

***IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5803/2013 and CM Nos.12791/2013 and 47119/2019

Judgment reserved on : 27.04.2022

Date of decision: 24.11.2022

JAI RAJ SOLANKI

..... Petitioner

Through: Mr.Vishal Raj Sehijpal & Mr.Shoeb
Shakeel, Advocates

Versus

THE UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Archana Gaur & Ms.Ridhima Gaur,
Advocate for R-1/UOI.
Mr.Chetan Sharma, ASG along with
Mr.Sangram Patnaik, Ms.Swayam Sidha,
Mr.Rishav Dubey, Mr.Sahaj Garg and
Mr.Aditya Parmar, Advocates for R-2 and 3.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, Jairaj Solanki, vide the present petition seeks the setting aside of the order dated 16.07.2013 of the Appellate Authority of the Indian Renewable Energy Development Agency Ltd. (herein after referred to as IREDA) which affirmed the order dated 22.03.2013 No. 233/3/89-MS/IREDA of the Disciplinary Authority of the IREDA whereby the petitioner herein, a Driver-cum-Attendant (Grade-III) , Employee No. 0212, IREDA, having been chargesheeted for six Articles of Charge under Rule 25 of the IREDA Conduct, Discipline and Appeal (CDA) Rules vide

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Memorandum No. 233/3/89-MS-/IREDA dated 24.8.2011 modified vide Memorandum dated 20/31.10.2011 vide which he was found guilty of the Articles of Charge with which he was charged and an inquiry was conducted and vide order dated 22.3.2013 of the Disciplinary Authority the major penalty of removal from service imposed with immediate effect qua the petitioner was upheld.

2. The charges framed against the petitioner were to the effect:

“Charge-I: Shri Jairaj Solanki did not park the official staff car at the allotted parking slot, did not deposit the keys and made false & incorrect entries in the log book.

Charge-II: Shri Jairaj Solanki himself has admitted in his reply dated 13.9.2011 to the charge memo that he had parked the official staff car at CVO's residence. This was without any permission of the Competent Authority.

Charge-III: The log book was not maintained properly as it does not show actual places visited, time of visit, actual mileage to these visited places and also does not contain the signature of the official who actually used the staff car.

Charge-IV : Shri Jairaj Solanki has admitted that he had put the white fluid in the log book. This was to cover up his misconduct.

Charge-V: Shri Jairaj Solanki misappropriated petrol by obtaining unnecessary petrol on 29.6.2011, 1.7.2011 and 12.7.2011.

Charge-VI: Shri Jairaj had excessively written the distance for route : Noida-Office-

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Noida- Office on different dates and once to the extent of 69 kms on 23.3.2011.”

3. The Disciplinary Authority on conducting the enquiry held to the effect:

“WHEREAS, I being the Disciplinary Authority, after going through the entire record, inquiry report dated 5.9.2012, comments of Shri Jairaj Solanki, Charged Official on Inquiry Officer's report, deposition of witnesses and other evidence on record, I find that Shri Jairaj Solanki has committed misconducts which are of serious nature and have been proved as per the report of Inquiry Officer, with which I agree fully. I find that Shri Jairaj Solanki did not park the official staff car at the allotted parking place, did not deposit the said staff car key to the Security and made false & incorrect entries in the log book (Article-I), parked the staff car at former CVO's residence without any written orders of the Competent Authority of HR Deptt., IREDA (Article II), failed to maintain log book properly as Shri Jairaj Solanki did not record the actual places visited, time of visit, actual mileage to the these places and also did not obtain the signatures of the official who actually used the staff car as provided in the relevant columns of the log book (Article-III), tampered with the log book by applying white fluid to cover up his misconduct (Article-IV), obtained unnecessary petrol on 29.6.2011, 1.7.2011 & 12.7.2011 which was misappropriated (Article-V) and excessively wrote distance for route : Noida-Office-Noida Office (Article-VI), as detailed in the report of the Inquiry Officer. All the 6 Articles of Charges which are proved shows that Shri Jairaj Solanki failed to maintain absolute integrity, devotion to

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duty, and acted in a manner which is unbecoming of a public servant and prejudicial to the interest of the Company.

NOW THEREFORE, I being the Disciplinary Authority find that Shri Jairaj Solanki is not a fit person to remain in the service of the company and accordingly I impose the major penalty of removal from service with immediate effect on Shri Jairaj Solanki, Driver-cum-Attendant (Gr.III), Employee No.0212, IREDA i.e. the Charged Official.”

4. The Appellate Authority vide order dated 16.7.2013 observed to the effect:

“The undersigned being the Appellate Authority in the case has gone through this appeal, inquiry report and all other connected records of the case. It is found that Shri Solanki has been given sufficient time and fair opportunity to defend his case before the Inquiry Officer. The inquiry has been conducted in a fair manner and there has been no violation of principles of natural justice. The Inquiry Officer had provided numerous opportunities to the Appellant to attend the inquiry but he did not attend the inquiry and the inquiry had to be postponed 16 times. The Disciplinary Authority has issued Order No.233/3/89-MS/IREDA dated 22.03;2013 based on facts, records, evidence and report of the Inquiry Officer where the charges against the Appellant have been proved. I fully agree with the order issued by the Disciplinary Authority.” ,

and thus rejected the appeal of the petitioner against the order dated 22.3.2013.

