
(2022) 01 GAU CK 0021
In the Gauhati High Court
Case No : Writ Appeal No. 153 Of 2021

Oil India Limited	Vs	APPELLANT
Protim Patni Dey		RESPONDENT

Date of Decision : 11-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 311, 311(1)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 13

Citation : (2022) 01 GAU CK 0021

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : S. N. Sarma, N. Deka

Final Decision : Dismissed

Judgement

Soumitra Saikia, J

1. This appeal is filed against the Judgment and Order dated 23.04.2021 passed in W.P.(C) No. 7096/2017, whereby the termination order dated

17.05.2017 passed by the Deputy General Manager (Employees Relations, Oil India Limited, Duliajan) as well as order dated 13.10.2017 issued by the

Resident Chief Executive, Oil India Limited to the respondent/writ petitioner was held to be not sustainable and set aside and the writ petitioner was

directed to be reinstated in service.

2. The respondent was appointed as a Graduate Teacher for a period of 6 (six) months with effect from 13.07.2011 in the Oil India H.S School, Oil

India Limited, Duliajan. On the basis of a complaint submitted by the parents of a girl student of class-IX on 20.09.2011, the petitioner was issued a

show cause notice on 23.09.2011 on the charge of sexually harassing the girl student. The petitioner submitted his reply dated 24.09.2011 to the show

cause notice denying the charges levelled against him. The said show cause notice, however, was thereafter withdrawn and the enquiry proceedings sought to be initiated were also cancelled by order dated 19.10.2021. On the same day a second show cause notice dated 19.10.2011 was again issued to the petitioner/respondent reiterating the charges that the petitioner had sexually harassed a minor girl child of class-IX by making unwelcome remarks and gestures intending to insult the modesty of the girl student. It was further alleged that he had been coercing and forcing the girl student to agree to his illicit desires and which had caused mental trauma and agony to the girl student. The petitioner submitted his reply on 24.10.2011 denying the charges. Thereafter, by Notice dated 05.11.2011, enquiry proceedings were initiated against the petitioner. The said enquiry was completed and in his Enquiry Report dated 25.04.2012, the Enquiry Officer held that the charges could not be established against the petitioner.

3. The Principal of the school forwarded the Enquiry Report dated 25.04.2012 to the petitioner and the petitioner submitted his representation requesting the Principal to accept the findings of the Enquiry Officer as per the Enquiry Report dated 25.04.2012. The principal of the school, however, refused to accept the findings of the Enquiry Officer and vide order dated 16.08.2012 the penalty of dismissal from service was imposed on the petitioner. Being aggrieved the petitioner filed a complaint before the Regional Labour Commissioner Central at Dibrugarh. A conciliation proceeding was attempted which however failed prompting the petitioner to approach this Court for filing a writ petition being WP (C) No.

3980/2015. The said writ petition was disposed of vide order dated 09.02.2017 holding that although a school was an establishment under the Industrial

Disputes Act, 1947, the petitioner who was a school teacher was not a workman under the Industrial Disputes Act, 1947. This Court further held that

since no opportunity was granted to the petitioner to make any representation against the reasons allegedly made, by the disciplinary authority,

disagreeing with the findings in the Enquiry Report, the order of dismissal dated 16.08.2012, was set aside and the appellant/Oil India Limited was

given liberty to continue the departmental proceedings from the stage of furnishing to the petitioner, the reasons of disciplinary authority disagreeing

with the Enquiry Report and to provide the petitioner with an opportunity to make a representations against those reasons.

4. Pursuant to the said order passed by this Court in WP (C) No. 3980/2015 the petitioner was furnished the reasons by the Principal of Oil India

Higher Secondary School, Duliajan for disagreeing with the findings in the Enquiry Report and the petitioner was also afforded an opportunity to

represent against the said reasons. The petitioner accordingly submitted his representation and thereafter vide order dated 17.05.2017 issued by the

Deputy General Manager (Employees Relations, Oil India Limited, Duliajan), it was held that the misconduct of the petitioner was of a grave nature

and due to the petitioner's unsatisfactory performance during the probation period, the service of the petitioner as a Graduate Teacher (Science)

could not be confirmed. His temporary appointment was therefore terminated vide order dated 17.05.2017. The petitioner preferred an appeal dated

17.06.2017 before the appellate authority namely, Resident Chief Executive, Oil India Limited, Duliajan. The said appeal was, however, dismissed vide

order dated 13.10.2017 by the appellate authority. Being aggrieved the respondent as a writ petitioner approached this Court by way of the writ

petition assailing the orders dated 17.05.2017 and 13.10.2017.

