

(2009) 03 MAD CK 0051

In the Madras High Court

Case No : Writ Appeal No. 3056 of 2004 and W.A.M.P. No. 5658 of 2004

Oil and Natural Gas Corporation Ltd.

APPELLANT

Vs

P. Surya Rao

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Oil and Natural Gas Corporation (Conduct Discipline and Appeal) Rules, 1994 — Rule 3, 33, 33(1), 33(2), 33(3)

Oil and Natural Gas Corporation Limited Conduct Service Rules, 1995 — Rule 25(2A), 25(2B)

Oil and Natural Gas Corporation Limited Pay and Allowances Regulations, 1972 — Regulation 14, 14(3)

Prevention of Corruption Act, 1988 — Section 13, 13(2)

Citation : (2009) 3 MLJ 417

Hon'ble Judges : S.J. Mukhopadhyaya, Acting C.J.; R. Sudhakar, J

Bench : Division Bench

Advocate : N.R. Chandran, King and Patridge, for the Appellant; A.V.K. Ezhilmani, for the Respondent

Judgement

R. Sudhakar, J.—The Oil and Natural Gas Corporation Ltd., (hereinafter called as ONGC) and three others have filed the writ appeal,

challenging the order dated 29.4.2004 passed by a learned single Judge in W.P. No. 36399 of 2002.

2. The respondent herein, a dismissed and reinstated employee has filed the above writ petition aggrieved by the order of the third appellant's

proceedings dated 4.9.2002 wherein the third appellant while ordering reinstatement of the respondent/writ petitioner into service with effect from

the date of rejoining of the service in ONGC, imposed certain conditions and denied certain benefits. The respondent/writ petitioner, therefore,

sought for setting aside the said order and to direct the appellants to reinstate

the respondent/writ petitioner with continuity of service with full arrears of salary, allowances and all other attendant benefits including promotion as Superintending Engineer, Chief Engineer and Deputy General Manager in the years 1994, 1997 and 2000 respectively with due seniority over his juniors.

3. The brief case of the respondent/writ petitioner for the disposal of this appeal is as follows: The Respondent/writ petitioner was working as Deputy Superintending Engineer with the appellants' organization. In the year 1990, (i.e.) on 27.8.1990 a case was registered against the respondent/writ petitioner by the Deputy Superintendent of Police, CBI, Visakapatnam u/s 13(2) read with Section 13(i)(e) of Prevention of Corruption Act, 1988, alleging that the respondent/writ petitioner amassed assets disproportionate to his known sources of income. Consequently, respondent/writ petitioner was placed under suspension by ONGC with effect from 1.12.1990 and the suspension was revoked on 9.10.1991 and the respondent joined service once again on 30.10.1991. The CBI filed a charge sheet in C.C. No. 4 of 1994 on the file of the Special Judge, for CBI Cases, Visakapatnam. The Special Judge by his judgment dated 1.7.1996 convicted the respondent/writ petitioner and imposed a sentence of rigorous imprisonment for a period of one year and further imposed a fine of Rs. 15,000/- and in default to undergo three months simple imprisonment. Respondent/writ petitioner preferred appeal in C.A. No. 552 of 1996 on 10.7.1996 before the Andhra Pradesh High Court. In the meanwhile, on 27.8.1996, the Director (Technical ONGC, whose designation has been changed as Director (Technical & Field Service) issued a show cause notice to the respondent/writ petitioner stating that it had been provisionally concluded that the respondent/writ petitioner is not a fit person to be retained in service in view of the conviction by the criminal court and accordingly proposed to impose the penalty of dismissal from service. The show cause notice was served on the respondent/writ petitioner, when he was working at Southern Regional Office at Chennai.

Hence, the respondent/writ petitioner filed W.P. No. 14059 of 1996 before this Court challenging the show-cause notice. This Court granted interim injunction on 27.9.1996. Hence, the respondent/writ petitioner continued in employment at the Regional office, Chennai as Deputy

Superintending Engineer (Civil). However, W.P. No. 14059 of 1996 was dismissed on 15.4.1999. Paragraph 18 of the order reads thus:

18. The impugned memorandum dated 27.8.1996 calls upon the writ petitioner to make a representation on the penalty proposed to be imposed

under Rule 34 of the Rules taking into account the gravity of the criminal charge and the conviction. It does not say that the punishment is to be

imposed on the strength of facts or conclusions arrived at by a judicial trial. The conclusion appears to be foregone. However, as pointed out by

the learned Counsel for the first respondent, there is a provision for appeal and it is open to the writ petitioner to convince the disciplinary authority

to await the decision in the criminal appeal and in case the authority does not heed to the request of the writ petitioner he can go to the higher

authority. At the same time, it should also be pointed out that the second respondent can await the decision in the criminal appeal filed by the writ

petitioner before invoking Rule-41 of the Rules. But it is entirely left to the respondents to consider the same. In any event the relief prayed for by

the writ petitioner cannot be granted. The writ petition is dismissed. No costs. Consequently, W.M.P. No. 19123 of 1996 is closed.

4. The Director (Technical), (now the second appellant), however, dismissed the employee/respondent herein from service by order dated

30.7.1999. Respondent/writ petitioner preferred departmental appeal to the first appellant on 14.8.1999 and the same was rejected on 2.2.2000.

The Andhra Pradesh High Court by judgment in Appeal passed on 7.11.2001, acquitted the respondent/ writ petitioner in the criminal case holding

that the respondent/writ petitioner was not guilty of the charge of possession of disproportionate assets. Respondent/writ petitioner, thereafter, sent

a representation dated 19.12.2001 to the first appellant seeking reinstatement with all consequential benefits. He sent several reminders on

9.1.2002, 21.1.2002, 5.2.2002, 13.2.2002 and 20.3.2002. After lapse of several months, the respondent/writ petitioner received the impugned

proceedings dated 4.9.2002 from the third appellant imposing certain conditions for reinstatement and called upon the respondent/writ petitioner to

give his consent within 21 days and the said proceedings which is under challenge reads as follows:

(i) Reinstatement will be effective from the date of rejoining the service of ONGC.

- (ii) You will not be entitled to any benefit for the intervening period with effect from the date of dismissal to the date of rejoining.
- (iii) You will not be entitled to any career growth for the period of severance and the period will be treated as non-existent/dies non.
- (iv) Your seniority will be fixed afresh as per the revised position.
- (v) Your pay will be fixed in the revised pay scale (Pay Scale with effect from 1.1.1997) without any increment benefit.
- (vi) On reinstatement, you will be posted in ER-Assam Asset.

Respondent/writ petitioner received the above letter on 7.9.2002. He sent a reply on 11.9.2002 for benefits as claimed and with a further request to the department to furnish the relevant rules under which the above conditions were imposed. The respondent employee requested for more time to take a decision. It appears that there is no reply to this specific request.