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5. The petitioner through his petition submitted that he was appointed as a Driver-cum-Attendant in the IREDA in the year 2008 on a permanent post and prior to his removal from the services on 22.3.2013 had rendered 13 years of service in the IREDA and prior to that had also worked with the IREDA on contract basis. The petitioner vide the present petition apart from seeking the setting aside of the order dated 16.7.2013 of the Appellate Authority and the order dated 22.3.2013 of the Disciplinary Authority submitting the same to be arbitrary or illegal based on no evidence has sought reinstatement with full back wages and benefits.

6. The petitioner submits that after his appointment, he was assigned the duty to pick up and drop the respondent No.5, Ex.C.V.O, IREDA from the office to his residence and vice-versa and that the petitioner was bound to oblige and followed the order/instructions of the respondent No.5 and performed his duty with complete honesty and integrity rather towards satisfaction from the services rendered by the petitioner the respondent Nos 2, i.e.the Chairman and Managing Director IREDA and respondent No. 5, i.e., the Joint Director (COAST) had issued the testimonials in his favour and that the respondent nos. 2 and 5 had stated in their testimonials that they were extremely satisfied with the work of the petitioner in terms of initiative, courteousness, punctuality, sincerity and obedience.

7. The petitioner submits that he used to park the official vehicle/Car at the residence of the respondent No. 5 upon his

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order/instructions and that it is the general practice adopted by all the officials to direct their drivers to park the official vehicles at their residence and the same still prevails. The petitioner submitted that he being a subordinate was not supposed to object to the instructions/directions of the respondent No. 5 nor could he deny to obey the same. The petitioner submits that he was working with the IREDA since 2000 and doing his job with complete honesty and integrity; and that the petitioner applied for the leave to the department for 15 days i.e, 28.06.2011 to 11.07.2011 by following the proper procedure and the same was sanctioned by the in-charge and the petitioner informed the respondent No. 5 about his 15 days leave as the respondent No. 5 was his duty officer and it was instructed by the respondent No. 5 to the petitioner to park the official vehicle/Car at his residence and also to hand over the keys and being the subordinate petitioner obeyed the directions/instructions of the respondent No.5 and parked the vehicle at the residence of the respondent No.5 in the evening on 22.07.2011 and thereafter, subsequently, informed the reporting officials telephonically.

8. The petitioner submits that there was an ego clash between the respondent no.2 and the respondent no.5 as the respondent No. 5 made a complaint of the respondent No.2 to the Chief Vigilance Committee with regard to the corruption charges and due to those charges, the respondent No. 2 was facing problems and thus the petitioner was targeted by the

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respondent No. 2 as the respondent No. 2 wanted to implicate the respondent No. 5 by collecting evidence against him to teach him a lesson and therefore, upon the instructions of the respondent No. 2, the officials of the IREDA pointed out/raised the issue and that the respondent no.5 did not give any written documents that the respondent No.5 did not give the instructions to park the vehicle as it was evident that the vehicle was parked at the residence of the respondent No. 5.

9. Inter alia the petitioner submits that when he joined the office after the sanctioned leaves the officials asked about the vehicle, the petitioner informed the officers that he had parked the official vehicle at the residence of the respondent No. 5 upon his directions and instructions and instead of considering the reply and clarification, the respondent No. 5 issued the memo dated 03.08.2011 to which the petitioner filed a response to the memo dated 17.8.2011.

10. The petitioner further submits that thereafter the memorandum with the Statement of Articles of Charge framed against the petitioner dated 24.8.2011 was received by him to which he responded on 13.9.2011 and an Inquiry Officer was appointed on 28.9.2011 without considering or following the guidelines issued by the DoPT Circular dated 26.9.2011.

11. Inter alia, the petitioner submitted that he attended the preliminary hearing with the Defence Assistant and that the Inquiry Officer restricted the petitioner that the Defence

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Assistant should not be an advocate and should have an NOC from the Competent Authority.

12. The petitioner submits that the petitioner found a Government Servant as his Defence Assistant who appeared before the Inquiry Officer on 14.12.2011 and informed the Inquiry Officer of the same on 14.12.2011 but in as much as the Defence Assistant did not get the necessary NOC from the Competent Authority, he was unable to perform his duty defending the petitioner.

13. The petitioner submits that no notice was issued by the Inquiry Officer to the Defence Assistant and that the petitioner could not protect himself and on 24.1.2012 he sought time to bring his Defence Assistant but the Inquiry Officer rejected his request and the respondent No.3 refused to stop the proceedings vide the communication dated 27.1.2012 and the petitioner submitted his reply on 26.10.2012.

14. The petitioner has submitted that all the allegations levelled in the charges framed against him were false and that the petitioner had never misused the official property and never used the car in question for his personal used.

15. Inter alia, the petitioner submits that he had raised the conveyance claim whenever he dropped and left the official vehicle at the residence of the respondent No.5 but that the respondent No.5 had never pointed this act to be wrong and that all the conveyance claims were duly verified by the concerned Department and approved by the Finance Department.

