
(1996) 11 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3310 of 1990

Deepak Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105, 141
Constitution of India, 1950 — Article 12, 136, 226, 311

Citation : (1997) 2 WLC 292 : (1996) 2 WLN 445

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—In the instant writ petition, the petitioner questions legality and validity of his dismissal order dated 23.1.90 Annx.29 passed by respondent No. 2 and older dated 19.4.90 Annx.33 passed by respondent No. 3 dismissing his appeal.

2. The aforesaid two orders have been challenged by the petitioner on the ground, inter alia, that he was appointed by the General Manager (respondent No. 3) whereas dismissal order has been passed by the Superintending Engineer (Drilling) (respondent No. 2) who is admittedly lower in rank to respondent No. 3. No charge-sheet and materials in support thereof have been supplied during domestic enquiry which has caused serious prejudice to him. He was not afforded reasonable opportunity of hearing and the orders impugned have been passed against the principles of natural justice and fair play.

3. The factual genesis of the present case has a chequered history. It is alleged that the petitioner has filed S.B. Civil Writ Petition No. 1060 of 1989 before this Court seeking a relief to quash the order of promotion dated 1.12.89 passed by respondent Company promoting illegally to Shri R.K. Goyal and Shri Magha Ram, both juniors to the petitioner.

4. In the aforesaid writ petition, in paragraphs 9 and 10, serious allegations of mala fide were made by the petitioner against the officers of Oil (India) Limited (hereinafter referred to as "the Company"). It is alleged in paragraph 3 of the instant writ petition that the petitioner was pressurised to withdraw the aforesaid writ petition by Shri Deependra Sharma, Superintending Engineer (Inquiry Officer in the present case) and when he expressed his inability to yield to the pressure, a false case of misconduct was concocted against him alleging that he along with process server of the Court went to deliver the notices in S.B. Civil Writ Petition No. 1060 of 1989 to Shri Y.K. Mishra of the Accounts Department. Shri Y.K. Mishra went to Shri N.K. Bhatt, Superintending Accounts Officer to seek his advice to receive the said notices then the petitioner entered in his room and started shouting by using abusive language and made an attempt to assault them in presence of process server of the Court. The allegations made in the present case against the petitioner are evident from the show cause notice, a copy whereof is filed as Annx. 1 to the writ petition.

5. After service of notices on the respondents, they filed counter affidavit denying the averments made in the writ petition. It is averred in the counter affidavit that the orders impugned passed by respondents No. 2 and 3 are perfectly legal and valid and these impugned orders have been passed after following the principles of natural justice. No prejudice has been caused to the petitioner either in holding domestic enquiry or in passing dismissal order against him. According to the answering- respondents, the facts of the present case do not require interference of this Court by issuing a prerogative writ making the orders impugned ineffective and inoperative.

6. After service of counter affidavit, the petitioner filed a rejoinder denying the averments made in the counter affidavit filed by the respondents.

7. After exchange of counter and rejoinder affidavits between the parties, a learned Single Judge of this Court dismissed the writ petition on 30.10.95 holding that the petitioner has got an alternative efficacious remedy before the Labour Court. In support of his aforesaid order dated 30.10.95 the learned Single Judge of this Court placed-reliance on a Full Bench decision of five learned Judges of this Court in Gopi Lal Teli Vs. The State of Rajasthan and Others,

8. Aggrieved against the order passed by the learned Single Judge of this Court on 30.10.95, the petitioner preferred a special appeal under the Rules of the Court before a Division Bench consisting of Hon''ble the then Acting Chief Justice (now Chief Justice) and Hon''ble Mr. Justice V.G. Palshikar, J. and their Lordships set aside the order dated 30.10.95 passed by the learned Single Judge of this Court. The Special Appeal was allowed by the Division Bench of this Court with a direction to have the matter re-heard by another learned Single Judge of this Court. This is how this writ petition has come up for decision before me.

9. I have heard the petitioner in person and learned Counsel appearing on behalf of the answering-respondents at length and examined the materials available on

record critically.