5. It was further contended by the writ petitioner that as per the earlier ONGC Vigilance Manual, which was in force earlier to the present set of Rules and Regulations, in terms of Chapter VII, paragraph 2.2., after an acquittal on merits, on reinstatement, the officer is entitled to full pay and allowance and the period of absence will have to be treated as period spent on duty. To this effect a letter dated 18.9.2002 was sent to the appellants M/s. ONGC quoting the provision of the Vigilance Manual and asking reinstatement with all benefits. It is now clarified and not disputed that while considering the period under issue, 1994 Rules alone will apply to the facts of this case.

The writ appeal W.A. No. 910 of 1999 filed against the dismissal of W.P. No. 14059 of 1996 challenging the show-cause notice dated 27.8.1996, was dismissed on 24.4.2002 stating that the respondent/writ petitioner should pursue his appellate remedy and take further action if any adverse order was passed. The appeal as stated earlier, was rejected on merits. The impugned order dated 4.9.2002 was passed thereafter.

6. The first contention raised on behalf of the respondent/writ petitioner before the learned single Judge was that once his conviction has been set aside by the High Court on merits and the charge has been held not proved, the whole basis of the dismissal goes, he will be entitled to all benefits on reinstatement. The competent authority in terms of Rule 34, dismissed the respondent/writ petitioner from service by way of penalty invoking

the power conferred under rule 41(a) of the ONGC (Conduct, Discipline and Appeal) Rules, 1994, in view of conviction by a criminal court on the above stated criminal charge. When once the criminal charge is effaced, there is no ground to dismiss the respondent/writ petitioner from service. The second contention was that when he was not charged with any misconduct mentioned in Regulation 2(k) read with the Schedule thereunder, except the one in item 12 namely "convictions in any Court of law for any criminal offence", the appellants cannot deprive the employee of the full benefits on reinstatement. The next contention was that if the employee was fully exonerated, he will be entitled to full pay and allowances, as if he had not been dismissed or removed or suspended and the period of absence will be treated as one spent on duty. It was further contended that the action of the appellants, violates respondent/writ petitioner's fundamental right under Articles 14 and 16 of the Constitution of India.

7. Before the learned single Judge on behalf of appellants/ respondents, no counter has been filed by the appellants ONGC in the writ petition.

However, a counter is filed in W.P.M.P. No. 54753 of 2002 in W.P. No. 36399 of 2002. It is stated that the ONGC was not responsible for the criminal case proceedings since the criminal case itself was initiated by the CBI and not by M/s.ONGC. The Court of Special Judge for CBI

Cases, Visakhapatnam found the respondent/ writ petitioner guilty under the Prevention of Corruption Act and by judgment dated 1.7.1996

convicted the respondent/writ petitioner to undergo one year rigorous imprisonment and pay a fine of Rs. 15,000/-. Following the above

conviction, appellants issued a memorandum of show cause dated 27.8.1996 to the respondent/writ petitioner calling upon him to make his

representations with regard to proposed punishment of dismissal from service in terms of Rule 34 of the ONGC Conduct, Discipline and Appeal

Rules 1994. The respondent filed W.P. No. 14059 of 1999 to quash the above memorandum of show-cause dated 27.8.1996. The said writ

petition was dismissed by this Court as per order dated 15.4.1999 with the observation that the writ petition was premature. The respondent/ writ

petitioner filed appeal in W.A. No. 910 of 1999 and the same was also dismissed on 24.4.2002 with observation that the respondent/writ

petitioner should pursue the appellate remedy. The second appellant, the competent authority passed an order dated 30.7.1999 dismissing the respondent/writ petitioner from service. The period of suspension from 1.12.1990 to 29.10.1991 was treated as "non-duty period".

But in the meanwhile, as stated earlier, the High Court of Andhra Pradesh, Hyderabad by order dated 7.11.2001 allowed C.A. No. 52 of 1996

setting aside the judgment of conviction imposed on the respondent/writ petitioner and also ordered refund of the fine amount.

And therefore, there is no issue with regard to reinstatement. But, the issue that still remained is whether the reinstatement benefits will operate

retrospectively (i.e.) with effect from the date of dismissal or prospectively (i.e.) as and when the respondent/writ petitioner reports for duty.

Reliance was placed on Rule 25(2)(B) of the ONGC Service Rules, 1995,

(2)(B) Where an employee is reinstated in service under item (c) of Clause 2(A), the order of reinstatement shall specify:

(i) the amount of proportion of pay and allowance, if any, to be paid to the Employee for the period of his absence between the date of termination

of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes read with Sub Rule (2)(A) and (1), it

is contended that reinstatement is not pursuant to a departmental enquiry, but because of the decision of the High Court, Andhra Pradesh setting

aside the conviction.

8. In the instant case, the dismissal was not on account of the departmental enquiry, but only a sequel to the action initiated by the State. The

prosecution of the respondent/writ petitioner was not at the behest of the ONGC, but one initiated by the CBI. While that being so, the question

that needs to be addressed is whether the employer/ONGC can be saddled with the responsibility of payment of salary and benefits for the period

during which the employee was out of office. The competent authority is the sole Judge as to how that period is to be treated. Taking into

consideration the well settled principle of law, viz., "No Work No Pay" during the period of severance, the ONGC offered to reinstate the

respondent/writ petitioner vide its order dated 4.9.2002 on the terms and conditions stipulated therein. The ONGC further contended before the

learned single Judge that as the respondent employee was dismissed from service on account of conviction and is reinstated on his acquittal. He, however, would not be entitled to back wages or other benefits since he had disabled himself from rendering service during the period of severance. Based on decision of the Apex Court it was contended that the discretion to pay back wages, allowance and other benefits for the period of severance rests exclusively with the employer. Therefore, it is well within the powers of the competent authority to treat the period of dismissal as not spent on duty and refuse the employee back wages, benefits and allowances. Respondent/writ petitioner was convicted by a Court of law. Hence, there is no question of infringement of Articles 14 and 16 of the Constitution of India. It is not open to the respondent/writ petitioner to insist upon payment of salary and allowances for the period he did not work and object to the conditions stipulated in the impugned order.

9. In the reply affidavit filed by the respondent/writ petitioner, it is stated that the prosecution against the respondent/writ petitioner was started only after a sanction order dated 24.12.1994, by the Director (Technical) ONGC. Had the ONGC applied its mind to employee's representation, the prosecution itself may not have commenced and the respondent/writ petitioner would not have been put to the agony of prolonged criminal prosecution, loss of employment and other benefits. Hence, it is not correct to say that dismissal of the respondent/writ petitioner came without any action by the ONGC. Respondent/writ petitioner has suffered loss of employment and all the adverse consequences due to a callous order of the sanction passed by the ONGC and hence, he is entitled to be treated in service with all consequential benefits. The counter-affidavit is wholly silent about the specific provision in the Vigilance Manual which says that when reinstatement following an acquittal in criminal prosecution, the employee is entitled to be reinstated with all consequential benefits of continuous service. On the contrary, the provision in the Service Rules which empowers the Disciplinary Authority to take action, when a dismissal pursuant to the disciplinary action is set aside, has been relied upon. The order of the third appellant is absolutely whimsical and not based on any reason or justification and has not followed the rules and regulations.