5. The respondent as the petitioner contended before the learned Single Judge that pursuant to the order passed in the earlier writ petition i.e. WP (C)

No. 3980/2015, the departmental proceeding was conducted as per the provisions of Modified Standing Orders, although, the appeal filed by the

petitioner was disposed of in terms of Oil India Limited Teachers CDA Rules, 2017. Before the learned Single Judge it was the further case of the

petitioner that in terms of the Clauses 21.3.3 of the Modified Standing Orders of the Oil India Limited, imposition of major penalty was to be issued by

the Head of the Department namely the Principal of the school. However, the penalty order dated 17.05.2017 was issued by the Deputy General

Manager (Employees Relations) instead, who was not the appropriate authority, according to the petitioner. It was also contended that as per the

clause 23.1 of the Modified Standing Orders, the petitioner can seek advice of Deputy General Manager (Employees Relations) in respect of filing any

appeal against penalty orders issued. However, since the Deputy General Manager (Employees Relations, Oil India Limited, Duliajan) was the

authority who issued the Penalty Order, the employee's right of seeking advice from the Deputy General Manager (Employees Relations, Oil

India Limited, Duliajan) under the Standing Orders was no longer available to him. It was also submitted that since the reasons for disagreeing with

the Enquiry Officer's Report by the earlier Principal as well as the new Principal are the same, it is evident that there is no application of mind by

the new Principal and therefore, the impugned orders were required to be set aside and quashed.

6. Before the learned Single Judge, the appellant as the respondent denied the contentions of the petitioner and submitted that there was no prejudice

caused to the petitioner. It was further submitted that as mentioned under Clause 23.1, the Modified Standing Orders, the Deputy General Manager

(Industrial Relation) is now re-designated as Deputy General Manager (Employees Relations). It was submitted that although Deputy General

Manager (Employees Relations) is not the disciplinary authority but it is an authority higher than the disciplinary authority and therefore it can pass a

valid penalty order. It was also submitted that the petitioner's appointment was issued by the Deputy General Manager (Industrial Relations)

which is now known as Deputy General Manager (Employees Relations).

7. The learned Single Judge on the issues raised in the writ petition came to a finding that the Principal of the Oil India Limited H.S. School was never

the disciplinary authority in so far as the petitioner is concerned and therefore Principal's disagreement with the findings made in the Enquiry

Report can be of no relevance or consequence. The learned Single Judge arrived at the finding that since the Deputy General Manager (Employees

Relations), who is the disciplinary authority did not disagree with the findings of the Enquiry Report, his rejection of the explanation given by the

petitioner against the disagreement recorded by the Principal of the school is of no relevance or consequence and is therefore a nullity. The learned

Single Judge also came to a finding that in the facts of the case, the petitioner was deprived of his right to seek the advice of the Deputy General

Manager (Employees Relations) while filing an appeal against the penalty imposed upon him. The writ petition was accordingly allowed and the

impugned orders dated 17.05.2017 and 13.10.2017 was set aside and the writ petitioner was directed to be reinstated in service leaving the question of

payment of back wages and other consequential benefits to be decided by the respondents. Being aggrieved the present appeal is filed by the

appellant/Oil India Limited assailing the orders of the learned Single Judge.

8. We have heard the learned counsels for the parties and we have also carefully perused the case records available. The respondent was appointed

as an Assistant Teacher (Science) on probation in the Oil India Limited High Secondary School. There is no dispute at the bar that the respondent

being a teacher is not a workman under the provisions of Industrial Dispute Act, 1947. As a consequence, the Modified Standing Orders of Oil India

will not have a strict application in respect of the petitioner who is not a workman as defined under the Industrial Dispute Act, 1947. However, the

spirit of the Standing Orders can always be relied upon as a guiding principle in matters pertaining to departmental enquiries / disciplinary proceedings

as has been initiated against the respondent. There is also no dispute at the bar that although the Principal of Oil India Limited Higher Secondary

