



W.P.No.29992 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.06.2023

Delivered on: 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.29992 of 2017

&

W.M.P.Nos.32516 of 2017 and 19636 of 2022

M.Soundarrajan

... Petitioner

Vs.

1.Oil and Natural Gas Corporations Ltd
Rep. by Chairman cum Managing Director,
Pandit Deendayal Phadhayaya Urha Bhavan
5, Nelson Mandela Marg, Vasanth Kunj
New Delhi 110001

2.The Director (HR)
Oil and Natural Gas Corporations Ltd
Rep. by Chairman cum Managing Director,
Pandit Deendayal Phadhayaya Urha Bhavan
5, Nelson Mandela Marg, Vasanth Kunj
New Delhi 110001

3.Union of India
Rep by Secretary
Ministry of Petroleum & Natural Gas

1/23



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... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent made in No.6/1/Ms/2005 D&A dated 30.06.2008 which is confirmed in an appeal by the first respondent made in No.6/1/MS/2005-D&A/Appeal dated 04.09.2017 and quash both the orders and consequently direct the respondents to reinstate the petitioner in service on par with my colleagues as in the original seniority list with all monetary and service benefits.

For Petitioner : Mr.V.Prakash, Senior Counsel
for
Mrs.Selvi George

For Respondents : Mr. M.Vijayan
for
M/s. King and Partridge for R1 and 2

ORDER

This Writ Petition has been filed by the petitioner seeking issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in No.6/1/Ms/2005 D&A dated 30.06.2008, which has been subsequently confirmed in appeal on the file of the 1st respondent in No.6/1/MS/2005-D&A/Appeal dated 04.09.2017 and quash both the said



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orders and to consequently direct the respondents to reinstate the petitioner in service on par with colleagues as in the original seniority list, together with all monetary and service benefits.

2. The facts as stated in the affidavit filed in support of the Writ Petition are that the petitioner joined the respondent Corporation on 06.02.1985. He has completed B.Tech and M.Tech from IIT, Delhi. Initially, the petitioner joined the respondent Corporation at Kolkatta and subsequently he was transferred to Chennai on April 1998 where he was promoted as Manager (IE) in the year 1999. In 1999, the petitioner was transferred to Dehradun on the recommendation of the then G.M (P&A) to head the SAP project. Despite the petitioner's name not being there for consideration for transfer at that point of time, the petitioner convinced the G.M (P&A) that he could better serve in the region where his assistance would be needed more rather than in Dehradun. He also met the Director (HR) and sought for cancelling the decision to transfer him.



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3. According to the petitioner instead of cancellation of the transfer, a decision was taken to defer it, for the time being and the petitioner was posted to Baroda in the following year. Further contention of the Writ Petitioner is that on 18.06.2001, though he was very much available in office, his room was broken open and sealed at about 06.30 p.m and he was denied entry into the office thereafter. The petitioner was served with a chargesheet in 2005 after a lapse of four years enclosing a copy of the relieving order dated 04.05.2001. It is the specific case of the petitioner that the said relieving order was not served earlier on the Writ Petitioner. According to the Writ Petitioner their action is vindictive and predetermined. The charges levelled against the petitioner was that:

(i) he was unauthorisedly absent from duty at Vadodra from 16.05.2001 onwards;

(ii) he did not obey the lawful orders of the superiors; he attempted to bring political influence in respect of his posting;

(iii) he attempted to cause damage to the work process at Chennai office by keeping his table drawers and cupboards locked and also his



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computer locked with password after being relieved from Chennai;

(v) he made a false statement vide letter dated 28.11.2001 that he was attending office at Chennai after being relieved from Chennai;

(vi) he unauthorisedly occupying office accommodation at Chennai with effect from 16.07.2001 despite being relieved.