10. At the outset, it has to be clarified that though the conviction by the Special Court, for CBI Cases came to be passed on 1.7.1996, the order

of dismissal passed by the appropriate authority was passed on 30.7.1999, by that time, the new ONGC Conduct, Discipline and Appeal Rules,

1994 has come into effect. Therefore, the case of the respondent employee will have to be considered on the basis of the Rules and Regulations as

amended and contained in the Human Resources (HR) Manual 1st April 2003.

11. Learned single Judge referred to following Rules and Regulations relating to ONGC for the purpose of deciding the controversy between the

parties:

(i) Regulation 14 of the Oil And Natural Gas Corporation Limited Pay and Allowances, Regulations, 1972 (Chapter 4 of HR Manual, page 221,

as amended from time to time);

(ii) Rules 3(j), 33, 34 and 41(a) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and Appeal Rules, 1994(Chapter 9 of HR

Manual, Page 385, came into force from 23.12.1994)

It will be relevant to extract these provisions for better understanding of the facts and for considering this appeal filed by the Department, viz., ONGC

aggrieved by the final order passed by the learned single Judge allowing the writ petition.

12. Regulation 14(b)(iii)(a), (b), (c) and (d) of the Oil And Natural Gas Corporation Limited Pay and Allowances, Regulations, 1972(Chapter 4 of

HR Manual, page 221-234, as amended from time to time) reads thus:

14. Period under suspension:

An employee under suspension shall be entitled to the following payments namely,

(a) xxx

(b) Any compensatory allowance admissible from time to time on the basis of pay, of which the employee was in receipt on the date of suspension:

(i) xxx

(ii) xxx

(iii) (a) When an employee, who had been dismissed, removed, compulsorily retired or suspended, is reinstated or would have been reinstated but

for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific

order:

(i) regarding the pay and allowance to be paid to the employee for the period of his absence from duty or for the period of suspension ending with

the date of his retirement on superannuation, as the case may be, and

(ii) whether or nor the said period shall be treated as a period spent on duty.

(b) Where the authority mentioned in Clause (a) above is of the opinion that the employee has been fully exonerated or, in the case of suspension,

that it was wholly unjustified, the employee shall be given the full pay and allowances to which he would have been entitled had he not been

dismissed, removed, compulsorily retired or suspended, as the case may be.

(c) In other cases, the employee shall be given such proportion of such pay and allowances as such competent authority may specify in this behalf;

Provided that the payment of allowance under Clause (b) or Clause (c) shall be subject to all other conditions under which such allowances are

admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence grant admissible under these regulations.

(d) In a case falling under Clause (b), the period of absence from duty shall be treated as a period spent on duty for all purposes.

(emphasis supplied)

13. Rule 3(j) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and Appeal Rules, 1994(Chapter 9 of HR Manual, Page 385,

came into force from 23.12.1994) reads thus:

3. Definitions — ½ In these Rules, unless the context otherwise requires:

(a) to (i) x x x

(j) "Misconduct", without prejudice to the generality of the term "Misconduct" and the specific provisions made in these Rules, includes acts and

omissions specified in the Schedule II annexed to these Rules.

(emphasis supplied)

14. Rule 33(1)(c), (2)(b), (3) and (4) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and Appeal Rules, 1994 (Chapter 9 of

HR Manual, Page 385, came into force from 23.12.1994) reads thus:

33. Suspension — ½ (1) The Appointing Authority, or any other Authority to which it is subordinate, or the Disciplinary Authority or any other

Authority empowered by the Company by general or special order to impose a penalty as specified in Rule 34 may place an Employee under

suspension:

(a) x x x

(b) x x x

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) (a) x x x

(b) An employee shall also be deemed to have been placed under suspension from date of his conviction; if in the event of a conviction for an

offence, he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired

consequent to such conviction.

(3) Where a penalty or dismissal, removal or compulsory retirement from service imposed upon an Employee under suspension is set aside in

appeal or on review under these Rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension

shall be deemed to have continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain

in force until further orders.

(4) Where a penalty or dismissal, removal or compulsory retirement from service imposed upon an Employee is set aside or declared or rendered

void in consequence or by a decision of a court of law and the Disciplinary Authority, on a consideration of the circumstances of the case decides

to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed,

the Employees shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal,

removal or compulsory retirement and shall continue to remain under suspension until further holders.

(emphasis supplied)

15. Rule 34 - Major Penalties (v), (vi), (vii), (viii) and (ix) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and Appeal Rules,

1994(Chapter 9 of HR Manual, Page 385, came into force from 23.12.1994)

reads thus:

34. Nature of Penalties –½ The following penalties, for good and sufficient reasons and as hereinafter provided, be imposed on an Employee, who

is found guilty of misconduct or a breach of any Rules or orders made by the Company or by any other Authority empowered in that behalf by the

Company, namely;

Minor Penalties:

(i) to (vi) x x x

Major Penalties:

(v) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Employee will earn

increments of pay during the period of such reduction and whether on the expiry of such reduction, the reduction will or will not have the effect or

postponing further increments of his pay.

(vi) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Employee to the time

scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade,

post or service from which the Employees was reduced and his seniority and pay on such restoration to that grade, post or service.

(vii) Compulsory retirement.

(viii) Removal from service which shall not be a disqualification for future employment.

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Company.

16. Rule 41(a) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and Appeal Rules, 1994(Chapter 9 of HR Manual, Page 385,

came into force from 23.12.1994) reads thus:

41. Special Procedure in certain cases - Notwithstanding anything contained in Rule 36 to 40,

(a) Where the Employee has been convicted on a criminal charge, the Disciplinary Authority may on the basis of the said conviction or on the

strength of facts or conclusions arrived at by a judicial trial, pass such orders thereon as it deems fit, or....

17. Serial Nos. 24 and 29 and Note 1 of Schedule II to the Rule 3(j) of the Oil and Natural Gas Corporation Limited Conduct, Discipline and

Appeal Rules, 1994(Chapter 9 of HR Manual, Page 385, came into force from 23.12.1994) reads thus:

24. Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another

person, which the employee cannot satisfactorily account for.

29. Conviction in any court of law for any criminal offence.

Note 1: The above are only illustrative and not exhaustive acts/omissions.

