioned un-authorized absence and disobedience of lawful orders of his superior authorities.

Accordingly, Shri BV Srihari Rao is hereby directed to explain as to why the proposed action should not be taken against him under ONGC CDA Rules, 1994. The explanation of Shri BV Srihari Rao against this show-cause notice must reach the undersigned, within 10 days of the receipt of this notice.”

9. The respondent replied to the said show cause notice on 9th November, 2011. On 2nd December 2010, after considering his contentions, the respondent was removed from service by an order of the then Director (Onshore). The operative portion of the said order set out below:

“Accordingly, in consideration of the case in totality and specifically the facts narrated above; in exercise of the powers vested with the undersigned vide Rule nos. 34, 35 and 41(b) of ONGC CDA Rules, 1994 the undersigned hereby imposes penalty of 'Removal from service, which shall not be a disqualification for future employment in the company' on Shri BV Srihari Rao, with immediate effect.

It is further ordered that no subsistence allowance shall be payable to Shri BV Srihari Rao beyond 16.06.2009, the date on which his suspension was revoked by the Company. Other dues payable by Shri Srihari Rao to the Company be recovered from the final dues payable to him.”

10. On 6th January, 2011, the respondent challenged his removal from service before this Court, vide W.P.(C) No.141/2011. On 11th January, 2011 some suggestions for reconciliation were explored between the parties, however no settlement fructified. The writ petition was thereafter heard on 22nd February, 2011, by the Division Bench wherein challenge to Rule 36 and Rule 38 of the ONGC's CDA Rules was considered. It was held that the said Rules were not arbitrary or violative of Article 14 of the Constitution of India and thus prayer 'c' in the writ petition was rejected. Insofar as prayers 'a' & 'b' in the writ petition were concerned the matter was remitted for hearing to the Learned Single Judge.

11. On 1st April, 2011, a Special Leave Petition filed against the order of the Division Bench of the Andhra Pradesh High Court dated 16th August, 2010 and dismissal of the review petition dated 20th January, 2011, was heard by the Supreme Court and the following order was passed:

“Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the petitioner, seeks leave to withdraw the petition, stating that since the petitioner has already challenged the order of his dismissal, he would like to urge all the grounds, including the allegation of suppression of the factum of revocation or order of suspension, before the Writ Court. Accordingly, the special leave petition is dismissed as not pressed.

We clarify that we have not expressed any opinion on the merits of the grounds urged in the present petition. The writ petition, stated to have been filed by the petitioner questioning the validity of order of his dismissal shall be considered on its own merits, uninfluenced by any observation in the impugned judgment.”

12. Both parties have relied on the order of the Supreme Court and have given varying interpretations as to the effect of the said order. While ONGC argues that the said order renders the transfer order final and hence the findings recorded by the Division Bench of the Andhra Pradesh High Court in the order dated 16th August, 2010, constitute *res judicata*, the respondent argues that the said order actually directs this Court to adjudicate the validity of the dismissal order, independently of the findings given in the transfer proceedings. Both these submissions shall be discussed a little later.

13. On 2nd September, 2013, Learned Single Judge of this Court passed the impugned order allowing the writ petition filed by the respondent. The present appeal was then filed by ONGC. The order of reinstatement was stayed subject to deposit of an amount equivalent to 50% of back wages within four weeks. The said deposit was released in favour of the respondent subject to its undertaking. We have been informed that the sum of Rs.25,01,870/- was deposited and was thereafter released in favour of the respondent. Thereafter, some dispute arose as to the computation of back wages and a further sum of Rs.12,38,112/- was also deposited by ONGC and was released in favour of the respondent on 22nd March, 2017. The interest earned on the said amount was also released. Thus, the respondent has received a total sum of Rs. 37,39,982, subsequent to the passing of the impugned order of the Learned Single Judge.

Appellants' Submissions

14. Mr. V. N. Kaura, learned counsel appearing for the appellants makes the following submissions:

- The respondent's transfer orders from Rajahmundry to Bokaro having been upheld and having attained finality, the contentions of the respondent are barred by *res judicata*. The only defence available to the respondent against the dismissal was that he was illegally transferred and was hence justified in not reporting at Bokaro. This defence no longer survives.
- The respondent had an alternative remedy to challenge the said order dated 2nd December, 2010 under Rule 45(b) of the CDA Rules.
- As per the CDA Rules, it is not necessary to hold an enquiry in each and every case and if the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not "reasonably practicable", an enquiry can be dispensed with.
- That the reasons for not holding an enquiry are legal and valid, inasmuch as, the only defence of the respondent was that he could not join at Bokaro as he had challenged the transfer order and the said matter was *subjudice*. Since the transfer orders have been upheld, according to ONGC, any enquiry would be an exercise in futility or a useless formality.

15. Mr. Kaura relies upon the following decisions in support of his submissions:

- ***Ajeet Kumar Nag v. General Manager (P.J.), India Oil Corporation Ltd. JT 2005 (8) SC 425 (hereinafter 'Ajeet Kumar Nag')***
- ***Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 (hereinafter 'Aligarh Muslim University')***

- ***Indian Railway Construction Co. Ltd. v. Ajay Kumar (2003) 4 SCC 579*** (hereinafter '*Indian Railway Construction Co.*'))
- ***Southern Railway Officers Association & Anr. V. Union of India (2009) 9 SCC 24*** (hereinafter, '*Southern Railway Officers Association*'))
- ***Kunhayammed v. State of Kerala (2000) 6 SCC 359*** (hereinafter '*Kunhayammed*'))

Respondent's Submissions

16. Mr. Ashok Rajagopalan, learned counsel appearing on behalf of the respondent, *inter alia*, contends as under:

- that no notice dated 16th June, 2009 revoking the suspension was ever served upon the respondent. The respondent could not have reported to Bokaro, inasmuch as, the suspension order was only revoked in June, 2009 and the disciplinary proceedings were in fact being conducted at Rajahmundry which required the respondent to be stationed at Rajahmundry. Despite repeated requests of the respondent, suspension having not been revoked, ONGC could not have expected the respondent to report at Bokaro.
- As per the order of the Supreme Court dated 1st April, 2011, the present challenge to the termination of the services of the respondent has to be heard independent of the findings given by the Andhra Pradesh High Court.
- The impugned order of removal is passed by the Director (Onshore), who was not delegated with the said functions of the Director (HR).

Power to direct removal is a core function of the Director (HR) which has remained with the CMD.

- The fact that no enquiry was conducted and no opportunity of hearing was granted to the respondent prior to removal from service vitiates the impugned order. The enquiry, having not been completed after issuance of show cause notice, the order of removal smacks of vindictiveness.
- The Management of ONGC did not treat the respondent in a bonafide manner, inasmuch as out of 64 employees participating in the strike call, 63 had been exonerated. The respondent was the only person who was held guilty, even after an apology was given.

17. In support of the cross objections filed by the respondent, Mr. Rajagopalan submits that the respondent is entitled to full back-wages and since there are no mitigating factors, the denial of back wages is erroneous. It is submitted that the respondent had worked in ONGC as a Geologist since 1989 till 2009, for a long period of 20 years, and hence he should be treated fairly and commensurate to his qualifications and long tenure.

Rejoinder submissions of the Appellants

18. Mr. Kaura submits that as per the Articles of Association constituting ONGC, directions given by the Board of Directors of ONGC are binding in nature. The CDA Rules can, at best, be treated as internal rules and are not statutory in nature. He further submits that the Supreme Court, in fact, dismissed the Special Leave Petition filed by the respondent and hence the transfer orders have been upheld. Only some observations made by Andhra

Pradesh High Court have to be ignored, the judgment itself has not been set aside. Since the Special Leave Petition was dismissed on the first date without issuance of any notice to ONGC, it cannot be read as meaning that all the findings of Andhra Pradesh High Court have been set at naught.

19. Since on the day of removal from service, the orders of Andhra Pradesh High Court had held that the transfer is valid, no purpose would have been served by holding an enquiry. The only ground for removal from service was that the respondent failed to report at Bokaro and the only defence of the respondent was that the transfer was illegal.

20. Mr. Kaura further submits that while the present appeal was pending, an offer was made to the respondent to join back without back-wages which was, however, refused by the respondent. He submitted that if the respondent was taken back with complete back-wages it would result in giving premium to indiscipline within the organization which is a public utility service.

