

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2607 of 2019

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Smt. Veena Kumari W/o- Sri Shashi Bhushan R/o- Kunti Villa Appartment,
Ambedkar Path, Bailey Road, P.S.- Rupaspur, Distt-Patna

... .. Petitioner/s

Versus

1. Indian Oil Corporation Limited through its Chairman, 3079/3 Sadiq Nagar, J.B. Tito Marg, New Delhi.
2. The Board of Director Through Establishment Committee, Indian Oil Corporation Limited, 3079/3 Sadiq Nagar, J.B. Tito Marg, New Delhi
3. Chairman cum Competent Disciplinary Authority, 3079/3 Sadiq Nagar, J.B. Tito marg, New Delhi
4. The Director(HR), Indian Oil corporation Limited, 3079/3 Sadiq Nagar, J.B. Tito Marg, New Delhi
5. The Director(Marketing), Indian Oil Corporation Limited, G9 Ali Yavar Jung Marg, Bandra East Mumbai
6. The Executive Directo(HR), Indian Oil Corporation Limited, G9 Ali Yavar Jung Marg, Bandra East, Mumbai
7. The Executive Director, Bihar State Office, 5th Floor, Lok Nayak Jaiprakash Bhavan, Dak Bunglow Chowk, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate Mr. Amaresh Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Ankit Katriyar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 15-04-2024

Heard learned counsel for the petitioner and
learned Senior Counsel for the Indian Oil Corporation.

2. The present writ petition has been filed for
the following reliefs:-

(i) For quashing/setting aside the order dated



30.01.2017 (Annexure- P/22) communicated through the Inter Office Memo (hereinafter referred to as IOM) dated 31.01.2017 (Annexure- P / 19) whereby the punishment of penalty of rupees 50,000 has been imposed in the Disciplinary proceeding.

(ii) For quashing the appellate order dated 27.06.2017 (Annexure-P/23) communicated vide IOM dated 27.07.2017 (Annexure-P / 20).

(iii) For quashing the order passed in review dated 21.09.2017 (Annexure-P/21) whereby it has been informed to the petitioner that the order against which appeal has already been preferred cannot be subject to review.

(iv) For a direction commanding the respondent to return back the penalty amount recovered from the petitioner as well as to grant all consequential benefit arising out of setting aside the impugned order.

3. Learned counsel for the petitioner submits that the petitioner was working as Deputy Manager (Employee Relations) in the eastern regional office of Indian Oil Corporation Limited (IOCL), Kolkata, in the year 2009 having responsibility to deal with the recruitment, promotion, working condition of the workmen in the eastern region of



Indian Oil Corporation. Counsel submits that letter dated 16.06.2009 was communicated to Human Resources (HR) Heads of all divisions by the Management to handover 10 gms of 24 carat of Golden Jubilee Medallion (GJM) to the surviving retired employees on 30.06.2009. In this regard, communication was made to the retired employees to collect the GJM on 24.10.2009. Accordingly, GJMs were distributed to the retired employees on the scheduled date. The petitioner was one of the members of three member team at counter No.2 with other two persons namely, Mr. Abhijit Bag and Mr. Sandeep Boral. Counsel for the petitioner submits that in the year 2013 after lapse of about four years period from the date of distribution of GJM, a charge sheet dated 26.11.2013 has been served upon the petitioner when she was working as Manager (HR) Bihar State Office with the following three charges:-

Article 1:

Ms. Veena Kumari while working as Dy. Manager (ER) was though the only officer in the team which manned counter no.2 for distribution of Golden Jubilee Medallions to retired employee on 24.10.2009,



she could not produce any statement with regard to the no. of Gold Medallions returned to the vault after completion of distribution from the said counter, Such lapses on the part of Ms. Kumari gave the opportunity for misappropriation of 24 carat golden jubilee medallions weighing 250gm worth Rs. 456000/- (based on bullion market value as on 10.08.2010 @ Rs. 18240/- per 10 gm) as on 20.05.2010.