18. The learned single Judge on the basis of the rival contentions placing reliance on the ONGC Conduct, Discipline and Appeal Rules, 1994 and

Pay and Allowances Regulation 1972, the sanction for prosecution, the conviction of the criminal court, subsequent show-cause notice issued on

27.8.1996 by the appellants invoking Rule 41(a) of the ONGC CDA Rules, 1994 for imposing penalty under Rule 34, the order of dismissal

dated 30.7.1999, came to the conclusion that the proceedings against the respondent employee resulting in dismissal was not based merely on

conviction by the criminal court, but due to the departmental action of the appellants under the various rules as stated above. Therefore, the action

of the appellants is in the nature of a departmental proceedings. Consequently, the appellants or the competent authority while reinstating the

respondent employee has to consider the respondent's case for reinstatement in terms of Regulation 14 of the Pay and Allowances Regulation

1972. The reliance placed by the appellants on Union of India (UOI) and Others Vs. Jaipal Singh, that the employee, who got involved in a

criminal case on conviction by the trial court and if acquitted on appeal cannot as a matter of right seek back wages and other benefits as he did

not serve the employer solely due to his own fault, was distinguished by the learned single Judge on the ground that the criminal case was relatable

to the conduct of the respondent employee in the course of his employment. According to the learned single Judge, the case of disproportionate

assets is relatable to the respondent employee's service with the appellant ONGC and therefore, the appellants cannot state that the criminal case

had nothing to do with them. The learned single Judge placing reliance on the show-cause notice proceedings and the order of dismissal in terms of

CDA Rules, 1994 pursuant to the conviction of respondent employee by the criminal court, came to the conclusion that the department is bound to consider the claim of the respondent employee under the relevant rules and regulations. Accepting the respondent employee's plea that his case was not considered for reinstatement and consequential benefits in the proper perspective, the learned single Judge held in paragraphs 35 and 36 of the order, as follows:

35. Having regard to my above said conclusion, it will have to be held that the impugned order imposing very many conditions and restrictions as regards the derivable of benefits consequent to reinstatement cannot be sustained. While the reinstatement ordered under the impugned order should continue to operate, the second respondent has to necessarily invoke Regulation 14(3)(a), (b) and (d) and pass appropriate orders in the light of the observations made in the above paragraphs as regards the exoneration of the petitioner from the criminal charges as held by the High court of Andhra Pradesh in its judgment dated 7.11.2001 in Crl. Appeal No .552 of 1994.

36. Though Ms. R. Vaigai, learned Counsel appearing for the petitioner in her submissions made on behalf of the petitioner, contended that the petitioner should be granted the relief of all consequential benefits in this writ petition itself, and reliance was placed upon several authorities in support of her submissions, I am afraid that such a direction can be straight away issued in this Writ Petition. However, it will have to be stated that while involving such a direction can be straight away issued in this Writ Petition. However, it will have to be stated that while invoking Clause 14.3(a), (b) and (d) it will be incumbent upon the second respondent to pass such orders that would enable the petitioner to derive all such benefits available to him. It will have to be stated that on 1.1.1994, the petitioner's case for promotion to the post of Superintending Engineer (Civil) (E4) level was considerate and the result of the said promotion was kept in a sealed cover. Therefore, in the light of the orders passed in this Writ Petition, it will have to be stated that the respondent's should declare the said result since as on date, nothing stands in the way of the petitioner claiming all other consequential benefits pursuant to his reinstatement. The respondent shall also pass appropriate orders as regards the other

consequential benefits accruing the petitioner pursuant to his reinstatement in accordance with law and as per Regulation 14.3(a), (b) and (d).

For the foregoing reasons, the Writ Petition is allowed and the order impugned in this Writ Petition in so far as it imposes the restrictions depriving

the petitioner of all consequential benefits pursuant to his reinstatement are set aside and the second respondent is directed to pass appropriate

orders as regards the consequential benefits pursuant to reinstatement of the petitioner under Regulation 14.3(a), (b) and (d) within three months

from the date of receipt of copy of this order shall be in tune with the observations contained in this order. No costs.

Further, in the light of the interim orders granted, whatever payments made to the petitioner shall be adjusted in the further amounts that may

become payable to the petitioner while passing the final orders by the second respondent.

Consequently, connected W.P.M.Ps. are closed.

(emphasis supplied)

Aggrieved thereby the appeal by the employer M/s.ONGC.

19. The learned senior counsel appearing for the appellant ONGC contended as follows:

(i) The Regulation 14(3)(a), (b), (c) and (d) of the Oil And Natural Gas Corporation Limited Pay and Allowances, Regulations, 1972 (Chapter 4

of HR Manual, page 221, as amended from time to time) will not apply to the case of dismissal, passed on the basis of conviction made by a court

and it will apply only to a departmental proceedings,

(ii) The Criminal case filed by Central Bureau of Investigation is not at the behest of the appellant department. Since the dismissal from service is on

account of the conviction in a criminal case for which the appellant department is in no way responsible. The respondent employee is not entitled to

back wages or other benefits for the period of non-employment.

(iii) The respondent employee disabled himself from rendering service on account of conviction and therefore, the respondent employee is not

entitled to the benefits of wages for a period of non-employment and the claim of the respondent employee has to be rejected on the ground of ""no

work, no pay"" as per the decision of the Apex Court in AIR 1994 552 (SC) .

(iv) The order of learned single Judge is a direction to the authority to pass orders under Regulation 14 of ONGC Pay and Regulations and grant

all the benefits. The authority has no discretion except to grant all the benefits. In any event, Regulation 14 is not attracted to the facts of the

present case. Appellant by the impugned proceedings made an offer so as to enable the respondent employee to be reinstated subject to

conditions. Since the employee has not accepted it, the offer becomes ineffective and unenforceable.

(v) The learned single Judge has not gone into the question whether the respondent employee is entitled to reinstatement into service. Without such

a finding, the direction to grant pay and allowances and such other relief is not correct.

(vi) The order of the learned single Judge is more in the nature of a specific direction to the appellant department to pass orders so as to enable the

respondent employee to derive all benefits. Therefore, the authority has nothing to decide.

20. Counsel for the respondent employee while justifying the order which is under challenge, stated that the sanction was granted by the employer,

though the case was initiated by the CBI. He referred to the various findings of the learned single Judge to state that the criminal case was relatable

to his employment and since the respondent employee was honourably acquitted by the High Court in appeal, he is entitled to back wages and all

consequential benefits as prayed for. The appellants and the respondent were further heard on 19.2.2009 on applicability of the Rules and

Regulations.

21. In this back drop, we will now consider the order passed by the learned single Judge. In this case, the major penalty of dismissal from service

came to be passed in terms of Rule 34 by virtue of the power conferred under Rule 41(a) of the ONGC Conduct, Discipline and Appeal Rules,

1994, Chapter 9 of the HR Manual (hereinafter referred to as "CDA Rules" for misconduct. The term misconduct contained under Rule 3(j) and

as specified under Schedule II is set out in serial Nos.24 and 29 which has been extracted above, deals with possessing disproportionate wealth

and conviction in court of law for criminal offence. Regulation 14 deals with period under suspension and inter alia deals with reinstatement and

consequential benefits that flow therefrom. It is a case of the appellants M/s. ONGC that Regulation 14 will not apply to the facts of the present

case. On the contrary, the contention of the respondent employee is that if there is no other provision under HR Manual to deal with the claim of

the respondent employee, as in this case, then for reinstatement Regulation 14 will apply. If not, the appellants will have to fall back on paragraphs

2.2 and 2.3, Chapter VII of the old Regulation which reads as follows:

Reinstatement

1. Reinstatement

1.1. An officer will be reinstated in service:

(i) if he had been placed under suspension pending criminal or departmental proceedings and is acquitted by the court of law or if he is exonerated

by the department.