School, under which the respondent was employed, is the controlling authority although not the appointing authority of the respondent. The appointing

authority of the respondent was the Deputy General Manager (Industrial Relations) which post is now is stated to be re-designated as Deputy General

Manager (Employees Relations). The short question which arises in this appeal is whether disciplinary proceedings against an employee can be

initiated by an authority lower than the appointing authority but higher than the delinquent employee. The issue raised in this appeal, in our opinion is no

longer res-integra. The Apex Court in P. V. Srinivasa Sastry vs Comptroller and Auditor General, reported in (1993) 1 SCC 419 had held that initiation

of departmental enquiry by an authority lower than the Appointing Authority but superior to the delinquent is not violative of Article 311 (1) of the

Constitution of India.

9. The Apex Court while interpreting the protection guaranteed under Article 311 (1) of the Constitution of India to a member of a Civil service of the

Union or an All India service or Civil service of the State or a member who holds a civil post under the Union of the State held that Article 311 (1) of

the Constitution of India, guarantees protection to a member of a Civil service of the Union of the State that the employee shall not be dismissed or

removed by any authority subordinate to that by which, he was appointed. The Apex Court held that the protection under Article 311 (1) does not say

that even departmental proceedings must be initiated only by appointing

authority. However, where any Rules have been framed prescribing departmental proceedings to be initiated by any officer not subordinate to the appointing authority, the same shall not be inconsistent with Article 311 of the Constitution. The Apex Court held that in the absence of any such Rules be framed, the interpretation that departmental proceedings can only be drawn by the appointing authority cannot be said to flow from Article 311 of the Constitution. The relevant paragraphs of the Judgment of the Apex Court in *P. V. Srinivasa Sastry (Supra)* is extracted as under:

“4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding

should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

5. In the case of State of M.P. v. Shardul Singh [(1970) 1 SCC 108] the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his enquiry report to the Inspector-General, who was the appointing authority. The Inspector General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10)

“... we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.”

6. Reliance was placed on behalf of the appellants on the judgment of this Court in the case of Scientific Adviser to the Ministry of Defence v. S.

Daniel [1990 Supp SCC 374 : 1991 SCC (L&S) 355 ; (1990) 2 SCR 440 : (1991) 15 ATC 799] . From the aforesaid judgment it shall appear that Rule

13 of the Central Civil Services (Classification, Control and Appeal) Rules, which was under consideration specifically provided:

“13. Authority to institute proceedings.”(1) The President or any other authority empowered by him by general or special order may--

(a) institute disciplinary proceedings against any Government servant;

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be

provided and prescribed by the rules. But no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of

Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the

departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the

appointing authority, alone could have initiated a departmental proceeding.

7. It was then urged that even if it is held that the departmental proceeding could have been initiated by the Senior Deputy Accountant General, the Accountant General while imposing the punishment of reduction in rank could not have reverted the appellants from the posts of Auditors to the posts of Lower Division Clerks. According to appellants, P.V. SrinwasaSastry and M. MahadevaSetty, they had been appointed against the posts of Upper Division Clerks by process of direct recruitment, as such they cannot be reverted to the posts of Lower Division Clerks i.e. below the rank of the posts to which they had been appointed initially by process of direct recruitment.â??

10. The learned Single Judge had correctly referred to the Judgment of the Apex Court in State of Madhya Pradesh and Others Vs Shardul Singh

reported in 1970 (1) SCC 108 as well as the Judgment of the Apex court in P.V. Srinivasa Sastry and others Vs Comptroller and Auditor General and

Others reported in (1993) 1 SCC 419. The ratio laid down in these Judgments by the Apex Court is that the protection under Article 311 (1) of the

Constitution of India guarantees that the employees shall not be dismissed or removed by an authority subordinate to that, by which, he was appointed.

The Article does not in terms require that the authority empowered under the provisions to dismiss or remove an official should itself initiate or

conduct the enquiry preceding a dismissal or removal of the officer or even that the enquiry should be done at its instance. The only right guaranteed

to the civil servant under this provision is that he shall not be dismissed or removed by any subordinate authority to that, by which, he was appointed.