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16. Inter alia, the petitioner submits as regards the charge No.4 it was the duty of the petitioner to pick up and drop the respondent No.5 to his residence and other places where he wanted to go and there were directions of the respondent No.5 never to disclose about his visits as they were secure and confidential and whenever the petitioner made an entry in the log book and thereafter showed the same to the respondent No. 5 for verification, the respondent No.5 stopped the petitioner and made him erase the destination and visiting places due to confidentiality and that it was on the directions and instructions of the respondent No.5 that the petitioner used white fluid and erased the destination and places where the respondent No.5 visited and after putting the white fluid used to write "Different Offices" and that the log book was perused by the respondent No. 5 and after the perusal, the same was signed by the Senior Office Secretary of the respondent No. 5 under his instructions and directions.

17. Inter alia the petitioner submits that as regards the Charge No. V, the imposition on the petitioner of mis-appropriation of the petrol, the receipt-cum-bills were allowed by the respondent No 5.

18. The petitioner submitted that he had been discriminated against as he belonged to the Schedule Caste & Schedule Tribe and that the major penalty of termination of the services has been imposed without providing an NOC for a defence assistant and without taking into consideration the note of the respondent

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No.5 wherein he clearly stated that the appellant, i.e., the petitioner herein, was being victimized and that the penalty imposed on the petitioner was arbitrary and baseless.

19. On behalf of the respondent Nos. 1, 4 and 5, the counsel who put in appearance on 28.2.2014 submitted that no counter affidavit was being filed. The counter affidavit on behalf of the respondent Nos. 2 and 3 and rejoinder thereto of the petitioner are on the record. The petition was admitted on 21.5.2014.

20. Vide order dated 13.9.2013 it had been observed to the effect:

“2. Counsel appearing for respondent nos. 2 and 3 states that in the peculiar facts of this case, without prejudice to the rights and contentions of respondent nos. 2 and 3, respondent nos. 2 and 3 possibly may consider if instead of the extreme punishment of removal from service, other stringent punishment can be imposed upon the petitioner, provided there is no lack of driving ability of the petitioner and which cannot be otherwise petitioner would not have been in employment of the respondent nos. 2 and 3 for a period of about 10 years.

3. Let a copy of this order be placed before the appropriate authority of the respondent nos. 2 and 3, who should dispassionately look into all the aspects of doctrine of proportionality in the peculiar facts of this case.”

21. On 18.2.2022 it was submitted on behalf of the respondent Nos. 2 and 3 to the effect:

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“Learned ASG who has appeared on behalf of the third respondent apprises the Court that pursuant to the interim directions issued on this writ petition, the decision taken by the disciplinary authority was duly reviewed by the higher authorities of the respondents and it has ultimately been found that no justification exists for modifying or interfering with the view as taken and expressed by the disciplinary authority and contained in the orders impugned. He prays for time to place those order on the record of this petition. The liberty as prayed for is granted. Let this petition be placed for final disposal on 24.03.2022.”,

and the documents in relation thereto were thus submitted on behalf of the respondent Nos. 2 and 3.

22. The respondent Nos. 2 and 3 have submitted that the remedy of appeal against the penalty imposed in the disciplinary proceedings has already been exhausted by the petitioner and that the writ petition is thus an abuse of the process of law and is misconceived and baseless.

23. Inter alia, the respondent Nos. 2 and 3 submit that the disciplinary inquiry has been conducted fairly without any bias or predilection in accordance with the disciplinary rules and the Constitutional provisions and that there cannot be any reappraisal of the evidence that had been led before the Disciplinary Authority especially as the disciplinary action imposed was not contrary to law.

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24. Inter alia the respondent Nos. 2 and 3 have submitted to the effect:

“(c) During the course of employment, the Petitioner was assigned the Driving and maintenance of Staff Car No. DL 2C AE-0777 (Maruti Dzire) and had been entrusted with the duties of driving and maintenance of the Answering Respondent's staff car, inter-alia including picking and dropping the Chief Vigilance Officer, maintenance of log book and other official duties as assigned to the Petitioner from time to time.

(d) That as per the Answering Respondent's policy, the Petitioner in order to perform the assigned duties was instructed to take the above-mentioned staff car from the allotted space in the parking lot in basement of the August Kranti Bhawan building in the morning and bring the car back to this parking lot daily in the evening after completing the duties and hand over the keys of the said staff car to the security.

(e) That the Answering Respondent was informed by the Security that on 28.06.2011 at 8.00 hrs in the morning, the Petitioner had token the staff car from Answering Respondent's Corporate Office, i.e. August Kranti Bhawan, for picking Chief Vigilance Officer from his residence at Noida. Thereafter, the Petitioner did not bring back the said staff car in the allotted parking place of August Kranti Bhawan in the evening of 28.06.2011 till 12.07.2011. The keys were also not deposited with the security from 28.06.2011 to 12.07.2011. It was also observed by the Respondent No.1 that the Petitioner has also committed other misconducts like not maintain the logbook properly, manipulating the same to

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his advantage and misappropriation of petrol etc.