10. Learned Counsel appearing on behalf of the answering-respondents raised a preliminary objection to the effect that as the respondent-Company does not fall within the definition of "State" as contemplated under Article 12 of the Constitution of India, therefore, the instant writ petition is not maintainable. In support of his contention, he placed reliance on a decision rendered by the Apex Court in case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED],

11. It is to be noticed that earlier, the present writ petition was dismissed on 30.10.95 by the learned Single Judge of this Court on the ground of alternative remedy following ratio decidendi laid down by Full Bench decision of five learned Judges of this Court in Gopi Lal Teli (Supra) against which, a Special Appeal under the Rules of the Court was filed before the Division Bench. The Division Bench of this Court disposed of the special appeal on 17.4.96 with a direction to rehear the writ petition on merits.

12. In view of the aforesaid decision dated 17.4.96 rendered by the Division Bench of this Court, the argument raised by the learned Counsel appearing on behalf of the answering-respondents is not acceptable. I would like to deal this question in detail, so that, the answering-respondents may not have a feeling that their plea of jurisdiction has been negated on mere technicalities.

13. Indisputably, the decision rendered by the Division Bench of this Court on 17.4.96 has attained finality, therefore, the petitioner is precluded to raise the aforesaid preliminary objection within the meaning of Sub-section (2) of Section 105 of the Code of Civil Procedure, which reads thus:

105. Other orders:

(1) ...

(2). Notwithstanding anything contained in Sub-section (1) where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom he shall thereafter be precluded from disputing its correctness.

14. Learned Counsel appearing on behalf of the answering-respondents frankly admitted that the order of remand dated 17.4.96 passed by the Division Bench of this Court was amenable to SLP under Article 136 of the Constitution of India but no such SLP has been preferred and as such it has attained finality yet he urged before me that Sub-section (2) of Section 105, CPC does not lay down any general rule and procedure and as such, it cannot be extended to writ jurisdiction as postulated under newly inserted explanation to Section 141, CPC by amending Act No. 104 of 1976 which is made enforceable with effect from 1.2.77. For proper appreciation of the aforesaid contention raised by the learned Counsel for the respondents, the newly inserted explanation to Section 141 is quoted hereinbelow-

141. Miscellaneous proceedings:

...

Explanation: In this Section, the expression "proceedings" includes proceedings under O.IX but does not include any proceedings under Art. 226 of the Constitution.

15. It is true that newly inserted Explanation to Section 141, CPC clearly provides that the provisions envisaged under the CPC with regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil Jurisdiction. But the expression "proceedings" used u/s 141 CPC does not include any proceedings under Article 226 of the Constitution of India.

16. From the aforesaid discussion, I am of the view that after insertion of Explanation to Section 141 CPC, the provisions engrafted under Sub-section (2) of Section 105, CPC are not applicable to the writ proceedings yet its principles are applicable to the writ proceedings for the reason that all the provisions including provisions of Sub-section (2) of Section 105 CPC are based on principles of natural justice and fair play. The principles emanating from the provisions envisaged under Sub-section (2) of Section 105 CPC intend to advance judicial propriety in the present hierarchal justice system and are also based on sound jurisprudence, therefore, even if the provisions of the aforesaid section are not applicable to the writ proceedings yet its principles can be extended to the writ proceedings.

17. Here in the present case, the answering-respondents were at liberty to file a SLP under Article 136 of the Constitution of India against remand order dated 17.4.96 passed by Division Bench of this Court and if they failed to do so and allowed the decision rendered by the Division Bench of this Court dated 17.4.96 to attain finality then they are precluded from disputing the correctness of the decision rendered by the Division Bench of this Court on the ground of maintainability of the writ petition before me. The ratio of the decision rendered by the Apex Court in case of Chander Mohan Khanna (supra) is not applicable to the facts and circumstances of the present case.

18. With the aforesaid circumspection, I would also like to examine merits of the aforesaid technical argument advanced by the learned Counsel appearing on behalf of the answering- respondents.