(ii) if the penalty of dismissal or removal is set aside by the court of law or by the appellate authority.

2. Orders to be passed on reinstatement

2.1. If an employee is reinstated, the authority competent to order shall make a specific order.

(i) regarding the pay and allowances to be paid for the period of his absence from duty.

(ii) whether or not the said period will be treated as a period spent on duty.

2.2. If the employee has been fully exonerated, he shall be entitled to

(i) full pay and allowances, as if he has not been dismissed or removed or suspended.

(ii) the period of absence will be treated as spent on duty.

3. When acquitted by court of law, may be treated as exonerated.

3.1. It is for the authority competent to determine from the circumstances of each case whether the acquittal by a court of law should be taken to mean full exoneration or not.

4. Filling up the vacancy caused by the dismissal etc.

4.1. A permanent post vacated by the dismissal or removal may not be filled, until the expiry of the period of one year from the date of such

dismissal or removal.

22. Criminal Case: The effect of the criminal case and the consequence of conviction and acquittal is the first issue to be considered. The first and primary contention of the respondent employee was that the sanction to prosecute him was given by the appellants on 24.12.1994. It is after the sanction order, charge sheet was filed and the criminal trial was set in motion. The appellants, however, denied the said fact stating that the F.I.R. itself does not disclose that the appellants are responsible for initiation of the case. The sanction order was granted at the behest of the Central Bureau of Investigation. Therefore, the criminal trial was not at the behest of the department. Learned single Judge came to the conclusion that the sanction order and the criminal action under the provisions of Prevention of Corruption Act 1988 could not be proceeded without the involvement of the disciplinary authority of appellant M/s. ONGC. Learned single Judge rejected the appellants' plea that they had nothing to do with the criminal proceedings.

(i) The learned single Judge held that the order of dismissal dated 30.7.1999 is based not merely on the conviction by the Special Judge in C.C.

No. 4 of 1994, but also by virtue of the power of the disciplinary authority invoking the Rule 41(a) of the ONGC, CDA Rules 1994. Therefore,

the learned single Judge came to conclusion that the dismissal of the employee was at the behest of the department and therefore, since he was fully

exonerated in the criminal case, he should be given appropriate benefit.

(ii) On this issue, we are not inclined to accept such finding of the learned single Judge, since the F.I.R. which has been enclosed as a document

does not disclose that the complaint was by the appellants. It is based on other reliable information gathered by the C.B.I. with regard to the

respondent amassing assets disproportionate to his known source of income. A charge sheet was laid by the CBI and in that case, the respondent

was convicted, thereby the respondent was visited with an order of dismissal dated 30.7.1999 as provided and in terms of the proceeding under

the CDA Rules, 1994. In the writ petition challenging the order of reinstatement dated 4.9.2002, there is no allegation by the writ petitioner that the

criminal proceedings were initiated by the appellants M/s. ONGC. Merely because the sanction was sought for by the CBI and granted by the

appellants, it does not mean that the action has been taken by the appellants to

prosecute the respondent. The order of dismissal and the subsequent order of reinstatement is a necessary action consequent to the conviction by criminal court and acquittal by the High Court of Andhra Pradesh and that is mandate of the Rules and Regulations referred to earlier. We, therefore, hold that the appellants are not responsible for the criminal case initiated against the respondent/employee.

23. Application of Regulation 14: Learned Single Judge taking into consideration the order of dismissal passed on 30.7.1999 in terms of Rule 34

invoking the power under Rule 41(a) of the CDA Rules, 1994, has come to conclusion that the punishment was for the improper conduct of the

respondent in the course of employment with M/s. ONGC. Therefore, held that Regulation 14(b)(iii)(b) of the Pay and Allowances Regulations,

1972 gets attracted. This finding that Pay and Allowances Regulations, 1972 applies to the facts of the case is disputed by the appellants on the

ground that the aforesaid Regulation applies to the case where a delinquent is proceeded against by way of departmental action or proceedings,

which is not the case here. If the respondent employee was imposed with a punishment of dismissal which is reversed or varied by the appellate

authority by way of an independent departmental action, then the aforesaid Regulation will come into operation. In other words it is the specific

plea of the appellants that Regulation, 1972 is not applicable to the case of dismissal passed on the basis of conviction by a criminal court.

This contention of the appellants that Regulation 1972 does not apply cannot be countenanced for the following reasons:

(i) The show cause notice dated 27.8.1996 proposing to award penalty under Rule 34 of the CDA Rules, 1994 consequent to the conviction by

the criminal court and the order of dismissal dated 30.7.1999 under Rule 34 of the aforesaid Rules in exercise of the power conferred under Rule

41(a) is exercised by the competent disciplinary authority under the CDA Rules, 1994.

(ii) The order of reinstatement consequent to the acquittal in the criminal case passed on 4.9.2002 which is the impugned proceedings is also

passed by the competent authority.

(iii) The 1972 Regulations and in particular Regulation 14 which deals with period under suspension and the order of reinstatement specifically

refers to the competent authority who is mandated to pass a specific order with regard to reinstatement. It, therefore, follows that the competent

authority who passed the order of dismissal alone is the competent authority to pass order of reinstatement.

(iv) Appellants have not shown any other provision under HR Manual which deals with the case of reinstatement in a case of this nature, and on the

other hand, the respondent employee had referred to a specific provision under Chapter VII of the old Regulation relating to reinstatement.

Appellants employer and the respondent employee now state that the new HR Manual containing the amended Rules and Regulations set out in the

HR Manual is in operation relevant to the period of dismissal and reinstatement.

(v) In such circumstances, the appellants' plea that Regulation 1972, in particular, Regulation 14, will not apply to the present case cannot be

accepted. For the purpose of show-cause notice and passing the order of dismissal, they cannot apply a particular rule under the HR Manual and

for reinstatement they cannot be allowed to state that they are not bound by any rule or regulation. Such a stand will be totally arbitrary and

unreasonable.

(vi) Learned single Judge has recorded in paragraph 15 of the order that the senior counsel appearing for M/s. ONGC has fairly stated that Pay

and Allowances Regulations apply to the respondent herein. The plea of the appellants that Regulation 14 will apply only to the case of

departmental proceedings does not stand to reason. For the purpose of dismissal, CDA Rules 1994 is made applicable. Whereas for reinstatement

and other benefits, they totally deny the application of the regulations. The HR Manual deals with Sections 1 - 10 and the issue in the present case

is covered u/s 3, Manpower Maintenance. The case of dismissal and the reinstatement has to fall under this Section and nowhere else. Appellants

are unable to show any other provision. Hence, when a specific rule and regulation touching upon the service condition of all employees without

any exception is in force, we have no hesitation to hold that Regulation 14 will apply to the facts of the present case for the purpose of deciding the

issue relating to reinstatement.