(f) Pursuant to the above grave act of indiscipline on part of the Petitioner, the Answering Respondent issued a Show Cause Notice vide Memorandum No.233/3/89-HR/IREDA dated 2.8.2011 on misconduct/ grave act of indiscipline on non-compliance of instructions and procedure for maintenance of log book, non-parking of staff car at the parking slot at IREDA's Corporate Office, August Kranti Bhovan, New Delhi and not depositing the keys of staff car during the period 28.6.2011 and till 12.7.2011 (15 days)."

25. The respondent Nos. 2 and 3 further submitted to the effect:

"(j) Thereafter the Disciplinary Authority appointed Mr. S. N. Bhollo, Former Senior Manager (Vigilance), NHPC Ltd. OS the Inquiry Officer to inquire into the charges framed against the Petitioner on 28.09.2011. The Inquiry Officer vide its letter dated 03.10.2011 informed the Petitioner that the preliminary hearing will be conducted on 17.10.2011 and requested the Petitioner to attend the said hearing along with his Defence Assistant, if any.

(k) That because of lack of cooperation on the part of the Petitioner, total eighteen sittings were held to conclude the disciplinary inquiry proceedings on 17.10.2011, 31.10.2011, 11.11.2011, 18.11.2011, 14.12.2011, 04.01.2012, 24.01.2012, 30.01.2012, 31.01.2012, 15.02.2012, 06.03.2012, 02.04.2012, 11.04.2012, 19.04.2012, 30.04.2012, 15.05.2012, 28.05.2012 & 05.06.2012. The

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Petitioner, however participated in the proceedings held on 17.10.2011, 31.10.2011, 11.11.2011, 14.12.2011 & 04.01.2012 only and remained absent in the remaining sittings despite having been informed about the dates and timings of the inquiry. On some occasions despite being in office, the Petitioner chose not to appear. A copy of all orders passed during the said inquiry proceedings are annexed herewith and marked as Annexure R-3 ('Colly').

(l)

(m)

(n)

(o) The Inquiry Officer completed the disciplinary proceedings and submitted its report dated 05.09.2012, wherein all charges leveled against the Petitioner stood proved. A copy of Report dated 05.09.2012 is annexed herewith and marked as Annexure R-7.

(p) Pursuant to the above, the Disciplinary Authority after going through the entire record and the inquiry report dated 05.09.2012 vide its order dated 22.03.2013, imposed the major penalty of removal from service with immediate effect on the Petitioner.

(q) The Petitioner thereafter filed an Appeal against the Disciplinary Authority order dated 22.03.2013 before the Appellate Authority vide his letter dated 18.04.2013.

(r) That the Appellate Authority vide its order dated 16.07.2013 after considering the appeal, inquiry report and all records of the case agreed with the findings of the Disciplinary Authority and rejected the Appeal of the Petitioner."

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26. Inter alia, the respondent Nos. 2 and 3 have submitted that even during the pendency of the disciplinary proceedings the petitioner had been misbehaving and it has been submitted as under:

“(t) It is pertinent to mention here that even during the pendency of the disciplinary proceedings, the Petitioner on 28.06.2012 whilst taking two officers of the Answering Respondent in the said Staff Car asked the officials to get off from the official staff car mid way whilst the said officials were travelling to the Ministry of New and Renewable Energy for official work. A copy of complaint made by the said officials is annexed herewith and marked as Annexure R-8.

(u) It is submitted that on 06.08.2012, the Answering Respondent had issued a circular through email to all employees seeking their feedback on an employee satisfaction survey. However, the Petitioner instead of giving feedback, sent a letter to the Secretary, Ministry of New and Renewable Energy, Government of India alleging that the circular was sent only to those employees who would give their feedback as per the directions of the Manager. Furthermore, the Petitioner also alleged in said letter that he was aware of many employees who had not received the circular and were not able to send their feedback and sought the Ministry's intervention and inquiry into the matter.

(v) Pursuant thereto, vide Memorandum dated 29.08.2012 the Answering Respondent once again whilst taking a lenient view cautioned the Petitioner to follow the proper procedure & guidelines and not to repeat such act of

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indiscipline in future. A copy of Memorandum dated 29.08.2012 is annexed herewith and marked as Annexure R-9.

(w)

(x) In the meanwhile, the Answering Respondent also received a complaint from one of the employee of the Answering Respondent i.e. Mrs. P. Rajalekshmy, Deputy Manager (Admin) alleging that the Petitioner threatened her and shown arrogant behavior. A copy of Complaint dated 12.12.2012 is annexed herewith and marked as Annexure R-12.

(y) That the Answering Respondent had purchased a new 3 wheeler CNG vehicle for official use primarily for movement of dak/files etc. from registered office and corporate office. However, the Answering Respondent received various complaints against the Petitioner, wherein the Petitioner refused to drive the 3 wheeler CNG vehicle and failed to perform his duties. It is pertinent to mention here that the Petitioner was advised by his reporting officer and official concerned to perform official duties but the Petitioner failed to adhere to the same. It is pertinent to mention here that the Answering Respondent vide its letters dated 17/01/2013 and 28/01/2013, informed the Petitioner to adhere to the official duties and perform his official duties accordingly.