19. It is urged before me by the learned Counsel for the respondents that Article 12 of the Constitution of India should not be stretched to every autonomous body which has some nexus with the Government within the sweep of expression "State". According to learned Counsel for the respondents, a wide enlargement of expression "State" must be tempered with by a wise limitation. In support of his contention, he placed reliance on a decision rendered by the Apex Court in case of Chander Mohan Khanna (supra). It is pertinent to mention here that the aforesaid question also came up for consideration before the Apex Court in case

of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, (decision rendered by Constitutional Bench).

20. It is also important to mention that after decision rendered by the constitutional Bench of the Supreme Court in case of Ajay Hasia (supra), the aforesaid question again came up for consideration before the Apex Court in case of P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others,

21. The preponderance of the aforesaid decisions rendered by the Apex Court lead towards an irresistible conclusion to the effect that it is immaterial for determining whether a Corporation or Public Company is an "Authority" and is created under a Statute. The proper test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a Statutory Corporation created by a Statute or it may be a Government Company or a Company formed under the Companies Act or it may be a Society registered under the Societies Registration Act or any other similar statute. The concept of instrumentality or agency of the Government is not limited to a Corporation created by a Statute but is equally applicable to a Company or Society and in a given case it would have to be decided on a consideration of the relevant factors whether the Company or Society is an instrumentality or agency of the Government so as to come within the meaning of Article 12 of the Constitution of India. A juristic entity which may be "State" for the purpose of Part III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution.

22. In the instant case, it goes without saying that the Oil (India) Limited is a Company of Central Government and its shares are not open for the private individuals. Its annual Budgets require approval of the Parliament. The financial assistance from the State is so much as to meet the entire expenditure of the Oil (India) Limited and the share Capital of the Company is completely held by the Central Government, which is clear indication of the Company being impregnated with governmental character. It is important to mention that the Company enjoys monopoly status which is conferred by the Central Government and also protected by the Central Government. The Central Government has deep and pervasive control over the Oil (India) Limited. The function of the Oil (India) limited is of public importance and related to the Governmental Junction, therefore, the Oil (India) Limited Company comes within the definition of the "State" (Central Government) and its "Authority" comes within the meaning of

Article 12 of the Constitution of India and any disciplinary action taken against any officer or employee of the Oil (India) Limited is also amenable to the writ jurisdiction.

23. From the aforesaid discussion, I have no hesitation in holding that after remand order dated 17.4.96 passed by the Division Bench of this Court which has attained finality the respondents are precluded to dispute the correctness of the above mentioned remand order dated 17.4.96 passed by the Division Bench of this Court on any ground. It is also held that the respondent-Company is an instrumentality of Central Government and disciplinary action taken against its officers or employees are amenable to writ jurisdiction under Art. 226 of the Constitution of India.

24. Now I propose to examine the merits of the case as disclosed in the writ petition, counter affidavit and rejoinder filed by the parties.

25. It is contended by the petitioner in person, at the first instance, that he was appointed as Clerk-cum-Typist vide order dated 28.12.84 by the General Manager, therefore, no authority less than General Manager can dispense with his services. In the present case, the disciplinary enquiry was initiated against the petitioner by giving show cause notice dated 6.7.89 by the Superintending Engineer (Drilling) and he has also passed dismissal order dated 23.1.90 Annx.29 to the writ petition which is ex facie illegal and without jurisdiction. The petitioner has laid foundation in support of his aforesaid contention in ground(n) of his writ petition.

26. The answering-respondents in paragraph(n) of their reply to the ground(n) of the writ petition have categorically stated that power to take disciplinary action has been conferred on the departmental head. In the present case, it was Superintending Engineer (Drilling), who was competent to take disciplinary action against the petitioner. It is also stated that since Article 311 of the Constitution of India is not applicable to the respondent-Company, therefore, there is no prohibition for removal or dismissal being ordered by an authority sub-ordinate to the appointing authority. Learned Counsel for the respondents reiterated paragraph(n) of the reply.