21. The revocation of suspension is not forged or fabricated and was in fact served upon the wife of the respondent on 14th August, 2009. The signature of the respondent's wife is not disputed and hence there was service of the process of revocation. That being so, there was no valid ground, whatsoever, for the respondent to not have reported for his new post in Bokaro.

22. Mr. Kaura submits that the respondent has been paid a sum of Rs. 37 Lakhs(approx.) during the pendency of the appeal, despite having not served in the organization from 7th January, 2009. In his submissions he has

contended that reinstating him would be contrary to law as ONGC has followed due process while passing the impugned order of removal from service. He, thus, submits that the impugned judgment of the Learned Single Judge, reinstating the respondent, is not sustainable.

Analysis and Findings

23. The issues that therefore arise for determination are:

- a. Whether the findings given in the proceedings challenging the transfer orders constitute *res judicata*?
- b. Should the respondent be relegated to the alternate remedy available under Rule 45(b) of the CDA Rules?
- c. Whether the Director (Onshore) of ONGC was competent to pass the termination order, as per the CDA Rules?
- d. Whether an inquiry ought to have been granted before passing the impugned order of termination and whether the order of termination is valid and legal?

24. Additionally, the respondent has raised a few pleas - One of them being that the reason for not reporting at Bokaro was that his suspension was never revoked and the order of suspension dated 16th June 2009, was never served; since the proceedings were going on in Rajahmundry, he could not have reported at Bokaro.

25. In the cross objections filed by the respondent, the issue that arises is whether the respondent is entitled to reinstatement with full back wages?

Question of Res Judicata

26. The show cause notice issued in the present case dated 3rd November, 2010 called upon the respondent to show cause as to why action should not be taken against him under Rule 5(2), 4(1) (b), (c) and items 1, 5, 30 and 32 of Schedule II annexed to Rule 3(j) of CDA Rules, 1994. In reply to the said notice, the grounds taken by the respondent were that:

(a) the transfer order issued by the Chief Manager (HR) was a modification of the suspension order issued by the Board of Directors of ONGC and since the suspension order continued to be in operation, he could not join his new posting at Bokaro;

(b) that the respondent had appealed against the order of transfer and that the said appeal was pending.

27. The respondent therefore clearly raised two grounds in defence of his conduct of not joining and reporting at Bokaro, namely, the non-revocation of the suspension order and the pendency of the challenge to the transfer. Both these grounds were adjudicated by the Andhra Pradesh High Court in the judgments dated 8th April, 2010 and 16th August, 2010. The findings of the Learned Single judge of the High Court are as under:

“9. It is to be seen that in spite of the notification issued by the Government declaring "services in any oil field" as a public utility service, the petitioner, along with other similarly placed persons, resorted to strike, causing huge loss to the organization, which was estimated to the tune of Rs.255 crores. It is also to be seen that the High Court of Delhi granted injunction orders in the suit filed by ONGC, prohibiting the petitioner and others to go on strike. In spite of the same, in deviation of the said orders, strike is resorted

to. On the aforesaid ground, the petitioner was removed from service, but considering the appeal filed, along with the undertaking furnished by him, to the effect that he will not indulge in any such activities in future, the executive committee of the company considered the same and set aside the order of removal, but continued the suspension so far as the petitioner and 7 others are concerned. Reasons for continuing disciplinary proceedings against the petitioner and 7 others have been explained in the counter affidavit. In that view of the matter, it cannot be said that any discrimination has been shown against the petitioner, in violation of his rights under Article 14 of the Constitution of India. Further, merely because in the order of appellate authority, headquarters was mentioned as Rajahmundry, that will not preclude the respondents- management to take steps to transfer its employees on administrative exigencies, as per the transfer policy. It is not in dispute that the petitioner continued in Rajahmundry for more than 5 years and as per the job retention and transfer policy, respondents are empowered to transfer its employees. It is also to be noted that in the disciplinary proceedings initiated against the petitioner, enquiry report is already submitted. Even after passing of the , order of transfer dated 17-02-2009, the petitioner has not approached this court immediately and on his request, from time to time, relieving date was extended upto 15-05-2009, by the respondents. In spite of the same, without joining at the place of posting, the petitioner approached this court belatedly. Though the suspension order was revoked in the month of January, 2009 itself, the petitioner did not mention the same in the affidavit filed in support of the writ petition. The affidavit is also silent with regard to letter of handing-over possession of the quarter, which was in occupation of the petitioner, at Rajahmundry. Suppressing the fact of handing-over the quarter, he

obtained interim orders to continue him in the quarter, as if he had not vacated the same. I have perused the retention and transfer policy, which makes it clear that the impugned order is not in violation of any of the clauses of the said policy. Further, it is stated ASTO was already de-recognized by the company. In that view of the matter, it cannot be said that the petitioner is entitled to continue further at Rajahmundry asset. The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies. No employee as a matter of right can seek continuance at a particular place/station for an indefinite period. Having regard to administrative exigencies, and the policy notified by the employer, it is always open for the employer to effect transfers, as per the requirements. In these circumstances, I see no discrimination meted out to the petitioner and it cannot also be said that his transfer is in violation of the policy notified."

28. In appeal, the Learned Division Bench of Andhra Pradesh High Court had dismissed the respondent's appeal and held as under:

"It needs to be placed on record that the learned counsel for the petitioner was pointedly asked to advance if anything in his armory to justify non compliance with the order of transfer without any interim direction from the writ court or this court to the contrary. He was reminded about the legal obligation that is cast upon the appellant to discharge his duties attached to the office. He was also reminded that failure to discharge his duties could visit him with penalties. Responding thereto, he pleaded lack of knowledge of revocation of suspension on the part of the appellant. Amazingly denial of knowledge is urged notwithstanding the fact that the order of revocation of suspension accompanies the counter of the respondents filed on 07/12/2009. In the given facts is it ipsi dixit of

the appellant or what, we would like to refrain from expression of opinion because we are not dealing with the consequences of noncompliance of the order of the employer "

29. The respondent had preferred a Special Leave Petition challenging the order passed by the Division Bench affirming the decision of the Single Judge, which petition was not pressed and was withdrawn by the counsel for the respondent stating that as the respondent had already challenged the order of dismissal, he would urge all grounds, including suppression of factum of revocation of order of suspension before the Writ Court. The Supreme Court observed that they had not expressed any opinion on the merits of the grounds urged in the Special Leave Petition. In other words, the Supreme Court had not commented on the merits one way or the other, i.e., in favour of the appellants or the respondent before us. Noticing that the writ petition had been filed by the respondent challenging the validity of the order of dismissal, it was observed that the writ petition would be decided on merits and without being influenced by any observation in the impugned judgment.

30. Given the language of the said order, we would observe that the issues and contentions raised before the Supreme Court by the respondent were left open and undecided. To this extent, the Supreme Court had not affirmed or commented on the finding of the Division Bench upholding the order of the single Judge. Doctrine of merger has its limitations and cannot be applied universally. ***Kunhayammed (supra)*** settles the law on the doctrine of merger and effect of dismissal of Special Leave Petition by a speaking and a non-speaking order and power of review by the High Court in such cases.

Doctrine of merger would also not assist the appellants for the simple reason that if the doctrine is to be applied, the decision of the Andhra Pradesh High Court would stand merged in the order of the Supreme Court and not the other way. The contention that the appellants were not heard and had no occasion to represent in the matter before the Supreme Court again is of no consequence. It was for the appellants to take appropriate steps and approach the Supreme Court in case they were aggrieved by the observations made therein.

31. The principle of *res judicata* aims to prevent multiplicity of proceedings between the parties when subject matter of the lis stands decided in a former suit or proceedings. The dictum stipulates that the matter directly and substantially in issue in the former proceedings cannot be re-agitated by instituting another proceedings. This applies when the order passed in the first proceeding has attained finality. Supreme Court in *Sheodan Singh Vs. Daryao Kunwar*, AIR 1966 SC 1332 (hereinafter, 'Sheodan Singh'), *Ram Gobinda Dawan Vs. Bhaktabala*, (1971) 1 SCC 387 (hereinafter, 'Ram Gobinda Dawan') and *Syed Mohd. Salie Labbai Vs. Mohd. Hanifa*, (1976) 4 SCC 780 (hereinafter, 'Mohd. Hanifa') has elucidated and held that the former or first suit should have been finally decided, otherwise the bar of *res judicata* would not operate and bar subsequent proceedings.