(z) The Petitioner vide his letter dated 28.01.2013 replied back, "Driving Auto is not my duty". A copy of Petitioner's letter dated 28.01.2013 is annexed herewith and marked as Annexure R-13.

(aa) Accordingly, vide Memorandum dated 31.01.2013, the Answering Respondent once again directed the Petitioner to adhere to the instructions of his reporting officer and carry

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out assigned duties without any further delay failing which, it will be construed as an act of neglect of work and appropriate action under CDA Rules shall be initiated.

(bb) However, the Petitioner being in the habit of avoiding the official communication on one pretext or the other, failed to obey the verbal instructions of his reporting officer and have been insisting on written order for each and every work assigned was again vide Memorandum dated 11.02.2013 clarified that as Driver-cum-Attendant, driving official vehicles of the Answering Respondent is his prime duty and once again whilst taking lenient view cautioned the Petitioner to follow the proper procedure & guidelines and not to repeat such act of indiscipline in future.

(cc) It is pertinent to mention here that the present Writ Petition came up for hearing on 13.09.2013 and in terms of the solemn order of this Hon'ble Court, without prejudice to its rights and contentions of IREDA, IREDA has to dispassionately consider if instead of the extreme punishment of removal from service, other stringent punishment can be imposed upon Shri Jairaj Solanki, provided there is no lack of driving ability of ShriJairaj Solanki.

(dd) Pursuant thereto, the Appellate Authority of the Answering Respondent in terms of the order dated 13.09.2013 passed by this Hon'ble Court, considered the records of the Petitioner independently and vide its order dated 01.10.2013 agreed with the findings and decision of the Disciplinary Authority and specifically observed that repeated misconducts, unruly behavior and habitual willful insubordinations are not conducive to

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office discipline and the Petitioner's continuance in the office shall be prejudicial to the overall interest of organization."

27. Inter alia, the respondent Nos. 2 and 3 have denied that the petitioner was on leave from 28.6.2011 to 11.7.2011 and have submitted that as per the leave records the sanctioned leaves of the petitioner were from the date 4.7.2011 to 15.7.2011 as submitted in para 5E to the counter affidavit:

"5E: That the contents of Para 5E are wrong, misleading and hence denied as incorrect. It is not true that the petitioner was on leave from (28.06.2011 to 11.07.2011). It is denied that the Petitioner informed the reporting officials telephonically that for 15 days the Petitioner has parked the car in the house of Respondent No.5. It is submitted that the Petitioner did not park the staff car at the allotted parking place and did not deposit the key of the staff car to the Security for 15 days continuously from 28.06.2011 to 11.07.2011. It is pertinent to mention here that the said fact was admitted by the Petitioner in his reply date 13.09.2011 that he had not parked the staff car in the allotted parking space from 29.06.2011 to 10.07.2011. It is pertinent to mention here that as per the leave records of the Answering Respondent had sanctioned leave from 04.07.2011 to 15.07.2011 to the Petitioner. A copy of sanctioned leave application form is annexed herewith and marked as Annexure R-16.

5F. That the contents of para 5F are wrong, misleading and incorrect hence denied. It is categorically and vehemently denied that there

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was any ego clash between Respondent No.2 and Respondent No.5 and there were any corruption charges against respondent No.2. Furthermore, the contention of the Petitioner that Respondent No.5 made the complaint against the Respondent No.2 to the Chief Vigilance Committee is denied and misconceived and the Petitioner is only trying to hide his misconduct by pin pointing figures at his superiors in order to mislead this Hon'ble Court. It is submitted that the Petitioner has failed to place before the Disciplinary Authority any evidence to show that the Petitioner upon the instructions of the Respondent No.5 parked the staff car outside the allotted parking space. On the contrary, the Disciplinary Authority after considering the evidence and all the records have reached to the conclusion that the Petitioner failed to park the staff car at the allotted space and further observed that no permission was taken by the Controlling Authority in the HR Department by the Petitioner for parking the staff car at the Respondent No. 5's residence and therefore, the said charge at Article I and II stood proved against Petitioner.

5G-H. That the contents of para 5G & 5H are wrong, misleading and incorrect hence denied. It is further pertinent to mention here that the Petitioner did not inform or took any permission from the concerned official for parking the said official vehicle at the Respondent No.5 residence. Respondent No.5 is not the reporting officer of the petitioner. In this regard, it is submitted that the Answering Respondent was informed by the Security that on 28.06.2011 at 8.00 hrs in the morning, the

