

(1997) 05 GAU CK 0035
In the Gauhati High Court
Case No : Civil Rule No. 357 of 1989

Dibesh Chandra Choudhury	Vs	APPELLANT
O.N.G.C. and Others		RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations, 1976 — Regulation 45
Oil and Natural Gas Commission Act, 1959 — Section 32
Penal Code, 1860 (IPC) — Section 381

Citation : (1998) 4 GLT 172

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; S. Deb and R. Dasgupta, for the Respondent

Judgement

A.K. Patnaik, J.—This is an application under Article 226 of the Constitution of India challenging the order dated 28/29.9.81 of the Project Manager, Oil and Natural Gas Commission, Agartala, suspending the Petitioner in contemplation of disciplinary proceedings and the order dated 17/21.2.83 of the Deputy General Manager(T-C), Oil and Natural Gas Commission, Agartala, dismissing the Petitioner from service on the charge of mis-conduct.

2. The facts briefly are that while the Petitioner was working as medium vehicle driver under the Oil and Natural Gas Commission (for short "ONGC"), in its Tripura project, an FIR was lodged by the Transportation Officer, ONGC, Tripura Project, with the Officer-In Charge, Amtali Police Station. Amtali, alleging that on 17.09.81 at 6.30 a.m., the Ambassador Car No. ASW-1849 of the ONGC was taken out by the Petitioner for doing the duties of Rakhia Drilling-in-Charge and the car was in shaded at 10.20 a.m. But again at 10.30 a.m. the Petitioner took out the said vehicle without informing the control room and without making any formal entry in the control room register and the Petitioner had not reported

back along with the car to the control room and has remained absent. Thereafter on 28/29.09.81, the Project Manager, ONGC, Tripura Project, Agartala, placed the Petitioner under suspension with immediate effect in contemplation of disciplinary proceedings. Thereafter these disciplinary proceedings were initiated against the Petitioner under Memorandum dated 10/17.11.81 of the Project Manager, ONGC, Tripura Project, Agartala, on the charge of misconduct. Simultaneously the police also completed investigation on the aforesaid FIR dated 19.09.81 and a charge-sheet was filed against the Petitioner in GR Case No. 1849/81. Pursuant to the said order dated 10/17.11.81 initiating disciplinary proceedings against the Petitioner, an enquiry was conducted by the Enquiry Officer and after receipt of the report of the Enquiry Officer, a show cause notice dated 28.12.81 was issued to the Petitioner to show cause as to why he should not be dismissed from service. The Petitioner submitted his reply dated 14.1.83 but he was dismissed from service by the impugned order dated 17/21.02.83 of the Deputy General Manager, ONGC, Tripura Project, Agartala, on the finding that he had absconded with the Commission's vehicle and had remained absent till 24.09.81 and had committed misconduct. Aggrieved, the Petitioner filed an appeal before the General Manager, ONGC, Central Region Business Centre, Calcutta but the Petitioner did not receive any communication from the appellate authority about the disposal of his appeal. In the meanwhile, the Petitioner was also prosecuted in the criminal case but acquitted by judgment dated 26.07.83 of the Judicial Magistrate, First Class, West Tripura, in the aforesaid GR Case No. 1849/81. By letter dated 25.08.83 the Petitioner informed the Deputy General Manager, ONGC, Tripura Project, Agartala, about the said judgment in the criminal case and requested him to reinstate him in service, but the Petitioner did not receive any reply. He finally served a demand notice dated 16.3.89 through registered post with A/D on the Respondents and when he did not get any response he filed the present writ petition under Article 226 of the Constitution for appropriate relief.

3. At the hearing of this Civil Rule, Mr. D.K. Biswas, learned Counsel for the Petitioner, submitted that since the criminal proceedings were pending against the Petitioner and the disciplinary proceedings were initiated on the same set of facts, the Petitioner was unable to defend himself in the enquiry conducted in the disciplinary proceedings lest he may be prejudiced in criminal proceedings. He submitted that since the Petitioner has been acquitted of the charge against him in the criminal case which were based on the same set of facts as in the disciplinary proceedings, the impugned order of suspension as well as the impugned order of dismissal passed in the disciplinary proceedings are liable to be quashed. In support of this submission, he cited before the Court an unreported judgment of the learned single Judge of this Court in the case of *Shri Promode Rn. Das v. The United Bank of India and Ors.* Civil Rule No. 127/89. He also relied on the judgment of the Supreme Court in the case of *Pritam Singh and Another Vs. The State of Punjab*, in which the Supreme Court has held that a verdict of acquittal pronounced by a competent Court is binding and conclusive in