32. The order passed by the Supreme Court in the Special Leave Petition had left the issues open and the issue of termination was in any case pending before this Court and was not the subject matter of the proceedings before the Andhra Pradesh High Court. There was no finality attached to the

findings and decision of the Andhra Pradesh High Court. Moreover, the Supreme Court had observed that the writ petition filed by the respondent challenging the validity of order of dismissal shall be considered on its own merits and should not be influenced by any observation in the judgment under challenge, i.e., the judgment of the Division Bench of Andhra Pradesh High Court. It follows that the judgment of the Division Bench would not operate as *res judicata* and would not foreclose the respondent from raising and questioning the order of dismissal. The High Court, while examining the said question, would have to keep aside, and not be influenced by the observations and findings made by the Andhra Pradesh High Court. The directions of the Supreme Court are contra and negate the applicability of the principle of *res judicata*.

Question of Alternate Remedy

33. ONGC has submitted that the order dated 2nd December, 2010 is subject to an appeal under Rule 45(b) of the CDA Rules read with Rules 46 & 51 and hence the writ petition ought not to have been entertained.

34. The non-exercise of judicial review due to the availability of an alternate remedy is not an absolute rule (***Rajasthan State Electricity Board Vs. UOI [2008] 5 SCC 632***). The facts and circumstances of each case have to be considered while relegating a party to an alternate remedy.

35. In the facts of the present case, the writ petition was filed in 2011, it was entertained and the Ld. Single Judge had accepted the petition. More than 6 years have elapsed since the filing of the writ petition. If the respondent is now relegated to an alternative remedy, it would cause severe injustice and would also result in protraction of proceedings. Since the case

involves termination of services of the respondent, giving finality to the same would enable the respondent, who is a qualified Geologist to also proceed further in his life. Relegating the respondent to the alternate remedy of the Appellate Authority in ONGC would result in further rounds of litigation and would not be equitable in this case. Thus, the objection of alternate remedy is rejected. This would not be a ground to allow the present appeal and relegate the parties to the appellate forum.

Question of delegation of power

36. One of the grounds on which the learned Single Judge has quashed the termination of the respondent is that the order of removal was passed by the Director (Onshore) whereas the power to terminate is part of the core functions of the Director (HR) which could have only been exercised by the CMD.

37. A perusal of the extracts of minutes of 207th meeting of Board of Directors of ONGC dated 29th July, 2010 dealing with temporary delegation of power vested in Director (HR) reads as under:-

“207.21 WORK ARRANGEMENTS FOR HOLDING ADDITIONAL CHARGE OF DIRECTOR (HR) BY CMD AND TEMPORARY DELEGATION OF CERTAIN POWERS VESTED IN DIRECTOR (HR) AS PER BDP-2009

207.212 It was further informed that presently about 18 senior executives report directly to the Director (HR), and Dr. AK Balyan as Director (HR) was also assigned additional responsibility as Director-In-Charge Business Development. He was also on the Board of a number of JV companies. CMD stated that in view of the aforesaid orders of MoP&NG and

considering the need to manage the various responsibilities of Director (HR) efficiently, it is deemed necessary to assign / delegate certain functions to other functional directors / senior executives (not below ED level). It was however clarified that the core responsibility for the functions of Director (HR) shall rest with CMD only, in conformity to the Government of India orders.

207.215 The Board, thereafter, deliberated the proposal and passed the following resolution:

RESOLVED THAT approval of the Board be and is hereby accorded for assignment and sub-delegation of certain existing delegated powers of Director (HR) to the other Functional Directors and ED-Chief ER/Chief HRD as per Annexure 6 of the Agenda Item, as a temporary arrangement till such time a regular incumbent is appointed as Director (HR) by the Government of India.”

38. Pursuant to the said Board resolution, office order dated 3rd August, 2010 was issued enlisting the temporary assignments/sub-delegations. The relevant part of the said office order relating to the CDA Rules, is as follows:

CDA RULES

<i>Major Penalty E1 to E4</i>	<i>Disciplinary Authority - D(HR)</i>		<i>Disciplinary Authority Director (Onshore)</i>
<i>Minor Penalty El to E4</i>	<i>Appellate Authority - D(HR)</i>		<i>Appellate: Authority Director (Onshore)</i>

39. The submission of the respondent is that as per the decision in the board meeting, the core functions had to rest with the CMD and termination

was a core function. A perusal of the resolution passed, however, clearly evidences that the existing powers of the Director (HR) were delegated to the other functional directors. Office order specifically enlists major penalty being imposed as per CDA Rules. As per the aforementioned office order, the functional director for imposing ‘*major penalties*’ as per the CDA Rules for the Executive level employees from E1 to E4 was the Director (Onshore). The employees falling within levels E1 to E4 at ONGC are as follows:

DESIGNATION	LEVEL	PAY SCALE
Manager/Superintending Geophysicist/Superintending Geologist/Superintending/Chemist Superintending Engineer	E-4	Rs.36600-62000
Deputy Manager/Deputy Superintending Geophysicist/Deputy Superintending Geologist/Deputy Superintending Chemist/ Deputy Superintending Engineer	E-3	Rs.32900-58000
Senior (**) Officer/Assistant Executive Engineer/Senior Geologist/Senior Chemist	E-2	Rs.29100-54500
(**) Officer/Assistant Executive Engineer/Geophysicist/Geologist/Chemist	E-1	Rs.24900-50500

(SOURCE: ONGC website)

40. Thus, as can be seen, the respondent was a Superintending Geologist, and was a level E4 employee, and as per the temporary delegation of powers of the Director (HR), his Disciplinary Authority was the Director(Onshore)

for the period when the board resolution was passed. The major penalties as per CDA Rules are as under:

“Rule 34: Nature of Penalties

Minor Penalties:

(i)(iv)

Major penalties:

(v) *Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Employee will earn increments of pay during the period of such reduction and whether on the expiry of such reduction, the reduction will or will not have the effect of postponing future increments of his pay.*

(vi) *Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Employee to the time scale of pay, grade, post or service from which he was reduced,, with or without further directions regarding conditions of restoration to the grade, post or service from which the Employee was reduced and his seniority and .pay on such restoration to that grade, post or service,*

(vii) *Compulsory retirement.*

(viii) *Removal from service which shall, not be a disqualification for future employment.*

(ix) *Dismissal from service which shall ordinarily be a disqualification for future employment under the Company.*

NOTE: *The following shall not amount to a penalty within the meaning of this Rule, namely:*

(i) *Non-promotion, reversion to previous service, post or grade-and withholding of increments of pay of an Employee for his failure to pass any departmental examination-in accordance with the Rules or orders governing the service to which he belongs or post which he holds under the terms of his appointment.*

(ii)' Stoppage of an Employee at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar.

(iii) Non-promotion of an Employee after consideration of his case, to a service, grade or post for promotion to which he is eligible.

(iv) Reversion to a lower service, grade or post of an Employee officiating in a higher service, grade or post on the ground that he is considered to be unsuitable for such higher service, grade or post on any administrative grounds unconnected with his conduct.

(v) Reversion to his previous service, in the lower grade or post of an Employee appointed on probation to any other service, grade or post, during or at the end of the period of, probation in accordance with the terms of his appointment.

(vi) Replacement of the services of an Employee, whose services have been borrowed from the Central Government or a State Government or an Authority under the control of the Central Govt. or a State Govt. or an Undertaking, at the disposal of the Authority which had lent his services.

(vii) Compulsory Retirement of an Employee in accordance with the provisions relating to his superannuation or retirement.

(viii) Termination of the services:

(a) Of an Employee appointed on probation, during, or at the end the period of probation, in accordance with the terms of his appointment;

(b) Of an Employee in accordance with the terms of his appointment;-

(c) Of an Employee employed under an agreement, in accordance with the terms of such agreement."

41. From the above, it is clear that the disciplinary authority for imposing major penalties qua the respondent under CDA Rules was Director (Onshore). The respondent has merely raised bald allegations that

'termination was a core function'. It is unclear as to what constitutes core function when the CDA Rules are clearly applicable. The finding of the Learned Single Judge that only the CMD can exercise the power of Director(HR) is contrary to the board resolution as also the office order issued on 3rd August, 2010, and the various powers of the Director (HR) that are delegated. Admittedly, the Director (HR) was exercising a large swathe of powers and functions and it would be practically impossible to expect the CMD to, in addition to the functions discharged by him, exercise all powers of Director (HR). The Board was conscious of this fact and hence the resolution was to assign and sub-delegate the powers of the Director (HR) to the other functional directors. Thus, the order passed by the Director (Onshore), which clearly enumerates the entire chronology of events and holds that the respondent's absence constitutes misconduct, is valid and legal. The respondent cannot expect the board to be passing every order in respect of his suspension, transfer and termination. The Board had enabled the Executive Committee which had revoked the suspension. The Director (Onshore) noticed the disobedience of the Respondent in not reporting at Bokaro and then passed the impugned order of termination. The said officer was empowered to do so.