27. It is pertinent to mention that in support of the fact that the power to take disciplinary action against the petitioner has been conferred on the departmental head i.e. Superintending Engineer (Drilling) and he was competent to take disciplinary action against the petitioner, no material has been brought on record. The answering-respondents failed to produce any Standing Order of the Company or any Model Standing Order in support of their aforesaid contention except reiterating that since Article 311 of the Constitution is not applicable to the respondent-Company, therefore, there is no explicit bar for passing dismissal order against the petitioner by an Authority subordinate to the appointing authority i.e. General Manager.

28. It is also argued in alternative on behalf of the answering-respondents that

as the General Manager of the respondent-Company on appeal has considered and affirmed the order of dismissal passed by the Superintending Engineer (Dilling), therefore, it should be taken to be sufficient compliance of the basic principle of service jurisprudence to the effect that a person should not be dismissed by a sub-ordinate authority.

29. I have given my thoughtful consideration to the aforesaid rival contentions. In my considered opinion, the impugned dismissal order dated 23.1.90 Annx.29 to the writ petition passed by the Superintending Engineer (Drilling) an authority sub-ordinate to the appointing authority General Manager in absence of power delegated to him, is per se illegal and without jurisdiction. The fact that such ex facie illegal dismissal order dated 23.1.90 Annx.29 to the writ petition was affirmed by the appointing authority in appeal vide his order dated 19.4.90 Annx.33 to the writ petition will not cure the initial defective dismissal order having been passed by an authority sub-ordinate to the appointing authority who lacks inherent jurisdiction to pass such order.

30. It is also held that in the present case, basic principle of service jurisprudence to the effect that the disciplinary authority himself could not become appellate authority under any circumstance of the case, has also been violated with impunity. I am fortified in taking the aforesaid view from a decision rendered by the Apex Court in case of Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another,

31. It is next contended by the petitioner appearing in person that the disciplinary enquiry was not held in accordance with the principles of natural justice and fair play. It is urged by the petitioner before me that he was called upon to participate in the disciplinary enquiry vide letter dated 29.9.89 and was compelled to cross-examine the witnesses of Management whose testimonies were recorded ex parte behind his back. The petitioner made a request to the enquiry officer to make available copies of the statements recorded ex parte to him but the aforesaid request was refused on 13.10.89 by the enquiry officer and a note to this effect has been recorded in the disciplinary proceedings. In paragraph (e) of the reply it is averred by the respondents that statements of the witnesses which were recorded ex parte by the enquiry officer during course of enquiry were to be given to him after conclusion of the enquiry not at the time of cross-examination. It is alleged that the petitioner has cross-examined all the witnesses produced before the enquiry officer and he has not suffered any prejudice due to non-supply of statements of witnesses examined behind his back. Suffice it to say in this regard that the enquiry officer and now answering respondents incorrectly presumed that the petitioner was not entitled to have the copies of the statements of the witnesses examined by the Administration ex parte before cross-examining them. Denial of request of the petitioner by the enquiry officer to make available copies of the statements which were recorded ex parte behind his back, has caused serious prejudice to him. As a matter of fact, cross-examination is only a potent weapon in the hands of delinquent

employee to demonstrate that the witnesses examined by the administration are not witnesses of truth. A delinquent employee by effective cross examination can successfully demolish veracity of the witnesses examined by the administration in support of his delinquency leading to his dismissal or removal. A meaningful cross-examination by a delinquent employee is not possible unless examination-in-chief of the witnesses of the administration are recorded in his presence. In my humble opinion, ordinarily the examination-in-chief of a witness of administration in support of his delinquency is to be recorded in his presence as recording of examination-in-chief of the witnesses of administration itself is an integral part of the principles of natural justice. However, in rarest of rare cases, where examination-in-chief of the witnesses of administration are recorded ex parte in absence of delinquent employee then it would be minimum requirement of the principles of natural justice to make available the copies of the statements of examination-in-chief so recorded ex parte by the enquiry officer to the delinquent employee in order to facilitate effective cross-examination by such delinquent employee about his delinquency. In view of the admission made by the answering- respondents in paragraph(e) of the reply, it is held that in the present case, recording of examination-in-chief of the witnesses of administration in absence of the petitioner behind his back on 29.9.89 and denial of his request to make available copies of such statements by the enquiry officer vide his order dated 13.10.89 has caused serious prejudice to the petitioner and he has been deprived of to cross-examine the witnesses of Management effectively leading to denial of reasonable opportunity of hearing.