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Petitioner had taken the staff car from Answering Respondent's Corporate Office, i.e. August Kranti Bhawan, for picking Chief Vigilance Officer from his residence at Noida. Thereafter, the Petitioner neither brought back the said staff car in the allotted parking place of August Kranti Bhawan in the evening of 28.06.2011 and till 12.07.2011 nor deposited the key of the said staff car to the security. Accordingly, pursuant to the said grave act of indiscipline on part of the Petitioner, the Answering Respondent issued a Show Cause Notice vide Memorandum No.233/3/89-HR/IREDA dated 2.8.2011 on misconduct/grove act of indiscipline on non-compliance of instructions and procedure for maintenance of log book, nonparking of staff car at the parking slot at IREDA's Corporate Office, August Kranti Bhavan, New Delhi and not depositing the keys of staff car during the period 28.6.2011 and till 12.7.2011 (15 days). Pursuant to the issuance of the Show Cause Notice, the Petitioner vide its letter dated 17.08.2011 replied and denied all charges leveled against him. However, as the reply doted 17.08.2011 submitted by the Petitioner was not found to be satisfactory and accordingly, the AGM (Administration) opined to issued charge-sheet to the Petitioner. Accordingly, based on the recommendation of the then AGM (Administration), the then GM (F & A) HR issued order for issuance of Charge-Sheet being the Disciplinary Authority. Accordingly, vide Memorandum No. 233/3/89-MS/IREDA dated 24.08.2011 charge-sheet was issued to the Petitioner."

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28. Inter alia, the respondent nos. 2 and 3 have submitted that the inquiry officer appointed in the instant case was as per rules and that retired personnel can be appointed as Inquiry Officer.

29. Inter alia, the respondent Nos. 2 and 3 submit that the requirement of an NOC for the Defence Assistant is not a special requirement in the petitioner's case, but it is a requirement in every disciplinary matter, as per CVC guidelines.

30. The respondent Nos. 2 and 3 submitted that adequate opportunities were given to the petitioner to put forth his pleas in the inquiry and it was submitted as under:

"5 O. That the contents of Para 50 are wrong, misleading and hence denied as incorrect. It is submitted that the date of hearing in respect of charge sheet issued to the Petitioner was on 10.01.2012 as per the order dated 04.01.2012, wherein the Petitioner once again did not appear and further no intimation was given to the Inquiry Officer or the Petitioner's Controlling Officer about the non-appearance by the Petitioner. In view of the said fact, the Disciplinary Authority vide its letter dated 11.01.2012 issued show cause notice against the Petitioner as to why disciplinary action should not be taken against the Petitioner. It is further pertinent to mention here that the Answering Respondent vide its letter dated 27.01.2012, once again informed the Petitioner that the next date of proceedings is fixed for 30.01.2012 and advised the Petitioner to bring his Defense Assistant to assist him during the course of inquiry proceedings and for cross-examination of witnesses. Furthermore, vide the said letter the

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Answering Respondent further informed the Petitioner that the issues taken by the Petitioner before the CVO i.e. Respondent No.5 has no relevance to the misconduct of the Petitioner and that the Answering Respondent has already replied to the note of CVO vide its letter dated 18.01.2012.

5P. That the contents of Para 5P are denied save and except which pertains to matter of record. It is submitted that the Inquiry Officer completed the disciplinary proceedings and submitted its report dated 05.09.2012, wherein all charges leveled against the Petitioner stood proved. Pursuant thereto, the Petitioner filed its reply to the inquiry officer report, to which the Answering Respondent vide its letter dated 01.11.2012 gave its rejoinder and reasoning reply, wherein the Answering Respondent informed the Petitioner that you had been given ample opportunities by the Inquiry Officer as well as by the Disciplinary Authority to bring your defence assistant to assist you in the disciplinary inquiry proceedings. It is further pertinent to mention here that the Respondent No.5 has no role in the Disciplinary Proceedings.

5Q. That the contents of Para 5Q are wrong, misleading and hence denied as incorrect. That the contents of Para 5Q pertains to the Article I as per the charge sheet against the Petitioner. It is submitted that the contention of the Petitioner that the Petitioner whilst parking the car at the residence of Respondent No. 5 for 15 days was just following orders of Respondent No.5 is clearly baseless, frivolous and denied. It is submitted that both the Disciplinary Authority and the Appellate Authority after considering the

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evidence, material and record came to the conclusion that the staff car was not parked at the allotted parking place during the period 28.06.2011 to 11.07.2011, whereas on the contrary the Petitioner has written in the log book that the car was parked in the Answering Respondent's parking place in the night of 29.06.2011 and take out in the morning of 30.06.2011 and thus these entries in the log book are fact fully incorrect and wrong and therefore, the charge against the Petitioner at ARTICLE I stood proved. It is further pertinent to mention here that Respondent No.5 is not the reporting officer of the Petitioner and the vehicle is staff general pool vehicle and in any no manner is attached to Respondent No.5.

5R. That the contents of Para 5R are wrong, misleading and hence denied as incorrect. That the contents of Para 5R pertains to the Article II as per the charge sheet against the Petitioner. It is against the Petitioner is false, frivolous and baseless as the Petitioner mentioned that he parked the vehicle at the resident of his duty officer. It is submitted that the charge against the Petitioner was that the Petitioner had not parked the staff car at the allotted parking space but parked the staff car at Respondent No.5's residence without the written orders of the Controlling Authority of the Answering Respondent. It is pertinent to mention here that the Petitioner vide his reply dated 17.08.2011 admitted that the Petitioner parked the car at the Respondent No.5's residence and had intimated to Sh. P. Kannalagan (PW-1) and Sh. S.M. Bhajantri (PW-4). However, whilst recording evidence of PW-1 and PW-4 before the inquiry officer, both the officers denied the said

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contentions of the Petitioners, which clearly shows that the statement alleged by the Petitioner were false. It is submitted that both the Disciplinary Authority and the Appellate Authority after considering the evidence, material and record came to the conclusion that the staff car had been parked at Respondent No.5's residence by the Petitioner without the orders of the Controlling Authority.