However, a perusal of the impugned Judgment of the learned Single Judge reveals that the said ratio was perhaps, not correctly interpreted by the

learned Single Judge as is evident from the findings of the learned Single Judge in the impugned Judgment. The learned Single Judge instead

interpreted that the law laid down by the Apex court in the said cases (Supra) is that a departmental proceeding can be initiated against that delinquent

officer by an officer not subordinate to the appointing authority. This interpretation by the learned Single Judge, according to us, is clearly in conflict

with the law and the ratio laid down by the Apex Court in the above Judgments.

11. In the facts of the present proceedings there is no quarrel that the Principal of the school, although not the appointing authority is certainly the

controlling authority in so far as the respondent is concerned and therefore a superior authority to the respondent/petitioner, the findings of the learned

Single Judge that the Enquiry initiated by the Principal of the school, not being the appointing authority cannot be sustained, does not appeal to us in

view of the law laid down by the Apex Court P. V. Srinivasa Sastry (Supra) that any authority who is not in the same rank or below or subordinate to

the delinquent officer against whom the proceedings are initiated, can be permitted to initiate disciplinary proceedings. Accordingly, the findings of the

learned Single Judge being contrary to the law laid down by the Apex Court will have to be interfered with and the same is accordingly interfered with

and set aside.

12. The further findings of the learned Single Judge that the Deputy General Manager (Employees Relations) being an authority who is required to

assist a delinquent employee to file an appeal cannot be accepted as well. The provision under the Rule is that the Deputy General Manager

(Employees Relations) is only required to assist which advise the petitioner in respect of filing an appeal. The Rule does not provide that the Deputy

General Manager (Employees Relations) will be the appellate authority.

13. As discussed herein above the Modified Standing Orders of the Oil India Limited, which are referred to, are only to be treated as guiding principles

as the same are not binding on the respondent, who is admittedly a teacher and therefore not a workman under the Industrial Dispute Act, 1947. No

other rules governing the disciplinary proceedings in respect of teachers like the respondents have been urged and/or placed before this Court,

although a perusal of the impugned order passed by the learned Single Judge reveals that a passing reference is made to a set of Rules, namely, Oil

India Limited Teachers CDA Rules, 2017, which was stated to have come into force with effect from 01.06.2017. However, besides making a

passing reference to the said rules, the rules were never pressed into service before the learned Single Judge by the learned counsels for the parties

nor in the present proceedings. Therefore, effectively the disciplinary proceedings were conducted as guided by the Modified Standing Orders of the

Oil India Limited.

14. The learned Single Judge also came to a finding that since the Deputy General Manager (Employees Relations, Oil India Limited, Duliajan) was

the authority in terms of the Modified Standing Orders, who is supposed to aid and advice the delinquent employee while preferring his appeal against disciplinary orders, the right of the delinquent employee to effectively prefer an appeal has been taken away or denied as the Deputy General Manager (Employees Relations, Oil India Limited, Duliajan) was the authority who ultimately passed the order of dismissal. Such a view arrived at by the learned Single Judge in our opinion cannot be sustained in view of the fact that the appeal was ultimately decided by the appellate authority namely, the Resident Chief Executive, Oil India Limited, Duliajan, who had rejected the same. There is no pleading and/or any submission made by the respondent either before the learned Single Judge, or before this Court, that the appeal which was preferred by the delinquent against the disciplinary order before the appellate authority, namely, the Resident Chief Executive, Oil India Limited, Duliajan, was defective or the same could not have been effectively preferred because of the failure of the Deputy General Manager (Employees Relations, Oil India Limited, Duliajan) to render proper aid and advice required to be given as provided under the Modified Standing Orders. In the absence of any such pleadings or statements to effectively demonstrate the hardship or the prejudice caused to the delinquent employee, we are unable to agree with the view arrived at by the learned Single Judge.

15. In view of all of the above, we are constrained to differ with the findings of the learned Single Judge. The impugned Judgment and order dated 23.04.2021 passed by the learned Single Judge in WP (C) No. 3980/2015 is hereby interfered with and set aside.

16. Consequently the orders dated 17.05.2017 and 13.10.2017 issued by the Deputy General Manager (Employees Relations) and the Resident Chief Executive, Oil India Limited, Duliajan respectively, are hereby, restored. Writ Appeal is allowed and the writ petition is accordingly dismissed.

17. No order as to cost.