4. The petitioner gave his explanation to the said charges. The respondent Corporation appointed an Enquiry Officer for conducting domestic enquiry. The enquiry officer, according to the petitioner was biased and did not consider the genuine request of the petitioner. Witnesses were examined at Kolkatta or outside of Chennai and only few witnesses alone were examined at Chennai. However, admittedly the enquiry officer held that charge four was not proved sufficiently and held charges 1,2,3,5 and 6 as proved. The Disciplinary Authority in and by order dated 30.06.2008 imposed major penalty of “removal from service”. According to the Writ Petitioner, the Disciplinary Authority should have been the Chairman or Managing Director and the Appellate Authority was to be the Board of



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Directors. However, the punishment was imposed by an incompetent authority and on this ground also the impugned order was sought to be set aside.

5. The Petitioner filed Writ Petition No.5950 of 2009 against the order passed by the Chairman cum Managing Director in appeal on 15.01.2009. The said Writ Petition was disposed of with a direction to the petitioner to give a fresh representation to the Appellate Authority who in turn was required to pass orders on merits and in accordance with law. The petitioner gave a representation on 15.09.2016 and the appeal was filed by the petitioner on which was rejected on 04.09.2017, which is impugned in the present Writ Petition. According to the Writ Petitioner, he received the order dated 05.07.2017 from the Chief Manager (HR) D&A informing the petitioner that the Appellate Authority had made an order on 13.06.2017. The said order dated 13.06.2017 was signed by ED-Chief Employee Relations. However, the petitioner received a further communication from the very same officer stating that the order of the Appellate Authority dated 13.06.2017 was



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withdrawn and only thereafter the impugned order came to be passed and the same was verbatim the one passed by the lower level officer. Thus, according to the Writ Petitioner, the impugned order has been passed mechanically with no independent appreciation of materials. These apart, the petitioner has raised as many as 34 grounds in the Writ Petition.

6. The respondent Corporation has filed a counter admitting to the appointment of the petitioner and subsequent transfer to Chennai. However, according to the respondent only at the repeated requests of the petitioner he was transferred from Kokatta to Chennai where he worked for a period of 13 long years. As per the policy of the Corporation, the employees who have been posted in particular location for 10 years and more, irrespective of field postings, he will be transferred to other stations. Petitioner being an executive of the respondent Corporation was fully aware of the policy of the company regarding transfer and despite the policy of the Corporation, in the case of the petitioner, the Corporation has been very liberal in acceding to his request to permit him to continue at Chennai citing personal reasons for a



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period of 13 years. The petitioner was never interested to move on transfer from Chennai and though he was promoted as Manager (IE) and posted at WRBC, Baroda he never took charge. Infact he gave an undertaking that he shall move to the new place on expiry of deferred period of transfer which was also acceded to. The transfer was deferred upto 15.05.2000 and the petitioner was to report at Baroda and assume charge. The order of transfer was only in organisational interest and in tune in the policy of Corporation. However, the petitioner did not move on transfer to Baroda, but instead sent a leave application stating that he required leave till 15.11.2001 citing his health reasons. The conduct of the petitioner clearly demonstrates that he was trying only to stay put in Chennai without joining the office at Baroda. Despite the petitioner being relieved, he continued to occupy the official quarters and also keep his personal belongings in his office. The petitioner also tried influencing the Corporation through an IAS officer seeking cancellation of his transfer from Chennai. Though notices including show cause notices were sent to the petitioner, he successfully evaded receipt of the same. The petitioner was given full opportunity by way of enquiry to put



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forth all his contentions and an impartial agency outside the ambit of respondent Corporation was appointed as the enquiry authority. There is no irregularity or illegality in the action taken by the respondent Corporation. In so far as the competent authority to take up and decide the disciplinary proceedings, the respondent states that the reliance placed on by the petitioner was the earlier position which came to be amended subsequently. The appropriate and competent persons alone have disposed of the petitioner's disciplinary proceedings as well as appeal and on this ground also no interference is warranted by way of a Writ Petition. With regard to the various grounds, the respondents have addressed each and every ground in detail and submitted that there is no violation of principles of natural justice during the enquiry process and the petitioner having deserted his duties was liable to be slapped with major penalty of removal from service. In so far as the breaking open of the office room of the petitioner, the respondent submits that since it was only the petitioner's action in not sharing the password of the computer or effect proper handing over of furniture and fixtures, the respondents were compelled to break open, which too was permissible and a