32. It is next contended by the petitioner appearing in person that his request to summon his defence witnesses was turned down by the enquiry officer which vitiates the entire disciplinary proceedings.

33. In paragraph(h) of the reply, it is averred by the answering-respondents that there is no procedure for summoning the defence witnesses. It. was the duty of the petitioner to have brought his witnesses but he did not bring his defence witnesses, therefore, he cannot blame the enquiry officer and on this ground alone, the domestic enquiry cannot said to have vitiated.

34. I am of the view that the contention raised by the petitioner has substance and the plea raised by the answering- respondents in paragraph(h) of their reply is untenable. Law must be taken to be well-settled that even if there are no positive words in the Statute or standing orders or model standing orders in the present case requiring that the petitioner is entitled to get his defence witnesses examined during disciplinary proceedings yet it is integral part of the principles of natural justice and fair play. Even if the standing order or model standing order are silent on the aforesaid issue yet justice of common law will supply omission of the standing orders or model standing orders or statute as the case may be and a delinquent employee will be entitled to summon and examine his defence witnesses provided the Enquiry officer is satisfied about the relevancy of statements of such defence witnesses. In my considered opinion the evidence

during the disciplinary proceedings should always be recorded in presence of the delinquent employee and he should always be given an opportunity to cross-examine the witnesses produced by the administration in support of his delinquency. Further where there are previously recorded statements of the witnesses of administration, the delinquent employee must be furnished copies thereof if he wants to cross-examine the witnesses of administration. After closer of departmental evidence, the enquiry officer even if the statute, rules, standing orders or model standing orders as the case may be, are silent on examination of defence witnesses yet as a part of principles of natural justice, the delinquent employee should be afforded an opportunity of producing his own statement whether oral or in writing and there is no manner of doubt that he should be afforded an opportunity of producing any defence witness as to the delinquent employee may like to produce provided the enquiry officer is satisfied about the relevancy of such statements.

35. Here, in the present case, the Enquiry Officer has out-rightly rejected the request of the petitioner to produce his defence witnesses even before enquiring from him what he intends to prove or disprove by producing the defence witnesses. In the present case, the petitioner has suffered a serious prejudice by refusal of the Enquiry Officer to allow him. to produce his defence witnesses and the order of dismissal passed on the basis of such enquiry cannot be sustained and as such deserves to be quashed.

36. My aforesaid view is buttressed by a decision rendered by a Division Bench of Allahabad High Court in case of Budh Singh Vs. State of Uttar Pradesh, and a decision rendered by learned Single Judge of this Court in case of Union of India v. Harcharan Singh, reported in 1974(1) SLR (Raj.)349.

37. It is to be noticed that the delinquency alleged against the petitioner in the charge-sheet dated 6.7.89 was that the petitioner came to the Accounts Department along with process server of the Court to deliver notices to Shri Y.K. Mishra, complainant and he stalled shouting and used abusive language, therefore, in such a situation, the process server of the Court was an independent witness and his testimony ought to have been a vital one but for the reasons best known to the Management, he was not produced as a witness. It is shocking to note that when the Management failed to produce process server of the Court in support of the delinquency alleged against the petitioner, then, the petitioner himself brought him for examination in the conference room as a defence witness, which is evident from Ex.41 to the rejoinder yet the Enquiry Officer arbitrarily observed that he has nothing more to record and abruptly closed the enquiry.