Service of revocation of suspension

42. Much has been said about the suspension of the respondent not having been revoked. However, the record speaks to the contrary. The order of revocation of suspension was clearly passed on 16th June, 2009. The Executive Committee reviewed the matter and revoked the suspension of the respondent with immediate effect. It was also directed that the respondent

may join at his new place of posting. The order of the revocation of suspension reads as under:-

“Whereas, for his participation in the strike called by Association of Scientific and Technical Officers w. e. f. 07-01-2009, as per the decision of the Board, Shri B.V. Srihari Rao, Suptdg. Geologist, Id.No.76491 was placed under suspension vide orders of even number dt. 29.01.09. The Board thereafter authorized the Executive Committee (EC) to take further necessary action in the matter.

2. Whereas, Shri B.V. Srihari Rao, was issued charge-sheet under Rule 36 of ONGC CDA Rules, vide memorandum dt. 05/3/2009 and a departmental enquiry in the matter is underway.

3. And whereas, the Executive Committee on review of the matter has decided to revoke suspension of Shri B.V. Srihari Rao with immediate effect. However, the decision on treatment of period of suspension of Shri B.V. Srihari Rao, shall be taken on conclusion of the ongoing departmental enquiry against him. The said decision of the EC is hereby conveyed to Shri B.V. Srihari Rao, Suptdg. Geologist, Id.No.7S491.

4. Accordingly, Shri B.V. Srihari Rao, Suptdg. Geologist join at his new place of posting i.e. CBM, Bokaro.”

43. This order was signed by the Executive Director Chief (ER) and was served on the respondent. The notice was accepted by his wife on 14th August, 2009. The signature of the respondent's wife on the acknowledgement of the said order is not disputed. The order of revocation of suspension was referred and relied upon by ONGC in the proceedings before the Andhra Pradesh High Court. Reference in these proceedings was also made to the show cause notice dated 3rd November, 2010. We have not

referred to the findings expressed by the Andhra Pradesh High Court, but only the factum that the order of recalling the suspension and the show cause notice was referred and relied. We would, therefore, not accept the contention of the respondent that the order revoking suspension was not communicated to the respondent. It was well within his knowledge. The stand of the respondent that the revocation was an afterthought is contrary to the record and has to be rejected. Suspension was certainly recalled. However, there is another aspect associated with the recall of suspension, which relates to new place of posting, i.e., CBM Bokaro, in spite of the fact that the respondent was facing departmental inquiry at Rajahmundry and was required to attend departmental proceedings. The contention of the respondent is that transfer to Bokaro was malicious and with ulterior motive to harass the respondent. This aspect would be examined subsequently.

Validity of the termination

44. The CDA Rules of ONGC are in the nature of administrative instructions and do not have any statutory flavor and backing. The relevant Rules which govern the present dispute are set out here in below:

“Rule 3(j) “Misconduct”, without prejudice to the generality of the term ‘Misconduct’ and the specific provisions made in these Rules, includes acts and omissions specified in Schedule II annexed to these Rules.

Rule 4(1) Every Employees shall at all times:

(a).....

(b) maintain devotion to duty; and

(c) do nothing which is unbecoming of a Public Servant.

Rule 5(2) An Employee shall not absent himself from duty without having obtained the permission of the Competent Authority.

Rule 10: Demonstration and Strikes:

No employee shall:

(a) engage himself or participate in any demonstration which involves incitement to an offence.

(b) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Employee of the Company.

Explanation: In this Rule "Strike" shall have the same meaning as in clause (q) of Section 2 of the Industrial Disputes Act, 1947.

Rule 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.....

(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 been made the order or by any Authority to which that Authority is subordinate.

(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.

Rule 34 – extracted above.

Rule 36: Procedure for imposing Major Penalties:

(1) An order imposing any of the major penalties specified in sub-Rule (v) to (ix) of Rule 34 shall be made after an inquiry, held as far as may be in the manner, hereinafter, provided or in the manner provided by the Public Servants (Inquiries) Act, 1850 where such inquiry is held under the Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an Employee, it may itself inquire into or appoint under this Rule an Authority or Board to inquire into the truth thereof.

NOTE: Where the Disciplinary Authority itself holds the inquiry any reference to the inquiring Authority in sub-rule (8), sub-rule (9) to (15) and sub-rules (17) to (21) shall be construed as a reference to the Disciplinary Authority.

(3) Where it is proposed to hold an inquiry against an Employee under this Rule and Rule 37 the Disciplinary Authority shall draw up or cause to be drawn up :

(a) the substance or imputation of misconduct or misbehaviour into definite and distinct articles of charges.

(b) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain:

- a statement of all relevant facts including any admission or confession made by the Employee;*
- a list of documents by which, and a list of witnesses together with their respective*

statements, if any by whom, the articles of charge are proposed to be sustained.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the employee, a copy of the articles of charge, the statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, a written statement of his defence.

NOTE : If the Employee concerned demands the inspection of listed documents he may be allowed to inspect the documents to submit a written statement of his defence.

(5) (a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint under sub-rule (2), an Inquiring Authority for the purpose and where all the articles of charges have been admitted by the Employee in his written statement of defence, the Disciplinary Authority shall record its findings on each article of charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 37.

(b) If no written statement of defence is submitted by the Employee, the Disciplinary Authority may itself inquire into the articles of charge or may if it considers it necessary so to do, appoint under sub-rule (2), an Inquiring Authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any articles of charge or appoints an Inquiring Authority for holding an enquiry into such charge, it may, by order, appoint an Employee or legal practitioner or any other public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The Disciplinary Authority shall where it is not the Inquiring Authority, forward to the Inquiring Authority :-

- (a) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;*
- (b) a copy of the written statement of defence, if any, submitted by the Employee;*
- (c) a copy of the statements of witnesses, if any, referred to in sub-rule (3);*
- (d) evidence proving the delivery of the documents referred to in sub-rule (3) to the Employee; and*
- (e) a copy of the order appointing the “Presenting Officer”.*

(7) The charged Employee shall appear in person before the Inquiring Authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputation of misconduct or misbehaviour, as the Inquiring Authority may, by notice in writing specify in this behalf of within such further time, now exceeding ten days, as the Inquiring Authority, may allow.

(8) The charged Employee may take the assistance of any other Employee, other than an Employee who is under suspension or against whom disciplinary proceedings are pending, to present the case on his behalf, but may not engage a Legal Practitioner for this purpose unless the Presenting Officer appointed by the Disciplinary Authority if a legal practitioner, or the Disciplinary Authority having regard to the circumstances of the case so permits.

NOTE : When on behalf of Disciplinary Authority, the case is presented by Presenting Officer of C.B.I., or Legal Advisor or ONGC’s Law Officer (such as Legal Advisor/Deputy Legal Advisor or Asst. Legal Advisor, etc.), the Disciplinary Authority may for good and sufficient reasons, permit the charged Employee to be assisted by a Law Officer of the Company as referred

to herein above or by a legal practitioner. In case a legal practitioner is permitted, it be at the cost of the charged employee.

Provided further that the employee who undertakes to render such assistance shall have to obtain approval in writing from his Controlling Officer for his absence from duty for the purpose of rendering the assistance to such an employee.

The Controlling Officer may not permit the employee to render assistance in the pending disciplinary proceedings :

- (i) if the Employee is already conducting/assisting in one of more pending disciplinary proceedings, or*
- (ii) If office work will suffer in the absence of the Employee, or,*
- (iii) He is of the opinion that the Employee has made it an independent field of practice to render such an assistance, or,*
- (iv) For any other administrative reason to be recorded.*

(9) If the charged Employee who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence appears before the Inquiring Authority, such Authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and the Employee shall sign such record.

(10) The Inquiring Authority shall return a finding of guilty in respect of those articles of charges to which Employee pleads guilty.