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known procedure. In so far as leave sought for by the petitioner, the respondents disputed the same and submit that the leave application did not even contain the contact address or medical certificate. In the Baroda office also they gave ample opportunity to the petitioner to resume duties through notices including show cause notices, despite which the petitioner has not chosen to join duty at Baroda and instead continued to stay at Chennai. For all these reasons, respondent sought for dismissal of the Writ Petition.

7. Heard Mr.V.Prakash, learned Senior Counsel for Mrs.Selvi George and Mr.M.Vijayan, for Ms/. King and Partridge, learned counsel appearing for the respondents 1 and 2.

8. This Court also perused the typedset of papers filed by the petitioner as well as the respondent Corporation and also the additional typedset of papers filed by the respondent Corporation. The learned Senior Counsel for the petitioner, first and foremost contended that the impugned order is liable to be set aside on the limited ground that the authorities who passed the



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orders in the original disciplinary proceedings as well as the appeal were incompetent. However, the learned counsel for the respondents 1 and 2 invited the attention of this Court to the Conduct, Discipline and Appeal Rules, 1994 (July 2003) of the respondent Corporation. According to the counsel for the respondents the Disciplinary Authority and Appellate body, no doubt, were originally as stated by the learned Senior Counsel for the petitioner. However, the schedule underwent a change and was revised in terms of which the disciplinary authority was the Director (HR) and the appellate authority was the Chairman cum Managing Director. Therefore, there is no irregularity in the procedure and only the competent named authorities decided the disciplinary proceedings as well as the appellate proceedings. In support of the same, the counsel for the respondent has also filed the Conduct Discipline and Appeal Rules, 1994 (July 2003) as amended upto July 2003. Thus, the present impugned proceedings are clearly after the amendments effected to the Conduct Discipline and Appeal Rules, 1994 (July 2003). Therefore, the contention of learned Senior Counsel cannot be sustained in this regard.



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9. With regard to the attack laid by the learned Senior Counsel in the irregularities pertaining to the procedure as to the manner in which the enquiry was held, depriving the petitioner of an effective opportunity to represent and put forth his case, this Court finds force in the submissions of the learned counsel for the respondents. No doubt, initially the petitioner was called upon for a hearing on 20.12.2006 at Chennai. The petitioner vide his letter dated 11.12.2006 sought for the assistance of one G.Nallappan who was Manager (IE) at Nazira, Assam. However, on 20.12.2006, the petitioner appeared for the hearing at Chennai and six witnesses out of nine prosecution witnesses were examined. Regarding the other three prosecution witnesses, since they were stationed at Assam Region, the enquiry officer directed that the next hearing on 21.12.2006 at the ONGC office at Kolkatta, which was agreed to by both the presenting officer as well as the Writ Petitioner. On 21.12.2006 hearing was held at Chennai alone and the petitioner sought for services of Mr.G.Nallapan, Manager (I.E) ONGC posted at Nazira, Assam to assist him in his defence. The said request was agreed and the dates were 06.02.2007 and 07.02.2007 to be held at Kolkatta. On 06.02.2007, the



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petitioner was absent and even the person appointed by him was also absent.

The prosecution witnesses were present for hearing. Two of the three prosecution witnesses were present. However, the enquiry officer, in order to give an opportunity to the petitioner posted the matter to 08.03.2007 and the venue fixed was Chennai. On 08.03.2007, despite the venue being Chennai the petitioner was absent. The three prosecution witnesses were present and considering the fact that neither the petitioner nor his defence assistant, Mr.G.Nallappan were present, the enquiry officer proceeded to examine the witnesses. This exercise was done only after several attempts were made to contact the Writ Petitioner at his known address at Anna Nagar, Chennai.