38. The aforesaid conduct of the Enquiry Officer leads me to believe that the management was apprehensive of the fact that the allegation of mis-conduct against the petitioner would fail, if the process server is examined as a defence witness. I have no hesitation to hold that it was obligatory on the part of the Enquiry Officer to have examined the process server when he was readily

available for examination even as a defence witness. The Enquiry Officer has no justification whatsoever to close the enquiry without examining the process server who was an independent eye witness to the accusation made against the petitioner. It would be pertinent to mention here that the process server Shri Ram Singh has filed his affidavit before this Court stating in paragraph 3 of his deposition that he has gone to the office of the Oil (India) Limited situated at Residency Road, Jodhpur with six notices of the respondents residing at Jodhpur received from Rajasthan High Court, Jodhpur in S.B. Civil Writ Petition No. 1060 of 1989-Deepak Kumar v. Chairman-cum-Managing Director, Oil (India) Limited for 13.7.89 which were assigned to him. It is also stated in paragraph 4 of his deposition that when he went to serve notices on the respondents at the address mentioned in the notices, he was not accompanied with any one. It is also deposed in paragraph 5 that he did not know the petitioner before 15.7.89 when he met him for the first time with the certified copies of served notices and enquired from him whether the certified photo copies of notices bore his endorsement. The contents of affidavit filed by Shri Ram Singh process server before this Court belies the allegation of mis-conduct alleged against the petitioner.

39. It is next contended by the petitioner that extraneous factors were considered by the Enquiry Officer which vitiate the entire proceedings. The findings of the Enquiry Officer at Annx.36 page 9 para 19(d) indicates that he laid emphasis on the statement of one Shri S.N. Bohra that the petitioner shouted at him in such a language which was devilish and abusive in nature. As held earlier, the statement of Shri S.N. Bohra does not inspire my confidence in view of the affidavit filed by Shri Ram Singh process server of the Court who is alleged to have accompanied with the petitioner. In his deposition, the process server has denied the presence of the petitioner, therefore, in such a situation, the question of his shouting in abusive and devilish language does not arise.

40. It is next contended by the petitioner that the order passed by the appellate authority is a non-speaking order and he failed to consider crucial question of law and fact. The petitioner has filed memo of appeal Annx.31 to the writ petition which reveals that he has raised several points, none of which were taken up and discussed by the appellate authority. The appeal filed by the petitioner has been dismissed against the specific provisions of law and principles of natural justice which runs counter to the provisions of Section 14(4)(C) of the Model Standing order in which expression "consider" has been clearly mentioned. I am of the view that it was bounden duty of the appellate authority to see whether the findings of the enquiry officer are in consonance with the principles of natural justice. In my considered opinion, the contention of the petitioner to the effect that the disciplinary proceedings in the present case from very beginning, were initiated and finalised against all the norms of the principles of natural justice and fair play, has substance. The manner in which the disciplinary enquiry has started and finalised, clearly made out a case of departmental malice against the petitioner and as such deserves to be quashed.

41. Since I am of the opinion, that the present domestic inquiry initiated and finalised against the petitioner as discussed in detail in the preceding paragraphs is against the principles of natural justice and fair play and the petitioner has been denied reasonable opportunity of being heard therefore, the order impugned dated 23.1.90 Annx.29 and the order dated 19.4.90 Annx.33 to the writ petition are liable to be quashed.

42. Learned Counsel appearing on behalf of the respondents urged before me in feeble voice that as in the present case, where the employer has lost confidence in the petitioner-employee instead of reinstating him in service, compensation may be awarded to him. In support of his contention, he placed reliance on a decision rendered by the Apex Court in case of Steel Authority of India Limited v. R.B.Rao and Anr. reported in 1991(2) SCC (Suppl) 339. Facts of the case of Steel Authority of India (supra) are not applicable to the facts and circumstances of the present case, especially when, the management miserably failed to establish existence of delinquency alleged against the petitioner.

43. I am of the view that if the argument of the learned Counsel for the respondents is accepted and instead of re-instating the petitioner, a compensation is awarded to him, then it would lead to grotesque result to the effect that the services of an employee in the respondent-Company can be easily terminated though there is no rate ground for doing so, even arbitrarily or capriciously. To uphold the alternative suggest of awarding compensation to the petitioner in the present case will tantamount to arm authorities of the Company to practice uncontrolled discrimination at their whim and fancy on irrelevant considerations not necessarily based on welfare of the Company at possibly based on personal likes or dislikes, personal preferences and prejudices. In the facts and circumstances of the present case, instead of reinstating the petitioner on his service awarding him compensation would encourage sycophancy and flattery in work culture of employees of the respondent-Company. An employee who is meritorious but waiting in the art of sycophancy and temperamentally incapable of indulging in flattery may lead to termination of his service on non-existent ground is in the present case.