5S. That the contents of Para 5S are wrong, misleading and hence denied as incorrect. That the contents of Para 5S pertains to the Article III as per the charge sheet against the Petitioner. It is denied that the Charge No. III framed by the Inquiry Officer against the Petitioner is baseless and without application of judicial mind. It is pertinent to mention here that the Charge III against the Petitioner was that the Petitioner failed to maintain the log book properly and did not record the actual places visited, the time of visit, the actual mileage to these places and also did not obtain the signature of the official who actually used this staff car as provided in the relevant columns of the log book and further the log book was also not maintained on daily basis and it was signed from another officials who had not actually used the staff car. It is pertinent to mention here that the Petitioner stated that entries were being shown to Respondent No. 5 on daily basis and as directed by the Respondent No. 5, the PA to the Respondent No.5 was signing the log book. However, on the contrary Sh. P. Kannalagan (PW-1) during the evidence stated that the main duty of the Petitioner is to ensure proper entries in the log book on daily basis and to take signature of the official who is using the vehicle. Furthermore, PW-1 stated that

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the log book of the staff car is required to be signed by the officer who uses this staff and not by any other officer. It is pertinent to mention here that in the Petitioner case the log book has been signed by Sh. Sanjeev Mangotra, who whilst deposing as PW-3 admitted that entries were made by the Petitioner and that he has signed the log book. It is submitted that both the Disciplinary Authority and the Appellate Authority after considering the evidence, material and record came to the conclusion that the Petitioner neither maintained the log book properly on daily basis nor properly filled the columns of the log book. It is further pertinent to mention here that the contention of the Petitioner regarding the conveyance bills has no relevance and it only shows that the Petitioner wanted to divert the attention and also to misled this Hon'ble Court.

5T. That the contents of Para 5T are wrong, nnisleading and hence denied as incorrect. That the contents of Para 5T pertains to the Article IV as per the charge sheet against the Petitioner. It is submitted vide the said charge, the Petitioner had tampered with the log book of the staff car by putting white fluid on the recorded entries against the dated 28.06.2011 and 29.06.2011 and gave false information about parking of the staff car in the parking outside office. In addition, the log book entry shows that the car was parked at Noida on the night of 30.06.2011, then how on the next morning i.e. 01.07.2011 the car can be taken out of the Answering Respondent's office parking and therefore, the said entries are false. It is submitted that both the Disciplinary Authority and the Appellate Authority after considering the evidence, material and record

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came to the conclusion that the Petitioner had intentionally given false information as the Petitioner is his reply dated 30.09.2011 has simply stated that use of white fluid was a mistake without any intention, however the Petitioner vide the present petition is now changing his plea and putting the blame on Respondent No.5, which clearly shows the malafide conduct of the Petitioner towards the Answering Respondent's organization."

31. Through the rejoinder affidavit to the counter affidavit of the respondent Nos. 2 and 3 the petitioner reiterated the submissions made in the petition but does not refute the contentions of the respondent Nos. 2 and 3 that the respondent No.5 was not the reporting officer of the petitioner.

32. Through the written synopsis submitted on behalf of the respondent nos. 2 and 3, it has been reiterated that the petitioner has been removed from the service after a proper inquiry and after adhering to the impartial inquiry and principles of natural justice and that the charges framed against the petitioner stood proved and are serious and grave in nature and that the petitioner had acted against the interest of the respondent organization and had failed to maintain integrity and devotion and misconducted himself.

33. Inter alia, it has been submitted by the respondent Nos. 2 and 3 that judicial review is not akin to the adjudication of a case on merits as a second Appellate Authority and thus this Court ought not to act as a second Appellate Authority under

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Article 226 of the Constitution in view of the finding of the Inquiry held by the Appellate Authority with it having been submitted that the charges against the petitioner were duly proved during the disciplinary proceedings and there is no evidence.

34. Inter alia, the respondent Nos. 2 and 3 submit that in as much as the petitioner has failed to maintain integrity, devotion and acted in a manner which is prejudicial to the interest of the respondent's organization and that all charges of misconduct had been proved against the petitioner this Court ought not to go into the correctness of the choice made by the administrator open to him and the scope of judicial review is limited to the deficiency in the decision making process and not the decision, with reliance having been placed on behalf of the Respondent Nos. 2 and 3 in relation thereto on the verdict of the Hon'ble Supreme Court in *B.C. Chaturvedi v Union of India & Ors* (1995) 6 SCC 749.

35. It has inter alia been submitted on behalf of the respondent Nos. 2 and 3 that there is no scope for interference in the punishment imposed by the Appellate Authority unless the same shocks the conscience of the Court. The respondent Nos. 2 and 3 further submitted that in terms of the order dated 13.9.2013 during the course of the present proceedings, the Appellate Authority had again considered the records of the petitioner impartially and vide order dated 1.10.2013 agreed with the finding and decision of the Disciplinary Authority and

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specifically observed that repeated misconducts, unruly behaviour and habitual wilful insubordination of the petitioner was not conducive to the office discipline and that the petitioner's continuance to the office would be prejudicial to the overall interest of organization.