10. From the above, it is seen that it is not as if the respondent Corporation has acted irregularly or in violation of principles of natural justice. Sufficient opportunities were given to the Writ Petitioner to make himself available and get along with the enquiry. However, it is the petitioner who has chosen to stay away from the disciplinary proceedings. Even the person appointed by him to help in the defence did not turn up to get along



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with the disciplinary proceedings. The enquiry officer has acted in a fair manner and has chosen to examine the prosecution witnesses only after giving more than sufficient opportunities to the petitioner to take part in the proceedings. The impugned order passed by the original disciplinary authority viz., the ED Chief Employee Relations dated 13.06.2017 is a well reasoned order and even the order in Appeal dated 04.09.2017 passed by the Chairman cum Managing Director is seen to be one which has been passed after considering all material particulars available on record and an independent assessment of the same. The Appellate Authority has also found that the disciplinary authority has acted fairly, following the principles of natural justice and the same did not warrant any interference. The Appellate Authority also held that no new relevant fact related to the merits of the case were canvassed in the appeal by the Writ Petitioner.

11. The learned Senior Counsel for the petitioner relied on the following judgments:

1. ***B.Loganathan Vs. The Union of India, 2000 (3) CTC 351***, for the



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proposition that unexplained and inordinate delay would constitute denial of reasonable opportunity to the petitioner to defend himself and that it would amount to violative of principles of natural justice.

2. ***D.R.Devarajan Vs. The State, MANU/TN/0014/1984***, for the proposition that delay would run the risk of chances of fading out memory and lack of credibility to testimony of witnesses depriving reasonable opportunity to the petitioner.

3. ***P.V.Mahadevan Vs. M.D.Tamilnadu Housing Board, 2005 (4) CTC 403***, for the proposition that the enquiry should not be delayed or protracted as it would not only be against the interest of the concerned employee but also in public interest.

4. ***State of MadhyaPradesh Vs. Bani Singh, AIR 1990 SC 1308***, also for the similar proposition that delay in initiating disciplinary proceedings and not satisfactorily explaining the same would be unfair to the employee.

5. ***Chaman Lal Goyal Vs. State of Punjab, 1995 2 SCC 570***, for the proposition that where there is a delay in charges being served and disciplinary enquiry was initiated after a lapse of 7 years, the Hon'ble



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Supreme Court held that the Court wherever delay was put forward as a ground for quashing charges, the Court has to weigh all factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances.

6. *G.Adavan Vs Government of Tamil Nadu, rep by its Secretary, Rural Development and Panchayat Raj Department, Chennai and another, 2010 2 MLJ 1007*, for the proposition that protracting disciplinary enquiry should be avoided not only in the interest of the Government employee but in the public interest as well, especially since it would inspire confidence in the minds of the Government employees.

7. *State of Andhra Pradesh Vs. N.Radhakishan, 1998 4 SCC 154*, again for the proposition that delay in conclusion of departmental enquiry each case has to be examined on the facts and circumstances of that particular case and Court has to consider all relevant factors and balance and weigh them to determine as to whether in the interest of clean honest administration the disciplinary proceedings should be allowed to terminate after abnormal delay especially when there is no explanation for such delay.



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8. ***C.P.Harish Vs. The Central Warehousing Corporation and Another, 2000 (IV) CTC 517***, for the proposition that when a charge memo was issued after a lapse of several years and there was a long and unexplained delay in initiation of department proceedings, the charge memo itself was vitiated and liable to be quashed.

9. ***K.Kumaran Vs. State of Tamilnadu & Ors, 2007(3) CTC 763***, for the proposition that delay in disciplinary proceedings defeat justice as it causes prejudice to the delinquent officer. However, this Court also held that there are two exceptions to the said rule viz., (1) Where the delinquent officer himself was responsible for the delay and

(2) delay in conducting the disciplinary proceeding was properly explained.