Article 2:

Ms. Veena Kumari was though the only officer in the team which distributed Golden Jubilee Gold medallions to retired employees from counter no.2 on 24.10.2009 she did not supervise the activities of the other two employees namely, S/Shri Abhijit Bag, Emp. No. 32503, the then Accounts Officer II and Sandip Boral, Emp. No 21920, the then Accounts Officer II. Such lapses contributed towards misappropriation of golden jubilee gold medallions.



Article 3:

The lapses on the part of Ms. Veena Kumari as mentioned above under Article 1 to 2 contributed /facilitated towards misappropriation of golden jubilee gold medallions weighing 250 gm worth Rs. 456000/- (based on bullion market value as on 10.08.2010 @ 18240/- per 10 gm) at Eastern Regional office as on 20.05.201. Thus, the lapses on the part of Ms. Veena Kumari, which contributed towards the above-said pecuniary loss, made her liable for recovery of whole or part of the loss suffered by the Corporation.

4. It has been mentioned that the petitioner has committed the act of misconduct as per Clauses 7(5) and 7(9) of the Conduct Discipline and Appeal Rules, 1980 of the Indian Oil Corporation. Counsel submits that the petitioner has submitted her reply and categorically taken her defence that no GJMs were collected by the petitioner. As such, the question of returning the same after distribution does not arise. It has also been mentioned by her that the custodian of GJMs were Mr. Abhijit Bag who was the part of team at counter No.2. As



such, no GJMs for counter No.2 was collected by petitioner and as such the petitioner refuted charges. Counsel submits that the Chairman-cum-Disciplinary Authority has ordered to conduct the departmental enquiry as per Rule 31 of the Conduct, Discipline and Appeal Rules, 1980 of the Indian Oil Corporation. In the enquiry report, it was held that the petitioner is responsible for loss of medallions of different dominions.

5. On the basis of the said enquiry report dated 24.12.2015, the enquiry officer has found charge mentioned in Article-I has been partially proved and charge mentioned in Articles II and III are not proved. The petitioner has submitted her representation against the finding of enquiry officer on 23.01.2017 but punishment order has been passed vide order dated 30.01.2017, whereby punishment of penalty of 50,000/- was imposed in the disciplinary proceeding. The petitioner has challenged the said order in appeal but appellate order has come on 27.06.2017 communicated on 27.07.2017 by which his appeal has been rejected. Subsequently, on review final order has come on 21.09.2017 that order against appeal has already been preferred cannot be subject to review. Thereafter, the petitioner has preferred the present writ petition. Counsel



for the petitioner has taken specific stand in his favour and submits that prior to initiation of charge memo a two men committee was formed and in enquiry it was found as follows:-

“I. Gold Medallions for Long Service Award and Superannuation Award are issued to employees by Shri Abhijit Bag and record keeping of the same in the issue register is also being done by Shri Bag, as stated by him.

II. Some Issue registers are available with Shri Abhijit Bag as well as with Shri P.K. Ray.

III. Correspondence files are available with Shri P.K. Ray.

IV. Receiving of Gold Medallions is being done by Shri P.K. Ray and its safe keeping is done by Shri Abhijit Bag, as stated by Shri P. K. Ray.

V. Gold Medallions for Golden Jubilee Celebration were received by Shri P.K. Ray and were kept in the Godrej Safe. Issue documents for existing employees are available with Shri P.K. Ray and for retired employees with Shri Pallab Ghosh, AM(ER).”

6. In the said report, the mode of handling of keys were also discussed under the heading ‘Handling of Keys’. Subsequently, the general observation has been made



by the committee which reads as follows:

“I. No Gold Medallion stock Register has been maintained from the beginning which can show Opening Stock, Receipts & issued and balance drawn thereafter.

II. No reconciled statement of Gold Medallions are available for the past 7 years.

III. Only issue Registers of Gold Medallions for the period are available.

IV. Godrej Safe has been kept in a room where Xerox machine is also available. This Xerox machine is used by all the workmen/officers/contractors' workmen etc.