24. Reinstatement benefits and application of ONGC CDA Rules 1994 and Pay and Allowances Regulation 1972:

The next contention on behalf of the appellants is that since the dismissal from service was consequent to the conviction by the criminal court, appellant ONGC is not responsible for the same. The respondent is not entitled to back wages and other benefits for the period of non-employment. Learned senior counsel Mr. N.R. Chandran, appearing for the appellants contended that the respondent employee was convicted by a criminal court pursuant to the proceedings initiated by the CBI charged with the offence of possessing assets disproportionate to his known source of income. The said conviction, however, was set aside in appeal by the High Court of Andhra Pradesh. He was dismissed from service because he was found guilty by the trial court and consequent to the order of the High Court acquitting him, the offer to reinstate the respondent employee was made on certain terms and conditions. It was therefore, contended that since the respondent employee came to be dismissed consequent to the conviction by a criminal court, he cannot, as a matter of right, claim the benefits including back wages for the period during which he was not in service, particularly, when the criminal case was not at the behest of the appellants. Learned senior counsel relied upon the decision of the Apex Court in Union of India (UOI) and Others Vs. Jaipal Singh, . The Supreme Court in the said decision, held in paragraphs 3 to 5 as follows:

3. Heard Mr. Raju Ramachandran, learned Additional Solicitor General appearing for the appellants, who placed strong reliance upon the decision of this Court in Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board wherein this Court in a case identical to the facts of the present case, has chosen to order only reinstatement but denied back wages on the ground that the Department was in no way concerned with the criminal case and, therefore, cannot be saddled with the liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case. Per contra, Mr. Ranbir Singh Yadav, learned Counsel for the respondent sought to place reliance upon an order of this Court dismissing the SLP filed summarily against the judgment of the very same High Court dated 19-7-2001 in CWP No. 10201 of 2000. The learned Counsel for the respondent, by inviting our attention to the judgment of the High Court in that case

contended that on the facts the case on hand was also similar to the case considered therein but this Court dismissed the SLP when the relief

granted for reinstatement and back wages was contested by the authorities before this Court.

4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the

view that it is well accepted that an order rejecting a SLP at the threshold without detailed reasons therefore does not constitute any declaration of

law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons

specifically recorded therefore it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view

taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself,

perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if

after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for

having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service.

Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness

as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in

service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within

their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period

for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages

also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of

back wages is liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment

of back wages, that period also will be counted as period of service, without any break. The reinstatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

(emphasis supplied)

Learned senior counsel also relied upon the decision in Baldev Singh Vs. Union of India (UOI) and Others, . Paragraph 7 in Baldev Singh's case

reads thus:

7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has

been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to

be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent

acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore Vs. Superintendent

Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, .

(emphasis supplied)

25. Learned senior counsel for the appellants further placed emphasis on the Apex Court's decision in Ranchhodji Chaturji Thakore Vs.

Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, , wherein the Apex Court held in paragraph 3 as follows:

3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: Whether he is entitled to

back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent.

Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by

operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents

have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from

discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since

the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of

conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference.

(emphasis supplied)

26. Considering the ratio of the Apex Court's decision in Jaipal Singh's case, Ranchodji Chaturji Thakore's case (cited supra) and the other

cases, the question of reinstatement on acquittal in the criminal case is not disputed as the dismissal was on the basis of conviction by the criminal

court and by operation of the service rules applicable to the respondent employee in this case. The Apex Court in the aforesaid cases have held

that the department or the employer who is no way concern with the initiation of the criminal case, cannot be saddled with the liability for back

wages when the employee was out of service during and after conviction. The Apex Court in Ranchodji Chaturji Thakore's case (cited supra),

has stated that the question of back wages can be considered only if dismissal proceedings were taken by the department and if such action was

found to be unsustainable in law and the employee was prevented from discharging his duties, then the claim for back wages and other benefits

could be considered. It has to be stated that the Apex Court clearly expressed a view that each case required to be considered in its own

backdrop. On going through the decision of the Apex Court's decision in Jaipal Singh's case and Ranchodji Chaturji Thakore's case (cited

supra), there is no reference to any departmental rules or regulations that was applied to consider the case of employee in that cases. On the

contrary, in the present case as set out earlier, the HR Manual, containing I to X Sections, is in force touching upon various aspects of employment

under the appellants. Section III (Manpower Maintenance) is applicable to the facts of the present case and it deals with Service Rules, 1995; Pay

and Allowance Regulation, 1972 as amended; Leave Rules, 1995; Conduct, Discipline and Appeal Rules, 1994; besides other Rules and

Regulations. On a general principle, the payment of back wages and other benefits cannot be automatic, as held by the Apex Court. However, the

case of the respondent employee in this case is slightly at variance in view of the Rules and Regulations governing the service condition of

employees of appellants. The plea of reinstatement has to be considered on the basis of the Rules and Regulations which are binding on both the parties and in the facts of this case we have held so.

27. The recent decision of the Apex Court in *Banshi Dhar Vs. State of Rajasthan and Another*, in a case of similar nature as that of the present

one, the Apex Court held that no hard and fast rule can be laid down with regard to grant of back wages and each case has to be determined on

its own facts. While approving the decision in *Ranchodji Chaturji Thakore's* case (cited *supra*), the Apex Court held that the question whether the

employee would be entitled to back wages and other benefits from the date of dismissal to the date of reinstatement if ultimately ordered, should

invariably be left to be decided by the competent authority concerned according to law, after culmination of proceedings and depending on the final

outcome. Therefore, the case relied upon by the appellants can be distinguished on facts. In the present case both the appellants/employer and the

respondent/ employee are bound by the ONGC CDA Rules, 1994 and Pay and Allowances Regulations, 1972 and before the learned single

Judge, the learned senior counsel appearing for M/s. ONGC conceded the same and it is recorded in para 15 of the order. Hence, the competent

authority, has to decide the issue in terms of the Rules and Regulations contained in the H.R. Manual.