(11) The Inquiring Authority shall, if the Employee fails to appeal within the specified time or refuses or omits to plead require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding 30 days, after recording an

order that the Employee may, for the purpose of preparing his defence :

(a) inspect, within 5 days of the order or within such further time not exceeding 5 days as the Inquiring Officer may allow, the documents specified in the list referred to in sub-rule (3).

NOTE: If the Employee applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3) the Inquiring Officer shall furnish him with such copies as early as possible and in any case not later than 3 days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

(b) submit a list of additional documents required for his defence and a list of witnesses to be examined in this behalf,

(c) and give a notice within 10 days of the order or within such further time not exceeding 10 days as the Inquiring Authority may allow, or the discovery or production of any documents which are in possession of the Company but were not mentioned in the list referred to in sub-rule (3).

NOTE : the Employee shall indicate the relevance of the documents required by him to be discovered or produced by the Company.

(12) The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents or copies thereof, forward the same to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

Provided that the Inquiring Authority may, for reasons to be recorded in writing, refuse to requisition such of the documents as are, in its opinion not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or

possession of the requisitioned documents shall produce the same before the Inquiring Authority :

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of the such documents would be against the public interest or security of the State or against the interest of the Company it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall on being so informed communicate the information to the charged Employee and withdraw the requisition made by it for production or discovery of such documents.

(14) (a) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority.

(b) The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Employee.

(c) The Presenting Officer shall be entitled to re-examine the witnessed on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority.

(d) the Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(15) (a) If it appears necessary before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the charged Employee or may itself call for new evidence or recall and re-examine any witness and in such case the Employee shall be entitled to have if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence,

exclusive of the day of adjournment and the day to which the inquiry is adjourned.

(b) The Inquiring Authority shall give the Employee an opportunity of inspecting such documents before they are taken on the record.

(c) The Inquiring Authority may also allow the Employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

NOTE : New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence and such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) (a) When the case for the Disciplinary Authority is closed, the Employee shall be required to state his defence, orally or in writing, as he may prefer; if the defence is made orally, it shall be recorded and the Employee shall be required to sign the record.

(b) In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.

(17) (a) The evidence on behalf of the Employee shall then be produced and the Employee may examine himself in his own behalf if he so prefers.

(b) The witnesses produced by the Employee shall then be examined and liable to examination, cross-examination, re-examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(18) The Inquiring Authority may, after the Employee closes his case, and shall if the Employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Employee to explain any circumstances appearing in the evidence against him.

(19) The Inquiring Authority may, after the completion of the production of the evidence, hear the Presenting Officer, if any, appointed and the Employee or permit them to file written briefs of their respective cases if they so desire within such reasonable period as may be fixed by the Inquiring Authority.

(20) If the Employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this Rule, the Inquiring Authority may hold the inquiry ex-parte.

(21) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another Inquiring Authority which has, and which exercises such jurisdiction, the Inquiring Authority, so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding Inquiring Authority, is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(22) (a) The evidence of persons deposing at the inquiry shall be got signed by the persons deposing and the Employee against whom the inquiry proceedings are being taken.

(b) If any one of them refuses to sign the deposition, the fact shall be recorded by the authority, recording the evidence.

(23) (a) After the conclusion of the inquiry, a report shall be prepared which shall contain

- (i) the articles of charge and the statement of imputations of misconduct or misbehaviour;*
- (ii) the defence submitted by the Employee in respect of each article of charge;*
- (iii) an assessment of the: evidence in respect of each article of charge;*
- (iv) the findings on each article of charge and the reasons therefore*

NOTE: If in the opinion of the Inquiring Authority the proceedings of the inquiry establish any articles of charge different from the original articles of charge, it may record its findings on such articles of charge;

Provided that the findings on such articles of charge shall not be recorded unless the Employee has either admitted the facts on which such articles of charge are based or has had a reasonable opportunity of defending himself against such articles of charge. The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority, the records of inquiry which shall include :

- (i) the report prepared by it under clause (a)*
- (ii) the written statement of defence, if any, submitted by the Employee,*
- (iii) the oral and documentary evidence produced in the course of the inquiry,*
- (iv) written briefs, if any, filed by the Presenting Officer or the Employee or both during the course of the inquiry, and*
- (v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.*

Rule 37: Action on Inquiry Report :

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by

it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 36, as far as, may be.

(2) On receipt of the report of the Inquiring Authority, a copy thereof shall be made available to the charged employee requiring him to submit his representation if any within specified period as may be decided by the Disciplinary Authority.

(3) On receipt of the representation of the charged Employee or otherwise in the event the charged Employee has not responded, the disciplinary authority shall if it disagrees with the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

Provided, where the findings of the Inquiring Officer are that the charges are not established and the Disciplinary Authority disagreeing with the findings of the Inquiring Officer records its reasons for such disagreement which results into establishing the charges, such reasons, shall be communicated to the charged Employee, whose representation shall be called thereon.

(4) On receipt of the representation referred to in sub-rule (2) & (3) above, if the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the articles of charge is of the opinion that any of the penalties specified in Rule 34 should be imposed on the Employee, it shall make an order imposing such penalty notwithstanding anything contained in Rule 38 and it shall not be necessary to give the Employee any further opportunity of making representation on the penalty proposed to be imposed.

.....

Rule 41: Special Procedures in Certain Cases:

Notwithstanding contained in Rules 36 to 40,

(a).....

(b) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, the Disciplinary Authority may consider the circumstances of the case and pass such order as it deems fit.....

(c).....

Rule 45: Orders Against which Appeal Lies:

Subject to the provisions of the Rule 44, an

Employee (including one who has ceased to be such) may prefer an appeal against all or any of the following orders, namely:

(a).....

(b) an order imposing any of the penalties specified in Rule 34, whether made by the Disciplinary Authority or by any Appellate or Reviewing Authority.

(c).....(e).....

.....”

45. Rule 34 prescribes penalties, which can be imposed on an employee, who is found guilty of misconduct or breach of any rules or orders made by ONGC or any other authority empowered in that behalf. Penalties are divided into two categories, i.e., major and minor. The said Rule also postulates what would not constitute a penalty. Compulsory retirement, removal from service or dismissal from service, are considered to be major penalties. Rule 35 deals with the authority which may impose any of the penalties specified in Rule 34.

46. Rule 36 provides a detailed and elaborate procedure for imposing major penalties. The rule requires drawing up of the substance and imputation of misconduct or misbehaviour into definite and distinct articles of charge along with a list of documents and statement of witnesses which are required to be furnished to the delinquent employee, who in turn is required to submit a written statement of defence. The disciplinary authority or the enquiry officer appointed has to record evidence on the aforesaid charges and the charged officer is entitled to lead evidence in defence. Whereas, Rule 37 relates to action on the inquiry report and Rule 39 relates to communication of orders.

47. Rule 41(b) is an exception to Rules 36 to 40. The Rule begins with a non-obstante clause and stipulates that where the disciplinary authority is satisfied for reasons to be recorded in writing that it is '*not reasonably practicable*' to hold an inquiry in the manner provided by these Rules, the disciplinary authority may consider the circumstances of the case and pass an order as it deems fit. The question is whether the impugned order passed under Rule 41(b) dated 2nd December, 2010 is legal and valid in the sense that it meets the statutory mandate and requirements stipulated in clause (b) to Rule 41. The contention of the appellant is that they had the right to dispense with the inquiry and the expression "*is not reasonably practicable*" used in clause (b) to Rule 41 would include cases where no useful purpose would be served in the sense that misconduct is not in doubt or debate. It is, thus, submitted by the appellants that the inquiry would be a useless formality.

48. Before we examine and decide this contention with reference to judicial pronouncements including those cited by the appellants, we would like to reproduce the order of dismissal dated 2nd December, 2010. We have quoted the operative portion of the said order in paragraph 9 above. We would now like to quote the other relevant portions, before we examine the validity of the said order in exercise of power of judicial review. Relevant portion of the order dated 2nd December, 2010 reads as under:

“Whereas, in consideration of appeal against the aforementioned orders dated 08.01.09, vide order No. O-DHR/D&A/16/2008-09 dated 29.01.09 Shri Srihari Rao was reinstated in service however, he was placed under suspension till further orders.

Whereas, Shri Srihari Rao, was transferred from Rajahmundry to CBM-Dev. Project, Bokaro vide order No. DDN/CE/GEOL/AT-2009 dated 17.02.09 with date of relieving as 27.02.09.