44. In the present case on hand, it is evident from Annx.39 to the writ petition that the petitioner is an efficient, fast and accurate typist. Shri C.K. Mishra, Senior Production Engineer of Rajasthan on 9th August, 1988 found his demotion to duty above board. He recommended appropriate reward for his all round efficiency.

45. With the aforesaid introspection, it is not difficult for me to understand the suggestion of the answering-respondents to pay compensation to the petitioner in lieu of his re-instatement but it is very difficult for me to approve the same. Approval of compensation to the petitioner in lieu of his reinstatement would tantamount travesty of justice to him. This Court cannot afford to arm the disciplinary authorities of the respondent-Company to dismiss an employee of the Company on non-existent ground and after failure to substantiate the

allegation of mis-conduct starts arguing loss of confidence for payment of compensation. It is a matter of common knowledge that compensation in such cases is not to be paid from the pocket of the disciplinary authority but it is to be paid from the public Company and such disciplinary authority has to suffer nothing. The Court also cannot afford to see that the disciplinary authority may adopt a simple ruse to accommodate another employee of his choice after getting rid of an honest and meritorious employee of public company on the ground of provincialism, casteism, nepotism, religious fanaticism or any other irrelevant consideration. To my mind, these dangers may be imaginary in the private sectors as in such private sectors profit orientation is deep seated leading to personal gain or loss to managerial cadre which can be achieved through meritorious and efficient workers alone whereas such dangers are real in public sectors where perks to be paid to the disciplinary authorities are safe and they have to suffer nothing.

46. Suffice it to say in his regard that in the same business activities, the private sectors are earning crores of rupees yearly profits with less capital and less workmen whereas public sectors in the same business activities with more capital and more workmen are running into lossess of crores of rupees per year. It is to be noticed that the trend of huge losses in some of the public sectors went arrested during emergency in the year 1975-76 and 1976-77. Reasons are not far to seek but judicial restraint does not permit me to observe more than necessary on such sensitive issues affecting national economy.

47. The question about payment of compensation in lieu of reinstatement came up for consideration before the Apex Court in case of O.P. Bhandari v. Indian Tourism Development Corporation Limited and Ors., reported in 1986(4) SCC 377, where Hon''ble Thakkar, J. (as he then was) speaking for the Court in paragraph 6 ruled which reads thus:

6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings to which Article 12 of the Constitution of India, is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of an employee is void. No doubt in regard to "blue collar" workmen and "white collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule and compensation in lieu thereof a rare exception. In so far as, the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective;--a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfill its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest

confidence of the policy makers of such undertakings. Then and then only can the public sector undertaking achieve the goals of:

- (1) maximum production of the benefit of the community.
- (2) social justice for workers, consumers and people and
- (3) reasonable return on the public funds invested in the undertaking.

48. In the present case, the Oil (India) Limited is a public sector. In the case of its employer-employee relationship, Article 12 of the Constitution of India is attracted as discussed in the preceding paragraphs. It is true that a public sector cannot be able to fulfill its aim and object successfully if it is not capable to have efficient managerial cadre with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the policy makers of such undertakings but for workmen cadre, they are simply to be made to work by managerial cadre. In cases of workmen cadre, their reinstatement should be rule and payment of compensation in lieu thereof should be a rare exception whereas in case of managerial cadre or similar high level cadre, compensation should be taken to be a rule and reinstatement as an exception. In the case on hand, since the petitioner is a Clerk-cum-Typist, hence, he deserves to be reinstated.

49. As a result of the afore-mentioned discussion, the impugned order dated 23.1.1990 Annx.29 and appellate order dated 19.4.1990 Annx.33 to the writ petition are hereby quashed and the instant writ petition is allowed with costs directing the respondents to reinstate the petitioner with back-wages in service with all consequential benefits.