36. Through the written submissions submitted on behalf of the petitioner the averments and the contentions raised in the petition were reiterated with it having been submitted by the petitioner that he is a victim of circumstances and was never given a fair chance to defend himself and submits that the order of termination had been passed without application of mind and was liable to be set aside.

37. The copy of the order dated 1.10.2013 of the Disciplinary Authority on the re-application of mind pursuant to the proceedings dated 13.9.2013 of this Court concludes to the effect:

“ Conclusion:

“I, as the Disciplinary Authority have examined and reconsidered the entire enquiry proceeding and previous conduct and service record of Shri Jairaj Solanki. Shri Jairaj Solanki has failed to maintain integrity, devotion and acted in a manner prejudicial to the Company's interest and all other misconducts have been proved, in terms of the service regulations (CDA Rules). There is a complete loss of confidence in him. He has neither habit of nor will carry out truthfully and faithfully the jobs assigned. I find that there is a gross misconduct which by itself merits his removal from service . I further find that Shri

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Solanki is in the habit of indulging in dereliction of duty, disregard for authority, insubordination and bad behavior. In spite of repeated warnings and counseling to him, he has failed to correct and mend his ways, conduct and behavior. He has created a sense of fear in every employee. His conduct, insubordination and bad behavior have vitiated the discipline of the organization. Lenient view taken against him on number of occasion in the past instead of showing any positive outcome has resulted in continued and increased defiance of authority and insubordination. Maintenance of discipline of an organization is very vital and tolerance of continued acts of indiscipline for one employee encourages others to also indulge in such acts. Therefore in the larger interest of the organization and to maintain discipline, I with greatest respect regretfully do not find any reason or justification to reduce the punishment awarded to Shri Jairaj Solanki.

We may submit this to the Hon'ble High Court. CMD being the Appellate Authority in the matter may kindly see for appropriate decision in the matter."

38. On a consideration of the submissions that have been made on behalf of either side and the record and a perusal of the inquiry proceedings it does not appear that there has been any violation of the principles of natural justice in the disciplinary proceedings qua the petitioner during the course of the inquiry.

39. That the petitioner was not on sanctioned leave from the period 28.6.2011 to 11.7.2011 that he seeks to contend is brought forth through the counter affidavit of the respondent nos. 2 and 3 where they have categorically

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stated to the effect that the sanctioned leave of the petitioner was from 4.7.2011 to 15.7.2011 as per Annexure R-16 annexed to the counter affidavit of the respondent Nos. 2 and 3.

40. In these circumstances, where the petitioner does not refute:

- *that the respondent no.5 was not his reporting officer as submitted by the respondent nos. 2 and 3 through their counter affidavit,*
- *coupled with the factum that the keys of the vehicle in question were not deposited with the security from 28.6.2011 to 12.7.2011 and the log book had not been maintained properly by the petitioner,*
- *coupled with the factum that the respondent no.2 and 3 had categorically denied that it is a general practice of its drivers to park the official vehicles at the residence and rather the official staff cars are to be parked at the allotted space in the parking lot in the basement of the August Kranti Bhawan in the morning and are to be brought back to the parking lot in the evening after completing their duties and;*
- *the driver has to hand over the keys of the staff car to the security which the petitioner has not done in the instant case continuously for 15 days i.e., from 28.6.2011 to 12.7.2011 which was admitted by the petitioner vide reply dated 13.9.2011 that he did not park*

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the staff car in the allotted parking space from 29.6.2011 to 10.7.2011;

- *furthermore, as submitted by the respondent nos. 2 and 3 that the Disciplinary Authority had taken into account the factum that no permission was taken by the petitioner from the Controlling Authority in the HR Department for parking the staff car at the residence of the respondent No.5 and;*
- *that the respondent No.5 was not the Reporting Officer of the petitioner and;*
- *as informed by the security on 28.6.2011 at 8 am. the petitioner had taken the staff car from the answering respondents at the August Kranti Bhawan for picking up the CVO from his residence in Noida and did not bring the car back at the allotted parking space at the August Kranti Bhawan till 12.7.2011;*
- *nor did he deposit the keys of the said car to the security; as brought forth undoubtedly, are acts of grave indiscipline attributed to and committed by the petitioner as rightly contended by the respondent Nos. 2 and 3.*

41. In these circumstances as all charges No.1 to 6 in the inquiry proceedings in terms of the inquiry report of the inquiry conducted as indicated vide order dated 22.3.2013 of the Disciplinary Authority have been established and the appeal against thereto has been dismissed with the Disciplinary

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Authority having re-applied its mind pursuant to order dated 13.9.2013 of this Court and brought forth further acts of indiscipline against the petitioner (which even though not relevant qua the period of the inquiry) the Court does not consider it appropriate to interfere in the findings of the Disciplinary Authority and imposition of the major penalty of dismissal against the petitioner. In view thereof the petition and the accompanying applications are thus dismissed.

ANU MALHOTRA, J.

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