28. Relief: Having come to the conclusion that Regulation 14 of the Pay and Allowances Regulation, 1972 will apply to the facts of the present

case, we have to now consider the nature of order that can be passed by the competent authority before adverting to the order passed by the

competent authority which is under challenge. The issue relating to reinstatement with benefits as claimed by the respondent/employee will have to

be guided by the principles set down by the Apex Court in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd.*

and Others, (Three Judges - V.R. Krishna Iyer, D.A. Desai and O. Chinnappa Reddy, JJ). In that case, the management of Hindustan Tin Works

retrenched certain workmen and the matter was referred to the Industrial Tribunal. The Industrial Tribunal/Labour Court held that the retrenchment

was illegal and awarded reinstatement of all the workmen with full back wages and that was taken up by way of appeal to the Supreme Court by

the management. The SLP with regard to the relief of reinstatement was rejected. However, on the question of grant of full back wages, the Apex

Court took up the matter on merits. The question that arose before the Supreme Court is summarized in the first paragraph of the judgment itself

and it reads as follows:

D.A. DESAI, J.:— This appeal by special leave, limited to the question of grant of back wages, raises a very humane problem in the field of industrial

jurisprudence, namely, where termination of service either by dismissal, discharge or even retrenchment is held invalid and the relief of

reinstatement with continuity of service is awarded what ought to be the criterion for grant of compensation, to the extent of full wages or a part of

it?

The Apex Court ordered certain amount towards back wages by considering the financial position of the appellant's company and the sufferings of

the workmen. While deciding the said issue, the Apex Court sets out certain guidelines as to how the Tribunal in such a case should consider a plea

for back wages and that has been set out in paragraph 11 and the same is extracted hereunder:

11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the

verdict. More or less, it would be a matter addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party

objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the

relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent

and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that

something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful

but legal and regular (See *Susannah Sharp v. Wakefield* 1891 AC 173 AT P.179).

(emphasis supplied)

29. Even in respect of orders passed by the administrative authority recording of reasons was held to be imperative by the Apex Court in the case

of *S.N. Mukherjee Vs. Union of India*, . It held in paragraphs 35 and 36 as

follows:

35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decision of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be

added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original side. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

(emphasis supplied)

A similar view was taken by the Apex Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI)* and

Another, . In that case, the Apex Court clearly held that where an authority makes an order in exercise of quasi-judicial function, it must record its

reasons in support of the order it makes. The relevant portion reads as follows:

The rule requiring reasons to be given in support of an order is, like the principle or *audi alteram partem*, a basic principle of natural justice which

must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not

satisfy the requirement of law.

In *Director, Horticulture, Punjab v. Jagjivan Parshad* reported in 2008 AIR SCW 2858, in a case challenging the award of the labour court which

was challenged in writ petition, the Apex Court with regard to the recording of reasons by an authority emphasized the necessity for giving reasons.

The relevant portion reads as follows:

7. Even in respect of administrative orders Lord Denning, M.R. In *Breen v. Amalgamated Engg. Union* (1971) 1 All ER 1148 observed: (All ER

p.1154h) ""The giving of reasons is one of the fundamentals of good administration."" In *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 1 CR

120 it was observed:

Failure to give reasons amounts to denial of justice. Reasons are live-links between the mind of the decision-taker to the controversy in question

and the decision or conclusion arrived at.

8. Reasons substitute subjectivity by objectivity. The emphasis on recording

reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance (See: Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, .

In the present case, the respondent employee suffered an order of dismissal consequent to his conviction by the criminal court and has been reinstated after his conviction was set aside. The reinstatement order dated 4.9.2002 apparently has denied several benefits claimed by the respondent employee. On perusal of the reinstatement order dated 4.9.2002, the position of the respondent employee on reinstatement which in effect is that he has been allowed to join duty afresh and no benefits for the service rendered earlier has been considered so far. The respondent employee was granted the only benefit of reinstatement. All other benefits stood wiped out. The competent authority in terms of Regulation 14 which we have held to be applicable, has not given any reasons to form the opinion as to why the respondent employee will not be entitled to the benefits consequent to his reinstatement that would otherwise accrued to him had he not been dismissed due to the incarceration, consequent to his conviction by the criminal court which ultimately resulted in acquittal. By virtue of the impugned order, several benefits flowing out of the service have been denied. The denial of benefits by the impugned order is visited with civil consequence. Respondent's pay, emoluments, promotional opportunities, retirement benefits, etc., would be affected. Therefore, the regulation specifically states that the competent authority should first consider and make a specific order with regard to reinstatement. Regulation 14(b)(iii)(b) states that while passing the specific order, the competent authority should form his opinion with regard to the factual nature of the case (i.e.) the respondent being fully exonerated in the criminal case and

decide the plea of full pay, allowances, etc. Therefore, the specific order under Regulation 14(b)(iii)(3)(b) should be based on opinion on

consideration of relevant material. According to P. Ramanatha Aiyar's Advanced Law Lexicon ½ The Encyclopaedic Law Dictionary with legal

maxims, latin terms and words and phrases, Volume 3, 3rd Edition 2005, the meaning of "opinion" is stated as follows:

(Of Court). "The "opinion" of a Court is the reasons given for its judgment.

Opinion of the Court or a Judge generally means judgment of the Court or Judge.

The Judgment is of the law Lords delivered in the House of Lords are described as "opinion." The distinction between such opinions and the

judgments" of the judges of the High Court and Court of Appeal is merely one of name. In the U.S. of America the statement of reasons delivered

by a judge or Court leading to decision pronounced in any of the Courts, is called an "opinion.

Therefore, it is imperative that reasons should be the bedrock of the opinion of the competent authority who decides the plea of the respondent.

Such orders as indicated by the Apex Court in the decision referred to above should contain some reasons that will throw light on the basis on

which the competent authority came to conclusion one way or the other. The affected party should have an opportunity to understand that his plea

for benefits on reinstatement has been considered by the competent authority and there was no element of arbitrariness and the decision was on the

basis of fair assessment of the issue by the competent authority. The competent authority, therefore, has to record reasons to support the opinion,

resulting in the order as contemplated under Regulation 14(b)(iii)(b) in this case.

30. The competent authority, who passed the impugned order dated 4.9.2002, has failed to form an opinion based on the facts on record and

failed to give reasons, which form the basis of his order denying all benefits. The order which is under challenge is bereft of reasons. On the face of

the order it is apparent that there is no basis for the decision denying the benefits. The impugned order therefore, cannot be said to be a reasoned

order and the opinion is based on no material. Therefore, the impugned order deserves to be interfered with and has been rightly interfered with by

the learned single Judge.

31. The grievance of the appellants, which apparently appears to be the primary

reason for filing the appeal, is on account of the direction issued by the learned single Judge in paragraph 36 of the order. The learned single Judge while specifically holding that the power is vested with the competent authority to decide the issue relating to reinstatement and all consequential benefits flowing therefrom, has passed further direction that the competent authority shall pass orders granting all benefits in terms of Regulation 14. The Apex Court in *Banshi Dhar Vs. State of Rajasthan* and *Another*, , has held that the question of granting back wages is best left to the competent authority to decide on the merits of each case. Courts do not normally enter into the arena, where the decision is to be taken by the particular authority under the specific rules and regulations prescribed and impose its views as to how the relief should be granted. All that the court is required to do is to ensure that the authority follows the rules and regulations that will apply to the facts of a particular case to avoid an arbitrary, capricious approach to the problem. In this case, the specific direction of the learned single Judge to pass orders in a particular manner may not be justified as court do not order an authority who is competent to decide the issue to do so in a particular manner. Therefore, the further direction of the learned single Judge has to be interfered with and hence that portion of the order in para 36 directing the appellants to pass orders granting all relief to respondent in terms of Regulation 14 is set aside.