all subsequent proceedings between the parties to the adjudication. Mr. Biswas submitted the so far as the charge of absconding with the vehicle is concerned, since the criminal Court has given a finding exonerating the Petitioner of the said charge, the said finding was binding on the ONGC and no punishment could have been imposed on the Petitioner on the said charge. What remained, therefore, was only the charge of unauthorised absence of seven days and for such minor mis-conduct, the punishment of dismissal was too harsh and disproportionate. In support of his submission Mr. Biswas cited the judgment of the Supreme Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, in which the Supreme Court has held that although the question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial, the sentence has to suit the officer and the offender and should not be vindictive or unduly harsh and it should not be so disproportionate to the offence as to shock the conscience of the Court. In the peculiar circumstances of the present case, therefore, the Court should quash the impugned order of dismissal passed by the disciplinary authority and direct reinstatement of service. Alternatively, Mr. Biswas argued that it has been held by the Supreme Court in the case of Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, that in case the employer is not inclined to take back the employee for want of trust and confidence in him and the Court felt that it will not be desirable and expedient to direct reinstatement, the Court can direct the employer to compensate the employee monetarily in lieu of reinstatement for loss of future employment.

4. In reply, Mr. S. Deb, learned Counsel appearing for the Respondents, urged that the writ petition should be dismissed on ground of delay and laches as it has been filed in the year 1989 against the order of dismissal that was passed against the Petitioner in the year 1983. He submitted that it has been settled by the Apex Court that even where the Petitioner files a representation and more than six months have passed there after without the representation being disposed of, the Petitioner must promptly approach the Court and should not wait for his representation to be disposed of. Regarding the contention of Mr. Biswas that the Petitioner has been acquitted of the charges in the criminal case which was based on the same set of facts as in the disciplinary proceedings, Mr. S. Deb submitted that the earlier view of the Supreme Court in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, has been reviewed in the case of State of Rajasthan Vs. B.K. Meena and others, and the Supreme Court has now taken a view that even where a disciplinary proceedings is based on the same set of facts as the criminal case the Court or the Tribunal should not stay the disciplinary proceedings except in case of grave nature involving complicated questions of law and fact and that the approach and objective in the criminal proceedings and the disciplinary proceeding are altogether distinct and different. Mr. Deb explained that while the criminal case was instituted against the Petitioner for an offence u/s 381, IPC, the disciplinary proceedings were initiated against the Petitioner for misconduct defined in the schedule to the Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations, 1976 (for short

"the Regulation, 1976") framed u/s 32 of the Oil and Natural Gas Commission Act, 1959, Mr. Deb distinguished the facts of the present case from the facts in the case of *Shri Promode Rn. Das v. the United Bank of India and Ors.* Civil Rule 127/89, cited by Mr. Biswas by stating that in that case the disciplinary proceedings were kept in obedience and the delinquent employee was acquitted in the meanwhile. So far case of *Pritam Singjh v. State of Punjab* (supra) cited by Mr. Biswas is concerned, Deb submitted that the principle laid down therein does not apply to the facts of the present case. In the criminal case the parties were state and the Petitioner while in the disciplinary proceedings, the parties were the ONGC and the Petitioner; therefore, the findings given by the criminal Court were not binding on the ONGC. In reply to the submission of Mr. Biswas that the Court should quash the punishment of dismissal on the ground that the same was unduly harsh and disproportionate, Mr. Deb submitted that it has been held by the Supreme Court as far back as in the year 1963 in the case of *State of Orissa Vs. Bidyabhushan Mohapatra*, that once the Court does not disturb the finding of guilt of a delinquent employee in the disciplinary proceedings, the Court has no jurisdiction to interfere with the quantum of punishment is within the exclusive jurisdiction of the employer. He, however, stated that in a later case of Supreme Court in the case of *B.C. Chaturvedi Vs. Union of India and others*, the Supreme Court has taken a view that it is only an exceptional case where the quantum of punishment shocks the judicial conscience of the Court that the Court would remit the matter back to the employer for reconsideration on the quantum of punishment According to Mr. Deb, the power of judicial review of the Court is very limited in such cases and the Court cannot substitute its own view on the question of quantum of punishment for that of the employer.

5. The contention raised by Mr. Deb that the writ petition should be dismissed for delay and laches need to be considered first. It is true that the Petitioner was dismissed from service by the impugned order dated 17/21.02.83 but against the said Order of dismissal, the Petitioner has a statutory right of appeal Under Regulation 45 of the Regulations, 1976 and an appeal was in fact filed against the said order of dismissed which appear to have been dismissed on 21.11.89 as stated in the affidavit in reply filed on behalf of the Respondents. Therefore the Petitioner was diligent in pursuing his remedy against the order of dismissed passed in the year 1983 before the appellate authority. The appellate authority has unduly delayed the appeal and has disposed of the appeal only on 21.11.89. This writ petition which has been filed a few days thereafter cannot be dismissed on the ground of delay and laches.

