

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.495 of 2024
In
Civil Writ Jurisdiction Case No.2607 of 2019

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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 Director (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.

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. K.N.Singh, Sr. Advocate Mr. Ankit Katriar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date :07-01-2025

1. Heard Dr. K.N.Singh, learned Senior Counsel
assisted by Mr. Ankit Katriar, learned counsel for the appellant-
Indian Oil Corporation Limited.

2. The instant appeal has been preferred against the



judgment dated 15.4.2024 whereby the learned Single Judge was pleased to allow the writ application filed by the writ petitioner-respondent and quashed the order dated 30.1.2017 of the disciplinary authority imposing punishment of penalty of Rs.50,000/ as also the appellate order dated 27.6.2017.

3. The facts in brief are that while the writ petitioner was working as Deputy Manager (Emp. Relations) in the Eastern Regional Office of the Indian Oil Corporation Limited ('IOC Ltd.' in short) at Kolkata in the year 2009, the management of the IOC Ltd. decided to hand over golden jubilee gold medallions to retired employees on 30.6.2009. The writ petitioner along with one Abhijit Bag and Sandip Boral constituted the three member team at counter no.2.

4. After about four years, the writ petitioner was served with a chargesheet on 26.11.2013 containing three charges. The first charge was that the writ petitioner while working as Deputy Manager (Emp. Relations) was the only officer in the team at counter no.2 and she could not produce any statement with regard to the number of gold medallions taken out for distribution from the safe deposit vault and the number of gold medallions returned to the vault after completion of distribution from the said counter. Such lapses on



part of the writ petitioner gave opportunity for misappropriation of 24 Carat golden jubilee medallions weighing 250 gms worth Rs.4,56,000/ as on 20.5.2010. The second charge was that the writ petitioner who was the only officer in the team at counter no.2 for distribution of the golden jubilee gold medallions, she did not supervise the activities of the other two employees namely Abhijit Bag and Sandip Boral. Such lapses contributed towards the misappropriation of the gold medallions. The third charge was that lapses on the part of the writ petitioner contributed towards the misappropriation of the gold medallions weighing 250 gms worth Rs.4,56,000/ and in this view the writ petitioner had committed the act of misconduct as per clause 7(5) and 7(9) of the Conduct, Discipline and Appeal Rules, 1980 of the IOC Ltd..

5. The writ petitioner filed her reply and the inquiry proceeded. In course of the departmental inquiry, on behalf of the IOC Ltd. seven witnesses were examined and twelve exhibits marked. On behalf of the writ petitioner, one witness was examined and seven exhibits marked.

6. On conclusion of the departmental inquiry, the Inquiry Officer in his report dated 24.12.2015 came to the conclusion that the charge vide Article no.1 was partially proved



to the extent that the writ petitioner should have motivated/convinced her team members to prepare a handing over/taking over document pertaining to the gold medallions received from custodian, distributing to eligible retired employees and returned back to the custodian of gold medallions. So far as the charge vide Article no.2 and Article no.3 are concerned, the Inquiry Officer came to the conclusion that the same were not proved and not tenable.

7. The writ petitioner was served with a copy of the inquiry report to which she represented. The disciplinary authority came out with the final order dated 31.1.2017 imposing penalty of fine of Rs.50,000/ on the writ petitioner. An appeal was preferred by the writ petitioner which was declined by order dated 20.7.2017 by the appellate authority upholding the fine of Rs.50,000/ imposed by the disciplinary authority. The review preferred by the writ petitioner was also rejected by order dated 21.9.2017.

8. The writ petitioner challenged the order of penalty of Rs.50,000/ imposed by the disciplinary authority and upheld by the appellate order and the order rejecting the review application by filing CWJC no.2607 of 2019 which was allowed by the learned Single Judge by his order dated 15.4.2024,



impugned herein.