Whereas, in consideration of his requests, the date of his relieving from Rajahmundry was extended at three occasions to 01.04.2009, 15.04.2009 and 15.05.2009 vide orders dated 03.03.2009, 02.04.2009 and 24.04.2009, respectively.

Whereas, Shri Srihari Rao was relieved from Rajahmundry w.e.f. 15.05.2009 vide order No. RJY/HR/ESTT-1/DS/76491 dated 14.5.09. Accordingly, Shri Srihari Rao was supposed to join at CBM-Dev. Project, Bokaro latest by 24.5.2009 after availing admissible joining time.

Whereas, Shri Srihari Rao did not comply with the aforementioned transfer order and did not report at CBM-Dev. Project, Bokaro for joining his duties on transfer.

Whereas, vide order No. O-DHR/D&A/16/2008-09 dated 16.6.09, concerning revocation of his suspension, also Shri Srihari Rao was again advised to join his duty at CBM-Project, Bokaro.

Whereas, Shri Srihar Rao neither reported for joining his duty at CBM-Dev. Project Bokaro nor submitted any valid reasons for not joining his duty.

Whereas, GM-HR, CBM-Dev. Project, Bokaro vide memorandum NO. BKRO/ONGC/CBM/HR-ER/Estt/76491 dated 18.11.2009 advised Shri Srihari Rao to join his duty at Bokaro immediately and seek regularization of his absence through appropriate leave; else he may be liable for action under ONGC Rules and Regulations.

Whereas, I/C HR-ER CBM-Dev. Project, Bokaro Vide another memorandum NO. CBMDP/BKRO/D&A/76491/2010 dated 24.5.2010 again advised Shri Srihari Rao to join his duty at Bokaro immediately and to seek regularisation of his absence through appropriate leave; else his continuous un-authorised absence may render him liable for action under Rule 14(5) of ONGC Leave Rules 1995, as well as under provisions of ONGC CDA Rules, 1994.

Whereas, Shri Srihari Rao was further informed by I/C HR-ER CBM-E, Bokaro vide memorandum NO. CBMDP/BKRO/D&A/76491/2010 dated 18.06.2010 that his continuous un-authorised absence amounts to misconduct under provisions contained in ONGC CDA Rules, 1994 and has thereby rendered him liable for disciplinary action under Rules ibid.

Whereas, Shri B V Srihari Rao was issued with a Show Cause Notice bearing even number dated 03.11.2010, by the undersigned as the competent disciplinary authority, seeking explanation of Shri Srihari Rao as to

why proposed action should not be taken against him under ONGC CDA Rules, 1994.

Whereas, Shri Srihari Rao submitted his explanation dated 09.11.2010 against the said Show Cause Notice.

And Whereas, the primary contention of Shri Srihari Rao, made vide his explanation dated 09.11.2010 that his suspension was not revoked by the authority which had placed him under suspension (i.e. the Board), is not tenable because the Board had empowered the Executive Committee (EC) to take further actions and, accordingly, the revocation of suspension of suspended ASTO office bearers including that of Shri B V Srihari Rao, was done as per the decision of the EC. This fact was clearly mentioned in the revocation orders dated 16.6.2009. Other contentions of Shri Srihari Rao have also been carefully considered by the undersigned and the same are found to have no merit.

The undersigned after going through the case records and the facts and circumstances of the case, is convinced that Shri B V Srihari Rao, despite being ordered/advised by his superior authorities to join his duty at CBM-Development Project, Bokaro through various communications made to him in this regard; has willfully disobeyed all such orders and absented himself from duty un-authorizedly since 24 May 2009.

The fact, that consequent upon revocation of his suspension vide orders dated 16.06.2009, he has taken a conscious decision not to join his duties at the transferee location and thereby willfully causing to prolong his suspension, further substantiates that he is not willing to serve the Company any more.

Now, therefore, considering that reasonable opportunity has already been given to the employee through the various memoranda and notices including the final show cause notice dated 03.11.2010; evidently

demonstrated total disregard of various office orders by Shri Rao by not joining his duties at CBM-D Project, Bokaro; his unwillingness to abide by the revocation of suspension order; and also his failing to offer any plausible explanation to the Show Cause Notice dated 03.11.2010; the undersigned is convinced that holding of inquiry in a manner as prescribed under Rules 36 to 40 of ONGC CDA Rules, 1994 is not reasonably practicable and, therefore, it is a fit case for invoking Rule 41(b) and to pass orders as deemed fit based on circumstances and merits of the case.

Accordingly, in consideration of the case in totality and specifically the facts narrated above; in exercise of the powers vested with the undersigned vide Rule Nos. 34, 35 and 41(b) of ONGC CDA Rules, 1994 the undersigned hereby imposes penalty of Removal from service, which shall not be a disqualification for future employment in the company on Shri B V Srihari Rao, with immediate effect.”

49. No other order in writing is relied upon by the appellants. Question is whether the aforesaid order and reasons stated therein meet the mandate and requirements for invoking and applying Rule 41(b) of the CDA Rules. We would begin by referring to the judgments relied on by appellants in support of their contention.

50. In ***Indian Railway Construction Co. (supra)*** the Supreme Court, while examining Rule 30 of the Indian Railways Construction Co. Ltd Conduct, Discipline and Appeal Rules, 1981, observed that the focus in such cases was required to be on the impracticability or otherwise of holding the enquiry. Rule 30 of the said Rules are reproduced below:

“RULE 30: SPECIAL PROCEDURE IN CERTAIN CASES

Notwithstanding anything contained in Rule 25 or 26 or 27, the disciplinary authority may impose any of the penalties specified in Rule 23 in any of the following circumstances:

(i) xxx xxx xxx xxx xxx

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules”

51. The Supreme Court in the said case observed:

“12. It is fairly well settled that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. When two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry.”

52. The aforesaid quotation has to be read with care and caution to understand the ratio. It was held that the power to dismiss an employee by dispensing with inquiry is not to circumvent the prescribed rules. However, it is for the disciplinary authority to be satisfied whether facts exist to justify dispensing with the inquiry. Courts would not interfere when two views are possible, whether inquiry should be dispensed with or not, and the

disciplinary authority has held that it is not reasonably practicable to hold an inquiry in the manner stipulated. This does not mean that the Court would not interfere when the conditions stipulated in the Rule for dispensing with the inquiry do not exist and the power to dispense with the inquiry is exercised in an arbitrary, perverse and contrary manner. The Writ Court while examining the said aspect has to focus on the question of impracticability of holding of the inquiry and decide. The ratio does not prescribe that inquiry is not reasonably practicable, whenever the disciplinary authority feels that no useful purpose would be served as facts and misconduct are established.

53. On *Wednesbury's Principles*, the Court can interfere with an administrative decision when it is vulnerable and falls foul, being illegal, irrational or if it suffers from procedural impropriety having left out relevant factors or takes into account irrelevant factors or the decision is one which no reasonable person could have reasonably arrived at.

54. *Aligarh Muslim University (supra)* was a case wherein two terminated employees had absented themselves. They were removed on the ground of automatic vacation or cessation of service. These employees had successfully challenged the orders of cessation of service before the High Court. The Supreme Court referred to the Rule position, which had stipulated that where an employee absents himself from duty without previously having obtained leave or fails to return to duty after expiry of leave, the employee has to be given an opportunity to give an explanation and if the appointing authority holds that the explanation is unsatisfactory, the employee is deemed to have vacated the post. In the context of Rule

5(8)(i) of Aligarh Muslim University Leave Rules, 1969, the question arose as to the violation of principles of natural justice, as the explanation had not been sought. After referring to several decisions, the Supreme Court held that '*useless formality theory*' was an exception to the general principle, for some decisions have an express view that non-compliance itself causes prejudice. Turning to the facts, it was observed that absence of show cause notice did not make any difference, for the employees had already been told that they cannot continue in their jobs and extension of leave was refused. The language of Rule 5(8)(i) is absolutely different from the Rule in question. The said judgment, therefore, would have no application.

55. In ***Ashok Kumar Sonkar (supra)***, the question of selection to a post was in issue. In that context, it was observed that principles of natural justice cannot be construed in a strait jacket and the useless formality theory can be applied. Reference to the said judgment is out of context, for we are not examining and dealing with selection. The issue before us is whether the stipulation in clause (b) to Rule 41 to dispense with enquiry was satisfied or not, and to this extent we have to examine the order passed by the appellants.