V. There is no statement/register reflecting the name of Employees to whom Gold Medallions for Long Service Award are meant for as per closing stock taken on 08/04/2009 jointly by Shri Ujjal Prasad Chattopadhyay, Shri P.K. Ray and Shri Abhijit Bag.

VI. Shri Abhijit Bag reports to both Shri Monodip Bhattacharya and Shri P.K. Ray.”



7. Learned counsel further submits that the finding of the enquiry officer is also perverse due to the reason that on the one hand enquiry report has observed that from the deposition of witnesses it cannot be concluded that for an important activity of distribution of GJMs on 24.10.2010 no advance booking was given to the personnel on all the five counters. He further observed that one set of key is with Mr. Abhijit Bag right from the date of his joining in the current assessment ER section and with these keys he could open the vault independently. This clearly establishes directly/indirectly that till May, 2010 Mr. Abhijit Bag, even though being a staff cadre was entrusted independently the operation of vault and handling of GJMs. Mr. Abhijit Bag was one of the personnel on counter No.2 on 22.05.2009. The counsel for the petitioner has taken the plea that petitioner was not In-charge of counter No.2 no specific direction was received and since Mr. Abhijit Bag despite being in a staff cadre was entrusted independently with the operation of vault and handling of GJMs since prior to 24.10.2009. Therefore, there was no occasion for the petitioner to scrutinize Mr. Abhijit Bag being the senior most employee at Counter No.2. Counsel submits that the finding of enquiry officer is based on



surmise and conjecture. In support of his argument, counsel further submits that there is gross violation of guidelines made in **Roop Singh Negi Vs. Punjab National Bank and Others** reported in **(2009) 2 SCC 570**.

8. Counsel for the petitioner submits that findings of enquiry officer with regard to Article-I is partially proved, Article-II and III are not proved. But the said findings partially proved is completely based on his own imagination as well as surmises and conjectures and not sustainable in the eye of law.

9. Counsel for the petitioner relied on another judgment **Ravi Yeshwant Bhoir Vs. District Collector** reported in **(2012) 4 SCC 407**, which states that misconduct means misconduct arising from ill-motive, act of negligence, error of judgments or innocent mistake do not constitute such misconduct.

10. Counsel relied on another judgment that every negligence is not misconduct on the basis of the judgment passed by Apex Court in the case of **Abdul Gafoor Vs. UPSRT Corporation and Another** reported in **2005 SCC Online All 1823**.

11. He concludes his argument with the



judgment passed in **Union of India and Others Vs. J. Ahmed** reported in **AIR 1979 SC 1022**, according to which that there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributed to negligence would be as such to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

12. Mr. Chitranjan Sinha, learned Senior Counsel with Mr. Ankit Katriyar, Advocate, appearing on behalf of the Indian Oil Corporation, on the other hand, submits that the present writ petition is fit to be rejected and the order passed by the Disciplinary authority as well as appellate authority are fit to be sustained in the eye of law, as the petitioner the then was working as Deputy Manager (Employee Relations) in the eastern regional office and was named as one of the officers to handle distribution of GJMs for counter No.2 along with two other known officers. Counsel further submits that the specific charge memo has been served in which act of misconduct committed was proposed as mentioned in Rules 7(5) and 7(9) of the Conduct, Discipline



and Appeal Rules, 1980. He submits that the finding of enquiry officer is very categorical. Article-I partially proved, Article-II and Article-III not proved. Due opportunity was granted to the petitioner and principles of natural justice have been followed. Counsel for the respondent-Indian Oil Corporation has specifically mentioned that there were five counters for distribution of GJMs. For all counters signature of person received GJM and signature of person who have returned the medallions are there. But for counter No.2 no such handing over and returning the medallions have been prepared. Counsel further submits that the plea which has been taken by the petitioner that she was taken role of merely checking identity of ex-employees and getting their signature creates doubt. Counsel further submits that petitioner was given ample opportunities to defend herself. Counsel further submits that under judicial review this Hon'ble Court being the writ court ought not to interfere with the findings just because another view is possible and counsel lastly submits on factual matrix that the punishment is not disproportionate. It is a minor punishment imposed to make payment of Rs.50,000/-. In support of his argument, counsel for the IOCL relied on the judgment on the case of **B.C. Chaturvedi Vs. Union of India**