6. Coming now to the contention of the learned Counsel for the parties on the merits of the writ petition, I am unable to accept the submission of Biswas that after the acquittal of the Petitioner in the criminal case which was founded on the same facts as the disciplinary proceedings, the impugned order of dismissed passed by the disciplinary authority against the Petitioner is liable to be quashed. It has now been settled by the Apex Court in various cases including the case of *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, and *State of*

Rajasthan Vs. B.K. Meena and others, cited by Mr. Deb, learned Counsel for the Respondents, that even where the criminal proceedings and the disciplinary proceedings are founded on the same set of facts, there is no bar for the employer to initiate or continue disciplinary proceedings and punish the delinquent employee for mis-conduct. As has been explained by the Supreme Court in the case of State of Rajasthan v. B.K. Meena(supra), the approach and the objective in the criminal proceedings and the disciplinary proceedings is entirely distinct and different. In the disciplinary proceedings, the question is whether the delinquent employee is guilty of such mis-conduct as would merit his removal or any lesser punishment, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act or the Indian Penal Code are established, and if established what sentences would be imposed. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

7. But in such cases where the criminal case and the disciplinary proceedings initiated against the accused/delinquent are founded on the same set of facts, the delinquent employee may suffer a prejudice in defending himself either in the criminal case or in the disciplinary proceedings. The relevant question in the present case is as to whether the Petitioner has suffered any prejudice in defending himself in the disciplinary proceedings. It appears from the xerox copy of the enquiry report dated 20.11.82 filed by the Petitioner in this Court that during the enquiry the Petitioner was asked to cross-examine the prosecution witnesses but he declined to cross-examine any of the prosecution witnesses and his statement was recorded on 16.10.82. It further appears from the said xerox copy of the enquiry report that the Petitioner was asked by the Enquiry Officer to produce his defence witnesses but he expressed inability to produce any defence witness. It also appears from the copy of the appeal petition filed before the Deputy General Manager. (TC), ONGC, Tripura Project, Agartala, annexed to the writ petition as Annexure-F, that one of the grounds taken by the Petitioner in the appeal against the order of dismissal was that since the subject matter of the enquiry in the disciplinary proceedings and the criminal case pending before the Judicial Magistrate was one and the same, the Petitioner was not in a position to disclose his case of defence before the Court case was over. It cannot therefore, be ruled out that the Petitioner was prejudiced in the defence in the disciplinary proceedings in as much as the criminal case was pending in the Court of the Chief Judicial Magistrate, Sadar, Agartala, at the time of enquiry in the disciplinary proceedings. The order of the appellate authority or the records have not been produced before the Court to show that the appellate authority before whom this ground was taken had duly applied his mind to this aspect of the case before finally deciding to dismiss the appeal filed by the Petitioner. I am, therefore, inclined to remit the matter to the appellate authority to reconsider this aspect of the matter.

8. Regarding the submissions of the learned Counsel for the parties on the

quantum of punishment, the law has now been sufficiently clarified by the Supreme Court in the recent decision in the cases of B.C. Chaturvedi Vs. Union of India and others, cited by Mr. Deb that normally the Court will not interfere with the quantum of punishment imposed on a delinquent employee by the disciplinary authority but where the quantum of punishment is disproportionate to the misconduct and shocks the judicial conscience of the Court, the Court will either remit the matter to the disciplinary authority or the appellate authority for reconsideration on the quantum of punishment or in exceptional cases to shorten the litigation reduce the quantum of punishment. Since I am remitting the appeal to the appellate authority, the appellate authority will also bear in mind the law laid down by the Apex Court that the punishment should be proportionate to the mis-conduct and should not be unduly harsh or vindictive and take a fresh decision on the quantum of punishment. While deciding on the quantum of punishment, the appellate authority will also take into consideration the findings of the Enquiry Officer in the enquiry report dated 20.11.82 that the charge against the Petitioner that he had changed/removed some of the parts and tyres of the vehicle could not be proved as this is a relevant aspect which cannot be ignored by the appellate authority while deciding the quantum of punishment. It is made clear that in the event appellate authority takes a view that the quantum of punishment was disproportionate to the misconduct and the Petitioner ought to be reinstated in service, it will be open for the appellate authority to decide as to whether or not the Petitioner should be given any back wage and, if so, at what rate and for what period.

9. For the reasons stated above, this writ petition is disposed of with the direction that the appellate authority will decide afresh the appeal of the Petitioner against the impugned order of dismissal dated 17/21.02.83 in accordance with law and in accordance with the observations made in this judgment within a period of three months from the date of receipt of a certified copy of this judgment. But considering the entire facts and circumstances of the case, the parties shall bear their own costs.