56. In ***Southern Railway Officers Association (supra)***, the Supreme Court was dealing with the second proviso, clause (b) to Article 311(2), which postulates dispensing of an inquiry where the authority empowered to dismiss or remove a person or reduce in rank is satisfied, for reasons to be recorded in writing that it is not reasonably practicable to hold such inquiry. Reference was made to ***Union of India and Another versus Tulsi Ram Patel, (1985) 3 SCC 398*** (hereinafter, '*Tulsi Ram*') in which it was observed

that the disciplinary authority is not expected to dispense with the disciplinary inquiry lightly, arbitrarily or out of ulterior motives or merely in order to avoid holding an inquiry. Finality given to a decision of the disciplinary authority by Article 311(2) is not binding upon the Court insofar as power of judicial review is concerned. In a given case, the Court can strike down the order dispensing with an inquiry and also the order imposing penalty. For valid application of clause (b) to the second proviso to Article 311(2) the disciplinary authority should record in writing the reasons for its satisfaction that it was not reasonably practicable to hold inquiry. If reasons are not recorded, the order dispensing with inquiry would be void and unconstitutional. Reasons dispensing with the inquiry, however, need not find place in the final order as it is usual to record reasons separately. (However, in the present appeal there is no such assertion). The Supreme Court, nevertheless, observed that it would be better if the reasons are recorded in the final order to avoid allegations that the reasons were recorded post the order or subsequently fabricated. The reasons for dispensing with the inquiry cannot be vague or just a repetition of clause (b) of second proviso, though the reasons need not contain detailed particulars. Reference was made to a large number of decisions thereafter. We have quoted from this decision subsequently, when we examine the meaning of the expression "*not reasonably practicable*".

57. In *Southern Railway Officers Association (supra)*, the Supreme Court held that the dismissed employee had threatened, intimidated and terrorized the officers and had created an atmosphere of violence, general indiscipline and insubordination. In these circumstances, it was held that the

decision that it was not reasonably practicable to hold inquiry was correct. The Court, while exercising the power of judicial review, should place itself in the arm chair of the person at the spot and well conversant with the situation. This decision refers to the right to appeal wherein an order of dismissal could be challenged and in this manner the appeal provides for post-decisional hearing where all defences would be taken. In the appeal proceedings, satisfaction and findings of the disciplinary authority whether or not it was reasonably practicable to hold departmental inquiry could be examined.

58. We would now turn to the decision in *Ajeet Kumar Nag* (supra) wherein constitutional validity of clause (vi) of the Standing Order 20 of the Certified Standing Orders of the Indian Oil Corporation was challenged as being arbitrary and against the principles of natural justice. The matter was referred to a Larger Bench of three Judges in view of “purported” conflict between the two decisions in *Workmen of Hindustan Steel Limited versus Hindustan Steel Limited & Others, 1984 (Suppl.) SCC 554* and *Hari Pada Khan versus Union of India and Others, (1996) 1 SCC 536*. An employee in the Indian Oil Corporation, it was held, was not entitled to protection of Article 311 as he was not holding a civil post under the Union or the State. Turning to clause (vi) of Standing Order 20, it was observed that the said clause will apply where a workman has been convicted of criminal offence in a court of law or where the General Manager is satisfied, for reasons to be recorded in writing, that it is neither expedient nor in the interest of security to continue with the workman, who may be removed and dispensed from service, without following the procedure laid down in law. After a detailed

discussion, the provision was upheld after referring to the decision in *Tulsi Ram Patel (supra)*, which had dealt with a somewhat similar provision and upheld the constitutional validity. It was held that the Standing Order had limited application and limited power had been conferred to the General Manager, the highest administrative head. Standing order did not confer blanket or uncanalised power. It required reasons to be recorded in writing and there was also a right to appeal against the decision of the General Manager. More importantly, any action or order by the General Manager, on being unsuccessful in appeal, could be challenged in the High Court under Articles 226 and 227 of the Constitution. Supreme Court held:

“43. To us, therefore, it is clear that Standing Order 20(vi) allows the General Manager to take an action in emergency keeping in view the exceptional situation which has arisen and he is satisfied that the workman should be removed or dismissed from service without following the procedure laid down in Standing Order 20(iii). Whereas Standing Order 20(iii) deals with cases in general and provides enquiry and pre-decisional hearing, Standing Order 20(vi) is an exception to the general rule and deals with special cases under which an action can be taken. Since the appeal is provided in all cases, the case is one of post-decisional hearing.”

59. The expression “*reasonably practicable*” is also an exception in clause (b) to the second proviso of Article 311. The said expression has been extensively examined in several judgments in relation to the said proviso, and it has been held that the decision of the authority cannot solely rest on the *ipse dixit* of the concerned authority and it has to be shown that the said decision was based upon certain objective facts and not an outcome of whim and caprice [see *Jaswant Singh v. State of Punjab and Ors. (1991) 1 SCC*

362 (hereinafter, 'Jaswant Singh')]. The order of dismissal by resorting to power under the said proviso must record reasons in writing and it cannot be contended that the order is valid because of this proviso. Reasons recorded must not be vague or irrelevant and the power should be exercised bonafidely having regard to the relevant considerations.

60. Pertinent would be the observations in *Tulsi Ram Patel (supra)*, wherein it has been held:-

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster's Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice or perform: capable of being put into practice, done or accomplished: feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster's Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the

inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

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132. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed *ex parte* and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2)."

61. The Supreme Court had the occasion to address the meaning of the term "reasonably practicable" in a catena of judgments such as ***Chief Security Officer & Ors. Vs. Singasan Rabi Das***, (1991) 1 SCC 729, ***Union of India Vs. Harjit Singh Sandhu***, (2001) 5 SCC 593, ***Major Radha Krishnan Vs. Union of India & Ors.*** (1996) 3 SCC 507, wherein the Supreme Court has consistently upheld the above position.

62. Even recently, in ***Reena Rani v. State of Haryana*** (2012) 10 SCC 215 (hereinafter, 'Reena Rani'), relying upon the decision in ***Tulsi Ram*** (*supra*) and ***Jaswant Singh*** (*supra*) the Supreme Court held that dismissal from service without holding an enquiry is ultra vires the provisions of Article 311 of the Constitution and set aside the order of dismissal passed by the Superintendent of Police qua the appellant. It thus, directed reinstatement of the appellant with all consequential benefits.

63. We do appreciate the difference enunciated but in the context of the present case, we must hold that the term “*not reasonably practicable*” cannot have reference to the merits, i.e., gravamen of the charge and the misconduct which should be established. The reasons recorded must state and elucidate why the normal enquiry proceedings/procedure under Rule 36, which is the normal prescribed procedure, should be dispensed with. Perceived merits cannot be a ground to dispense with the enquiry. Thus, when an order under Rule 41(b) is challenged, the aspect of reasons for dispensation of enquiry have to be examined within the parameters of judicial review.

64. When we turn our attention to the order of dismissal, it is noticeable that in the present case show cause notice was issued. This show cause notice refers to unauthorised absence and disobedience of lawful orders of the superior authority, for the respondent had absented himself from duty from 15th May, 2009/24th May, 2009, and also when the respondent was asked to join at Bokaro after the order of suspension was revoked on 16th June, 2009. The show cause notice had stated that action was proposed to be taken under the Rules for unauthorised absence and disobedience. The show cause notice did not state that action under clause (b) to Rule 41 was proposed and inquiry would be dispensed with. Reference to this provision is made only in impugned order dated 2nd December, 2010.

65. Order dated 2nd December, 2010 refers to the facts and to the allegations against the respondent and his failure to join Bokaro after being relieved from Rajahmundry. However, the stand of the respondent is that the transfer to Bokaro was *mala fide* for the respondent was under

suspension and was facing disciplinary proceedings at Rajahmundry. The respondent was not required to work and perform duty, being under suspension. Thus, the action, it is asserted by the respondent, was *mala fide* and with a view to harass him. Of course, the position may be different after the suspension was revoked. Nevertheless, the contention of the respondent is that he continued to appear and face disciplinary proceedings pending at Rajahmundry. Thereafter, the order dated 2nd December, 2010 goes into merits of the reply given by the respondent and his failure to join posting at Bokaro after the suspension order was revoked. It holds that the respondent was not willing to serve the appellants. It is recorded that considering reasonable opportunity had been given and various memoranda and notices had been issued and the respondent had expressed his unwillingness to abide by the revocation of suspension order and offer any good explanation for not joining the transfer posting, it was a fit case for invoking Rule 41(b) of the CDA Rules. The said order does not mention why and for what reason it was not reasonably practicable to hold the inquiry in the manner stated in Rule 36 of the CDA Rules. In fact the respondent was in Rajahmundry itself and was participating in the proceedings. So an enquiry could have been held. The Rule mandate is not referred, adverted to and considered. This would amount to error in the decision making process.