(UOI) reported in (1995) 6 SCC 749 and submits that the disciplinary authority is the sole judge of facts. Another judgment on which the counsel for the IOCL has relied the case of **Dev Singh Vs. Punjab Tourism Dev Corporation** reported in (2003) 8 SCC 9, in which it has been held that the courts interference warranted only if the punishment shocks judicial conscious. Here in the present case only minor punishment has been imposed and, therefore, in such a situation no interference is required.

13. In the light of the submissions made by the parties and upon going through the documents, it transpires to this Court that the punishment of petitioner is based on the charge of misconduct as mentioned in Rule 7(9) of the Conduct, Discipline and Appeal Rules, 1980:- Neglect of work or negligence in performance of duty including malingering or slowing down of works. In the entire case, prior to entering into the finding of the enquiry officer the judicial conscious of this Court concentrate on the finding of two men committee prior to framing of the charge. This two men committee's report has been prepared without any bias and from the committee's report, which has been prepared by the two senior officers of the corporation in which discussion has been made



about the existing system going on in the corporation. According to which, Mr. Abhijit Bag independently handle the Godrej Safe vault and whenever any golden Medallions is required Mr. Abhijit Bag opens the Godrej Safe with his set of keys and make the gold medallion available and this Abhijit Bag was member of the three men committee for counter No.2. This Court is of the view that this aspect is very fatal in the present situation that a person who may be subordinate to the present petitioner, but was handing the Godrej Safe independently since much prior to the distribution then in that case any prudent man including the petitioner may not create any doubt on him and, therefore, the finding of the enquiry officer that Charge No.I is partially proved is absolutely perverse and it is a step which is completely unjust in view of this Court.

14. So far as other points of the counsel for the petitioner that the ratio laid down in the case of **Roop Singh Negi Case (supra)** has not been followed in this regard paragraph 14 is relevant which reads as follows:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges



levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

15. On this point also, this Court is of the view that without any material found against the petitioner, enquiry officer has reached on the conclusion that charge has partially proved. Basically, his finding is based on assumption which is not permissible in the departmental proceeding.

16. So far as the points taken by the counsel for the Indian Oil Corporation that due procedure has been followed and the punishment imposed is minor penalty of fine of Rs.50,000/- is concerned, this Court upon going through the



rejoinder to the counter affidavit became aware that the punishment order may be minor, but its effect on the career of the petitioner became fatal and for her no fault, she is suffering from irreparable loss in the service as the said punishment order seriously effected the career prospect of the petitioner as well as the stigma by virtue of this minor punishment resulted into loss of two back to back promotion.

17. Therefore, this Court is of the firm view that ratio of the case of **Dev Singh Vs. Punjab Tourism Dev Corporation (supra)** favours the petitioner. As such, punishment which are effecting her two back to back promotion for her no fault shocks the judicial conscious. This Court in the light of the then existing system on the basis of the two men committee report reached on the conclusion that the petitioner is neither negligent in her work nor negligent in performance of her duty. This Court is of the firm view on the basis of the discussion made above that neither there is any ingredient of action of the petitioner in a manner prejudicial to the interest of Indian Oil Corporation Limited or neglect of work or negligence in performance of duty. Hence, proposed act of misconduct as per Rules 7(5) and 7(9) of Conduct, Discipline and Appeal Rules, 1980 are not proved. The order



passed by the appellate Court dated 27.06.2017 (Annexure-P/23) communicated vide IOM dated 27.07.2017 (Annexure-P/20) as well as order passed by the disciplinary authority dated 30.01.2017 (Annexure-P/22) communicated vide IOM dated 31.01.2017 (Annexure-P/19) are hereby set aside.

18. Accordingly, the writ petition stands allowed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2024
Transmission Date	NA