9. Learned Senior Counsel appearing for the appellant-IOC Limited contended that the writ petitioner had been held guilty of being negligent on duty assigned to her on the ground that she had left the counter mid way and that she was not prudent enough to maintain statement showing the gold medallions receipt and returned to the custodian. It was submitted that the writ petitioner who is an officer grade personnel is expected to maintain a certain level of discipline to ensure that she is not deliberately negligent while discharging her duties. It was submitted that the findings of the Inquiry Officer cannot be said to be based on no evidence. The learned Single Judge has erroneously relied upon the two member committee report over the disciplinary inquiry report. The two member committee report was also part of the inquiry report and was considered by the Inquiry Officer. Reliance was placed on behalf of the appellant on the judgment in the case of ***B.C. Chaturvedi vs. Union of India [(1995) 6 SCC 749]*** to submit that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court does not act as an appellate authority to re-appreciate the evidence and the disciplinary authority is the sole Judge of the facts. Further



reliance was placed on the judgment in the case of ***Union of Indian vs. P. Gunasekaran [(2015) 2 SCC 610]*** to submit that the High Court under Article 226 is not to re-appreciate the evidence or go into the adequacy of the same. It was submitted that the learned Single Judge had committed an error in allowing the writ petition and quashing the order of punishment as also appellate order.

10. Having heard learned Senior Counsel for the appellant and having perused the material on record, the Court finds that for distribution of golden jubilee gold medallions to the retired employees of the IOC Ltd. on 24.10.2009, the writ petitioner along with Abhijit Bag and Sandip Boral were deputed at counter no.2. The writ petitioner was served with a chargesheet on 26.11.2013 containing three article of charges which were as follows:

“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 employees on 24.10.2009. She could not produce any statement with regard to the no. of Gold Medallions taken out for distribution from the Safe Deposit Vault and 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 opportunity for misappropriation of 24 Carat Golden Jubilee



medallions weighing 250 gms 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 Medallions weighing 250 gm worth Rs.456000/- (based on bullion market value as on 10.08.2010 @ Rs.18240/- per 10 gm) at Eastern Regional Office as on 20.05.2010. 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.

In view of the above, Ms. Veena Kumari allegedly committed the following Acts of misconduct as per clause 7(5) and 7(9) of the Conduct, Discipline and Appeal Rules, 1980 of the Corporation:

7(5)-Acting in a manner prejudicial to the interests of the Corporation

7(9)-Neglect of work or negligence in the performance of duty

Through the above mentioned acts, Ms. Veena Kumari also failed to maintain absolute devotion to duty, as required under sub-clause (b) of Clause No.1 of Rule 6 of Conduct, Discipline and Appeal Rules, 1980 of the Corporation.”



11. The Inquiry Officer in his report dated 24.12.2015 came to the conclusion that the charge vide Article no.1 was partially proved to the extent that the writ petitioner being the seniormost employee of the counter no.2 should have motivated/convinced her team members to prepare a handing over/taking over document pertaining to the gold medallions received from the custodian, distributed to the eligible retired employees and returned back to the custodian of the gold medallions.

12. It would be important to note here itself that there were three persons including the writ petitioner who were posted at counter no.2 namely Abhijit Bag, the then Accounts Officer and Sandip Boral, also an Accounts Officer. On perusal of the contents of the Inquiry Report, it transpires that none of the two other officers posted at counter no.2 were examined as witness on behalf of the management. Further, the writ petitioner in her deposition categorically stated that no directions were received with respect to the role assigned for different personnel manning the counter no.2 either in written form or verbally. She did not get any instructions or authorization from any senior officer to act as supervisor or in-charge of the said counter. As such, the three of them discharged



their roles at the counter with Abhijit Bag handing over the gold coins to identified retired employees, Sandip Boral accounting/reconciliating of the gold coins as he had been dealing with distribution of the same to other counters also and the writ petitioner checking the identity of the retired employees and getting their signatures in the list provided. This Court finds that none of the statements made by the writ petitioner with respect to no role having been assigned to them with respect to manning of counter no.2 has been denied by the respondents.

13. Further so far as the statements of P.W.1 Uttam Ghosh, Chief Manager (Emp. Relations), Eastern Region and P.W.4 Mr. Sharif Ul Islam, Chief Law Manager, Odi Sri, a State Office are concerned, the Inquiry Officer takes note of the fact that one set of key was always with Abhijit Bag right from the date of his joining in his current assignment at ER section and with these keys, he could open the vault independently. In this view of the matter also, in the opinion of this Court, it was of utmost important that Abhijit Bag who had the power to operate the vault independently should have been examined as a witness to bring home the charges against the writ petitioner.