10. ***B.C.Chaturvedi Vs. Union of India, 1995 SCC (6) 749***, for the proposition that any delay in initiating departmental enquiry was violative of Art. 14 and 21 of the Constitution of India.

12. Per contra, learned counsel for the respondent relied on the



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judgment of the Hon'ble Supreme Court reported in *Aligarh Muslim University and Others Vs. Mansoor Ali Khan, 2000 7 SCC 529*, for the proposition that mere violation of principles of natural justice would not be sufficient to warrant interference by a Court of Law and additionally prejudice should also be proved. The Hon'ble Supreme Court in that case also held that the High Court had rightly denied relief under Article 226 when the delinquent officer in that case was given a warning despite which he went ahead and accepted a new contract in Libya and there is no unreasonable action or procedure at the end of the employer.

13. He also relied on the judgment of the Hon'ble Supreme Court in *Regional Manager, UCO Bank and another Vs. Krishna Kumar Bhardwaj, (2022) 5 SCC 695*, for the proposition that when the disciplinary authority and the appellate authority have given cogent reasons and findings, the High Court ought to look into the same and appreciate the said findings. When the orders impugned are evidencing appreciation of records giving cogent reasons and the appellate authority also concurred with the findings of the



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enquiry officer and the disciplinary authority, the High Court by setting aside the same exceeded its jurisdiction while interfering with the disciplinary proceedings. The Hon'ble Supreme Court set aside the findings recorded by the High Court.

14. This Court has already discussed in detail the manner in which the enquiry has been held. The petitioner has to blame himself for not choosing to appear for enquiry . His allegations that witnesses were examined out of Chennai viz., Kolkatta and other places are also found to be incorrect and the same are borne out of records. The evidence of all the prosecution witnesses was recorded only at Chennai. Despite the petitioner seeking the enquiry officer to permit assistance which was also accorded to, neither the petitioner nor his designated defence assistant appeared to participate in the disciplinary proceedings. Despite the absence of the petitioner, the enquiry officer has proceeded to consider all materials available on record before him, including the evidence of the prosecution witnesses before coming to a conclusion. The original disciplinary authority has also appreciated the findings of the enquiry



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officer in a objective manner and assessed the same independently. Similarly, the appellate officer viz., the Chairman cum Managing Director has also assigned cogent reasons for confirming the penalty imposed on the petitioner. The scope of review of such concurrent findings rendered by disciplinary authorities under Writ jurisdiction is now well settled by a catena of judgments of Hon'ble Supreme Court as well as this Court. This is one case where absolutely no interference is warranted, that too by way of issuance of a Writ invoking Art.226 of the Constitution of India. Transfer is an incidence of service. The petitioner, though fully aware of the policy of respondent Corporation has through out his service managed to be at the place of his choice and even succeeded in his requests being accepted by the respondent Corporation. Finally, when was posted to Vadodra he has not joined duty at Vadodra, despite notices and warnings issued by the respondent. It is also not out of place to mention that the order of transfer taking deferred effect was also accepted. An undertaking was also given by the petitioner in this regard. Despite all this the petitioner voluntary and deliberately did not move out of Chennai and did not cooperate with the respondent Corporation for handing



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over his official assets including computer data etc., Thus it is not a case where the High Court would come to rescue of such an employee. There is absolutely no ground for interference with the concurrent findings of the disciplinary authorities and thus the Writ Petition deserves to fail.

In fine, Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2023.

Internet: Yes
Index: Yes/No
Speaking order
Neutral Citation: Yes/No
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1.The Chairman cum Managing Director,
Oil and Natural Gas Corporations Ltd
Pandit Deendayal Phadhayaya Urha Bhavan
5, Nelson Mandela Marg, Vasanth Kunj
New Delhi 110001

2.The Director (HR)
Oil and Natural Gas Corporations Ltd
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3.The Secretary, Union of India
Ministry of Petroleum & Natural Gas
Shastri Bhavan



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P.B.BALAJI, J.,
kpr

Pre-delivery order in
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