66. We do not find good reasons or ground to accept the contention of the appellants that the expression “*not reasonably practicable*” used in the said clause would include cases where the disciplinary authority perceives and believes that there is no defence and it is an open and shut case. This is not the purport and mandate of the said Rule and the expression “*not reasonably*

practicable". The expression "*reasonably practicable*" in the context of the said Rule refers to whether or not it was reasonably practicable to hold an inquiry. The procedure for such an inquiry is quite detailed. It would not include and encompass formation of an opinion by the authority that the employee's defence has no merit and deserves to be rejected. We have not been shown even a single decision where the said precept has been accepted and applied. On the other hand, decisions that were relied by the respondent, as noted above, hold that the Court exercising power of judicial review has to be satisfied that authorities had correctly understood and applied the provision dispensing with holding of the inquiry, which is not the norm and general rule but an exception. In *Ajeet Kumar Nag (supra)*, it is observed that dispensation of an inquiry is an exception to the normal rule and is to be done only in special cases, when it is not reasonably practicable to hold enquiry. It is clear from a reading of the termination order that apart from a mere reference to Rule 41(b) there is no reasons given therein for dispensing the enquiry. It is also not the case of ONGC that the reasons are contained anywhere else. No such document containing reasons has been placed. In this situation, the only conclusion is that no reasons have been given for dispensing the enquiry. This is contrary to law.

67. The disciplinary authority is thus, guilty of procedural illegality for it has wrongly understood when and in which cases, an order of removal or dismissal should be passed under clause (b) of Rule 41 i.e., without holding an inquiry. The expression "*not reasonably practicable*" has not been appreciated, applied and considered.

68. In view of the aforesaid finding, we would quash the order dated 2nd December, 2010 discharging the respondent from service. ONGC would be entitled to initiate disciplinary inquiry proceedings in accordance with the Rules.

Respondent's Cross Objections

69. Insofar as the respondent's cross objections are concerned, the respondent prays for reinstatement and grant of complete back wages. The respondent impugns the order of the Learned Single Judge to the extent it merely directs reinstatement and does not grant back wages. The prayer of the respondent is as under:

"In the premises it is most humbly prayed that this Hon'ble Court may most graciously be pleased to grant the Respondent his full back wages since February 2009 and reinstate him at Rajahmundry by partly modifying judgment order dated 02.09.2013 passed by the ld. Single Judge in WP NO.141 of 2011."

70. This would be setting the clock back by more than seven years. Pertinently, the respondent is facing another disciplinary inquiry in which report has been submitted. We are also confronted with the situation where the respondent has not performed duties and effectively worked for nearly ten years as he was under suspension and thereafter terminated by the impugned order dated 2nd December, 2010. We also record that in spite of the adverse decisions by the Andhra Pradesh High Court, the respondent did not join and report for duty at Bokaro. Hostility and angst was apparent even during the hearing of the present appeal.

71. Thus, the following is the undisputed factual position in the present case:

- i) the respondent does not dispute that he participated in a strike.
- ii) it is not disputed that the said strike was declared illegal. While the respondent was placed under suspension, the transfer order was passed within almost two weeks after passing of the suspension order.
- iii) the respondent chose to remain in Rajahmundry on various grounds and did not report to Bokaro.
- iv) even after the suspension order was revoked on 16th June, 2009, the Respondent failed to join at Bokaro.
- v) ONGC issued repeated orders and office memoranda on 18th November, 2009, 24th May, 2010 and 18th June, 2010, asking the respondent to join and report for duty at Bokaro. The respondent still chose not to join.
- vi) even after the dismissal of the writ petition by the Learned Single Judge and Division Bench of the Andhra Pradesh High Court, the respondent did not join at Bokaro.
- vii) the show cause notice for termination was issued after the dismissal of the appeal by the Division Bench of the Andhra Pradesh High Court and despite having failed in the challenge to the transfer, the respondent continued to rely upon the allegations that transfer order was illegal and hence chose not to join.
- viii) The respondent made repeated requests for extension of date of relieving him from Rajahmundry, which were granted on 3rd March, 2009, 2nd April, 2009 and 24th April, 2009. He was finally relieved

from Rajahmundry on 14th May, 2009 and was expected to join at Bokaro by 24th May, 2009.

72. The question of back wages would have to be examined and considered by the appellants in this factual background, in terms of the Rules. It is quite possible that the respondent may suffer an adverse order in the first inquiry in which the inquiry report has already been submitted.

73. As held by the Supreme Court in ***M.L. Kamra v. Chairman-cum-Managing Director, New Delhi Assurance Co. Ltd. (1992) 2 SCC 36***, the Court in these cases, is expected to balance conflicting interests. Thus, even if the Court feels that the impugned order of termination is illegal, it can direct compensation be paid to the employee instead of reinstatement and further continuance in service. This view has been upheld by a Division Bench of the Gujarat High Court in ***Gujarat Mineral Development Corporation Ltd. v. B.B. Sinha (1998) 2 GLH 29***, wherein the Court held as under:

“22. According to the petitioner, in a case falling in the first category, the Court has no option but to grant compensation in lieu of reinstatement. Since no post is available, even if the action is held to be bad, a successful petitioner has to be satisfied by compensation. Regarding second category, the petitioner submitted that even though the action may be held to be bad either because of illegality or of procedural irregularity, the court might be fully justified in refusing reinstatement considering seriousness of allegations leveled against the party. In such case, even if inquiry is found to be defective and/or vulnerable, such an employee may not be granted reinstatement.”

74. By the various interim orders passed in this appeal, ONGC has paid a sum of Rs. 37,39,982/- to the respondent. This constitutes 50% of the back wages along with interest for the period till the passing of the impugned judgment by the Single Judge. There is no straight jacket formula for awarding of back wages. The respondent being a qualified Geologist, it is stated at the Bar that he has not taken any other employment and has been pursuing the various litigations. It also appears from the record that the respondent is embroiled in a matrimonial dispute with his wife, who has also raised claims in this appeal in respect to the amount which was released to him. The principle of mitigation would also apply in this case. In ***Indian Railway Construction Co. (supra)*** the Supreme Court, while holding that the reasons which weighed with the disciplinary authority to dispense with enquiry did not appear to be proper, did not reinstate the employee. The Supreme Court held as under:

“33. In our considered opinion, a further payment of Rs. 12 lacs towards backwages and for giving effect to the order of dismissal on the ground of loss of confidence would suffice. The total amount of Rs. 15 lacs shall be in full and final settlement of all claims. The payment is to be paid within eight weeks from today after making permissible deductions statutorily provided and or adjustments, if any, to be made.”

75. Keeping in view the totality of the facts, we feel that the present litigation should be brought to a close with the direction that the appellants to pay a further sum of Rs.15 lakhs in full and final settlement. Upon the said payment being made, the respondent would be treated as retired from service without stigma and forfeiture of benefits with effect from 2nd December, 2010, the date on which the termination order was passed. The

respondent would be also entitled to pension or retirement benefits, if any and as payable to him if he had retired on 2nd December, 2010.

76. Keeping the totality of facts and circumstances in mind, the Court further directs that though the respondent has not discharged his functions since December 2008, the amount already released to him may not be refunded and be retained by him. This order has been passed in view of the fact that the learned Single Judge had held in favour of the respondent vide the impugned order dated 2nd September, 2013. The cross objections are allowed to this limited extent.

77. In view of the discussion above, the appeal of the appellants is partially allowed. The order of termination dated 2nd December 2010 passed by the Director (Onshore) terminating the services of the respondent is quashed and the order of the Single Judge directing reinstatement is set aside. However, the amount of back wages already paid would not be liable to be refunded and a further amount of Rs. 15 lakhs shall be paid to the respondent. The said payment be made within six weeks. As directed above, the respondent would be treated as having retired w.e.f. 2nd December 2010 and would be entitled to payment of retirement and such other benefits as payable.

78. In the facts and circumstances, there shall be no order as to costs.

PRATHIBA M. SINGH, J

SANJIV KHANNA, J

FEBRUARY 13, 2018/dk/R