14. The conclusion arrived at by the Inquiry Officer with respect to the charge vide Article no.1 also is that the same



is partially proved to the extent that the writ petitioner should have motivated/convinced her team members to prepare a handing over/taking over document pertaining to gold medallions. In this respect it would be important to take note of the fact that while dealing with and while coming to the conclusion that the charge brought vide Article no.2 was not proved against the writ petitioner, the Inquiry Officer observes that the Presenting Officer could not submit any documentary evidence to substantiate that the writ petitioner was in-charge/supervisor of counter no.2. He further observes that though she could have acted as supervisor of her own but without any communication from the competent authority she cannot be termed as supervisor/in-charge of the counter no.2 by virtue of being an officer and hence he concluded that the charge brought vide Article no.2 is not proved. Further also, while dealing with the charge brought vide Article no.3, the Inquiry Officer observed that there was no evidence of existence of a fool-proof system of handling and accounting of gold medallions in Eastern Region during the period under consideration. It states that in the inquiry proceedings it has come out from the witnesses and exhibits that there were no briefing and guidelines issued to the personnel who manned the



various counters. The Inquiry Officer concluded that due to non-existence of any structured formula/circular with respect to collection, handling/return of gold medallions from the custodian, neither the employee concerned attached significance on the implication of not preparing statement after completion of distribution nor were they instructed to prepare the same. The Inquiry Officer held that the charge vide Article no.3 was also not tenable.

15. It would also be relevant to take note of the fact that prior to initiation of the departmental proceeding, the matter was inquired into by a two man committee which found the following:

“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). ”

16. Having perused the contents of the inquiry report and the material considered therein this Court comes to the conclusion that in absence of the examination of the other two employees namely Abhijit Bag and Sandip Boral who were assigned to counter no.2 along with the writ petitioner as also the Inquiry Officer having come to the conclusion that the charges brought out vide Article nos.2 and 3 not having been proved and not being tenable against the writ petitioner, this was a case of no evidence. The learned Single Judge in the judgment impugned rightly interfered with the order of penalty imposed by the disciplinary authority as also the appellate order upholding the order of penalty.

17. So far as the judgment relied on by learned Senior Counsel appearing for the appellant-IOC Ltd. in the case of **B.C. Chaturvedi** (supra), the Court has no dispute with respect to the law laid down by the Hon'ble Supreme Court therein but at the same time is of the opinion that the same has no application in the facts of the instant case.

18. As to whether the High Court in its exercise of jurisdiction under Article 226/227 of the Constitution is entitled to interfere when the finding in a disciplinary proceeding is



based on no evidence came up for consideration of this Court in ***LPA no.446 of 2024 (The State of Bihar and Ors vs. Vikash Kumar @ Vikas Kumar)***, paragraph nos.8 to 13 of which is reproduced herein below for ready reference:

*“8. The decisions in **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 and ECIL v. B. Karunakar, (1993) 4 SCC 727**; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.*

9. The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being



penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

10. ECIL (supra) by a larger Bench, on a reference made, reaffirmed the dictum in Mohd. Ramzan Khan (supra). These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent employee.

11. The learned Single Judge has relied on Union of India v. P. Gunasekaran; (2015) 2 SCC 610 from which we extract Paragraph 12 and 13:

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;



(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

(underlining & bold font supplied, for emphasis)

12. From the above extract it is very clear that the High Court under Article 226/227 is



entitled to interfere when the finding of fact is based on no evidence. If in every case where no valid evidence is led at the enquiry proceedings, there is a remand made, it would be offering a premium to the negligence of the Management/Disciplinary Authority and condoning the levity with which the departmental enquiry was conducted. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings without any valid evidence.”

19. In view of the facts and circumstances stated herein above, in the opinion of the Court, the Inquiry Officer erred even in coming to the finding that the charge vide Article no.1 was partially proved as against the writ petitioner. The learned Single Judge rightly set aside the order of penalty of Rs.50,000/ imposed by the disciplinary authority as also the order of the appellate authority upholding the same. In the opinion of the Court, the appellant had not made out a case for



interference in the order of the learned Single Judge and the Court finds no merit in the instant appeal.

20. The appeal is dismissed.

(Partha Sarthy, J)

(K. Vinod Chandran, CJ): I agree.

(K. Vinod Chandran, CJ)

Saurabh/-

AFR/NAFR	
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