

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 116 OF 2020

Nandakumar Menon

... Petitioner

V/s.

Bharat Petroleum Corporation Ltd., and Ors. ... Respondents

Mr. Mihir Desai, Senior Advocate a/w. Mr. Mihir Joshi for the
Petitioner

Mr. R.S. Pai a/w. Mr. Kaushal Udeshi a/w. Mr. Vedant Chhajed i/b.
Sanjay Udeshi & Co. for the Respondents 1,3 and 5.

***CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.***

DATE : 18 FEBRUARY 2020.

P.C. :-

By this Petition the Petitioner has challenged the orders passed by the Disciplinary Authority on 26 July 2017, by the Appellate Authority passed on 22 December 2017 and the order by the Reviewing Authority on 8 July 2019.

2. The Petitioner joined the Respondent – Corporation on 23 July 1981 as a Plant Operator. After some promotions he was appointed to the post of Senior Operations Officer/Assistant

Manager (Group B) by order dated 14 July 1997. In the year 2014, the Petitioner was transferred from the Mumbai establishment of the Respondent to Kochi.

3. Show Cause Notices were issued to the Petitioner on 11 June 2015, 19 June 2015 and 16 July 2015. The allegations against the Petitioner was of insubordination and failure to obey the orders of the superiors. The Petitioner filed a reply. Enquiry proceedings were initiated. Hearings were held on 28 August 2015 to 23 February 2016. Enquiry Officer submitted the report holding the Petitioner guilty of the charges. The Petitioner submitted a reply to the same and thereafter, the order was passed by the Disciplinary Authority on 26 July 2017 to lowest basic pay in the grade of Engineer (Job Group-A) with effect from 7 August 2017. The Petitioner thereafter filed an Appeal. In the Appeal the Appellate Authority took a lenient view and the reduction to lower pay was modified to the grade of Engineer (Job Group -A). A review filed by the Petitioner was rejected.

4. We have heard Mr. Mihir Desai, learned Senior Advocate for the Petitioner and Mr. R.S. Pai, the learned Counsel for the Respondent Nos. 1,3 and 5. We have gone through the enquiry report, orders of the Disciplinary Authority and the Appellate Authority and the Review Authority.

5. The charges against the Petitioner were as under :-

(1) Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior. [Rule A(7) of Part-III]

(2) Neglect of work or negligence in the performance of duty including malingering or slowing down of work. [Rule A(10) of Part-III]

(3) Refusal to accept a charge sheet or order or any other official communication. [Rule A (39) of Part-III].

6. As far as principles of natural justice are concerned, the Petitioner has been given opportunity in the enquiry to put forth his say and cross examine the witnesses. No grievance can be made by the Petitioner of breach of principles of natural justice. Mr. Desai sought to contend that some of the witnesses which could have thrown light on the allegations against the Petitioner inspite of the Petitioner pointing out were not called as witnesses. It is not possible to accept this submission as nothing stopped the Petitioner from calling his witnesses and the Petitioner chose only to examine himself. Mr. Desai then submitted that it is the practice of the Respondent – Corporation to issue instructions in writing and therefore, breach of oral instructions cannot be held against the Petitioner and the same factum is not proved. On this aspect also the Petitioner's contention cannot be accepted. The witnesses have been examined on this charge. The Petitioner has cross-examined these

witnesses and a finding of fact is recorded that the directions were issued and breached. It was then contended that the Petitioner when directed to operate boilers could not have operated the same for lack of qualification required which differs from the State to State. This is however only on incident put against the Petitioner. An elaborate enquiry report has been furnished. At three levels the Petitioner's grievance has been examined. It is not possible for us to re-appreciate the evidence again. A lenient view is already taken.

7. In the circumstances, no interference is warranted in writ jurisdiction. The Writ Petition is rejected.

M.S. KARNIK, J.

NITIN JAMDAR, J.

**Jyoti P.
Pawar**

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by Jyoti P. Pawar
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