32. The competent authority while deciding the issue with regard to reinstatement and consequential benefits thereon, should consider all relevant material and should keep in mind the principles laid down by the Apex Court in *AIR 1979 Supreme Court 75* cited supra. For better clarity, the said paragraph 13 is extracted hereunder:

13. Now, if a sacrifice is necessary in the overall interest of the industry of a particular undertaking, it would be both unfair and inequitable to expect only one partner of the industry to make the sacrifice. Pragmatism compels common sacrifice on the part of both. The sacrifice must come from both the partners and we need not state the obvious that the labour is a weaker partner who is more often called upon to make the sacrifice.

Sacrifice for the survival of an industrial undertaking cannot be a unilateral action. It must be a two way traffic. The management need not have merry time to itself making the workmen the sacrificial goat. If sacrifice is

necessary, those who can afford and have the cushion and the capacity must bear the greater brunt making the shock of sacrifice as less poignant as possible for those who keep body and soul together with utmost difficulty.

The appellant while deciding the case of the respondent employee will keep in mind the fact that the respondent employee has been honourably acquitted in the criminal case. Therefore, the stigma attached on his conviction stands erased completely. This has to be taken into consideration

as a prima facie material to proceed while deciding the issue. The appellants may well be guided by the decision of the Apex Court in B.R. Kapoor

v. State of Tamil Nadu reported in : AIR2001SC3435 for the above state proposition. The relevant para 40 reads as follows:

40. In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and

sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Before we advert to the four judgments

relied upon in support of this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the

accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be

stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered

infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is

wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether

erased. But that is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it

carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence

applies as well.

33. In the result, the Writ Appeal is allowed in part as follows:

(i) The order of the learned single Judge setting aside the impugned order dated 4.9.2002 is confirmed.

(ii) The specific direction of the learned single Judge in para 36 of the order

directing the appellants to pass such orders that would enable the respondent/petitioner to derive all such benefits available to him in terms of Regulation 14 is set aside.

(iii) We direct the appellants to pass order in terms of Regulation 14 of the Pay and Allowances Regulations, 1972 and such other rules as may

apply, keeping in mind the principles laid down in the Apex Court's decisions in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan

Tin Works Pvt. Ltd. and Others, and Kapoor v. State of Tamil Nadu reported in : AIR2001SC3435 as above and also the decision of the

Andhra Pradesh High Court acquitting the respondent honourably, with reasons that will form the basis of the opinion and the order.

(iv) Such exercise shall be done by the appellants within a period of two months from the date of receipt of a copy of this order.

(v) There will be no order as to costs.

(vi) Consequently, connected miscellaneous petition is closed.

The Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., held as follows:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and

tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the

court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after

hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate

findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically

set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid

resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question to give their reasons for setting aside or not

setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of

natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a

difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law." (See also *South Bengal State Transport Corporation v. Sapan Kumar Mitra*)

Kumar Mitra)

The said decision of the Supreme Court has been followed in the case of *Banshi Dhar Vs. State of Rajasthan and Another*, .

The Court while exercising the power of judicial review, it cannot examine the details of the terms of the contract, vide the decision of the Apex

Court in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, , in which the Apex Court held in paragraph 19 as

follows:

19. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to

whether there has been any infirmity in the "decision making process." In this connection reference may be made to the case of *Chief Constable of*

the North Wales Police v. Evans. (1982) 3 All ER 141, where it was said that "The purpose of judicial review.

is to ensure that the individual receives fair treatment and not to ensure that

the authority, after according fair treatment reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the Court.

By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or

the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the

aforesaid case, *Chief Constable of the North Wales Police v. Evans* (supra), the Courts can certainly examine whether ""decision making process

was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

Respondent/writ petitioner submitted that he should be reinstated with all benefits of continuous service and arrears of salary. Once he is

honourably acquitted, there is no justification in denying promotion or increment. When the respondent/writ petitioner was dismissed from service,

he was working as Deputy Superintending Engineer(Civil) (Level E3), from the year 1990 and was drawing in the scale of pay of Rs. 16,000/- Rs.

20,000/-. On 1.1.1994, respondent/writ petitioner ought to have been promoted as Superintending Engineer (Civil)(E-4) which is non-selection

post carrying a scale of pay of Rs. 17,500/- Rs. 22,300/-. On 1.1.1997, respondent/writ petitioner was entitled to be considered for promotion as

Chief Engineer (Level-E5) in the scale of pay of Rs. 18,500/- Rs. 23,900/- along with his juniors, who were later promoted as such. Officers of

respondent/writ petitioner's batch were promoted as Chief Engineers with effect from 1.1.1997. Respondent's/writ petitioner's junior Biwal

Chandra Debnath was promoted as such with effect from 1.1.1998. Similarly, on 1.1.2000, the respondent/writ petitioner was eligible to be

considered for promotion as Deputy General Manager (Level-6) in the scale of pay of Rs. 19,500/- Rs. 25,600/- along with his juniors, whose

results are expected shortly.

The next contention raised by the learned senior counsel for the appellants is that the learned single Judge erroneously came to the conclusion that

the order of dismissal imposed on the respondent employee by invoking Rule 34 read with Rule 41 of the ONGC Conduct, Discipline and Appeal

Rules, 1994 was a punishment for his improper conduct in the course of

employment with the appellant ONGC. Consequently, the learned single Judge made Regulation 14(3)(b) of ONGC Pay and Allowances Regulation, 1972 applicable. It is a specific plea of the appellants that Regulation 14 will not apply to the facts of the present case. According to the appellants, though the order of dismissal was passed under Rule 34 read with Rule 41 of the ONGC Conduct, Discipline and Appeal Rules, Regulation 14.3 will not apply to the facts of the present case. The said Regulation 14 will apply only in Departmental proceedings and the question of considering the provisions of Regulation 14 will apply only in case of dismissal consequent to such departmental proceedings. It is a specific case of the appellants that Regulation 14 is not applicable to the order of dismissal passed based on conviction by a court. Since the respondent employee has not served the employer consequent to the criminal proceedings, admittedly, not at the behest of the Department, the appellant employer cannot be saddled with liability to pay back wages and other benefits. Reliance was placed on AIR 1994 552 (SC) . Without prejudice, it is contended by the learned senior counsel appearing for the appellant that the learned single Judge in paragraph 36 of the order has assumed the power of the competent authority under Regulation 14 of ONGC Pay and Allowance Regulation and directed the authority to grant all benefits. Therefore, the order of learned single Judge has to be set aside.