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**(2001) 12 KL CK 0020**  
**In the High Court Of Kerala**  
**Case No : W.A. No's. 794 and 2449 of 2001**

Raju T.K.

APPELLANT

Vs

Chairman, Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

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**Date of Decision :** 21-12-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2002) 93 FLR 816 : (2002) 3 LLJ 213

**Hon'ble Judges :** K.S. Radharkishnan, J;K. Balakrishnan Nair, J

**Bench :** Division Bench

**Advocate :** K.R.B.K. Kaimaw, for the Appellant; Antony Dominic, for the Respondent

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## Judgement

This Judgment has been overruled by : Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju, AIR 2006 SC 3504 : (2006) 2 JT 624 : (2006) 2 LLJ 113 : (2006) 2 SCALE 553 : (2006) 3 SCC 143 : (2006) 2 SLJ 470 : (2006) AIRSCW 1102 : (2006) 2 Supreme 369

K.S. Radhakrishnan, J.—Both the appeals are preferred against the judgment in O.P. No. 15479 of 1995. Writ Petition was preferred by one T.K. Raju, Senior Sales Officer challenging the order of dismissal from service of Bharat Petroleum Corporation Limited (hereinafter called the Corporation.)

2. Writ petitioner while working as Senior Sales Officer was served with charge memo dated July 27, 1992. Charges levelled against him are as follows:

"That in November 1991 you had taken the loan of Rs. 5000/- from Rose Flames, Cochin and the said amount was repaid by you only after a period of five months i.e. only after the show cause notice Ref. C. PERS. STF dated December 10, 1991 was served on you by CDM, Cochin Divisional Office. At that time you had also taken one DPR (Differential Pressure Regulator) from the aforesaid Distributor which has not been returned or replaced by you.

You had taken a loan of Rs. 1,000/- from Jyothi Gas, Tripunithura and the said

amount was returned only after a period of about 2 weeks. You had also taken a DPR (Differential Pressure Regulator) from this Distributor which was returned only in February 1992 after a period of more than an year.

You had taken a loan of Rs. 10,000 in July 1991 from Krishna Gas, Ernakulam which amount has not been returned by you. Furthermore, you have also solicited further loan from this distributor.

You had also taken a loan of Rs. 1,000/-from Cherukara Gas Agencies, Alleppey during July 1991 which was returned by you after a period of 30 days.

You had demanded a loan of Rs. 10,000/-from Seena Gas who had subsequently given you Rs. 5,000/- on September 7, 1991 which has not been returned by you till date.

You had taken a loan of Rs. 10,000/- from Maria Flames for finalising a house site which has not been returned till now. On assuming charge as LPG Sales Officer in the month of April 1991, you had demanded Rs. 5000/- again from this distributor. When the distributor explained his difficulties you had demanded at least Rs. 2000/- which was not paid by the distributor. On January 6, 1991 on your visit to the distributor for an inspection, you demanded an LPG stove which was given to you on credit which amount has also not been settled by you.

You had taken articles and availed services worth Rs. 2487/- from our dealer K.P. Varghese & Sons on credit. This amount has also not been settled by you so far.

You had taken supplies of petrol on credit from K.K. Abraham, Ernakulam during the period April 1990 and a sum of Rs. 2329.90 due for the supplies has not yet been paid."

The above acts were alleged to have been committed by the petitioner in violation of the provisions in Clauses 4 and 22 of Part II of the Conduct Rules of the Conduct Discipline and Appeal Rules applicable to the management staff. Petitioner filed detailed objection to the memo of charges. Later enquiry officer was appointed. Enquiry Officer examined nine witnesses on the side of the management. Petitioner was called upon to enter his defence, he though cited one Balan he could not be produced by the defence and therefore not examined. On conclusion Ext. P6 enquiry report was submitted a copy of which was forwarded to the petitioner on May 18, 1994. Petitioner filed his written objection. After considering the same Ext P8 order of dismissal was passed against him. Petitioner preferred statutory appeal which was dismissed by Ext. P20.

3. Learned single Judge after considering all the aspects of the matter found that the enquiry does not suffer from any vitiating circumstances. It was also found there is no violation of the principles of natural justice since adequate opportunity was given to the petitioner to defend his case. Learned Judge however felt that the order of dismissal was not justified in the facts and circumstances of the case, which according to the learned Judge was

disproportionate considering the gravity of the offence. Learned Judge therefore, felt that the punishment requires reconsideration by the appellate authority. Consequently the matter was remitted back to the third respondent for passing fresh orders in the matter of punishment. It was also ordered that such consideration would include the question whether reducing in rank coupled with transfer outside the State would be sufficient in the place of dismissal.

4. Management as well as the delinquent employee are aggrieved by the order of the learned single Judge and preferred appeals.

5. When the matter came up for hearing we heard counsel on either side.

6. After going through the enquiry report and the order of the appellate authority we find no reason to interfere with the enquiry proceedings. Petitioner could not establish that the enquiry was conducted in violation of any rules or regulations or that it was vitiated by mala fide or other extraneous circumstances. Counsel for the management placed reliance on several decisions of the Apex Court namely O.M. Kumar and Ors. v. Union of India 2001 (2) SCC 386 ; U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, ; U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, and Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noykarara Sangha Etc., and contended that this Court sitting in Writ jurisdiction is not justified in interfering with the punishment of dismissal and directing reconsideration.

7. We have pointed out that the charges levelled against the delinquent officer was that he had acted in violation of the provisions of Clauses 4 and 22 of Part II of the Conduct Rules. Clause 4 of Part II states that every management staff should serve the Corporation honestly and faithfully and that he should use his utmost endeavour to promote the interest of the Corporation and shall show courtesy and attention in all transactions. It is also stated that every management staff of the Corporation should at all times maintain absolute integrity, maintain devotion to duty and do nothing which is unbecoming of a management staff of the Corporation. It is also stipulated that every management staff of the Corporation should take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority. The Supreme Court had occasion to consider an identical provision in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., . While dealing with the clause the Apex Court held at p. 193 of LLJ:

"Rule 4 bears the heading "General". Rule 5 bears the heading misconduct. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct

in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex-post-facto interpretation of some incident may not be camouflaged as misconduct."

Same is the view taken by the Apex Court in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, , has stated as follows:

"..... a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public, uncertain as to the conduct it prohibits or leaves judges and jurors free to decide without any legally fixed standards, what is prohibited and what is not in each particular case.....Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government to impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that Courts must enforce."

Our Supreme Court in *Kartar Singh v. State of Punjab*, 1994 (3) SCC 569 at paragraph 130 has held as follows:

"It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to steer far wider of the unlawful zone.....than if the boundaries of the forbidden areas were clearly marked."

8. We find that the charges include the violation of Clause 4 Part II apart from other charges and the punishment order also relies on the said clause to impose the penalty of dismissal from service. It is a fairly settled principle of law that when a penal provision is vague, it denies the equal protection of laws guaranteed under Article 14. In the light of the above legal principles, the reliance placed on Clause 4 of Part II of the Classification, Control and Appeal Rules for the Management Staff, the impugned order is vitiated.

9. When a disciplinary authority takes a decision regarding the guilt of a

delinquent employee, it is taking the decision objectively on the basis of the materials before it. So even if irrelevant considerations have also been looked into for forming the conclusion of guilt, the Court judicially reviewing the action can consider whether the remaining ground would have been sufficient for entering the finding of guilt. So, even if the irrelevant considerations are excluded, still according to us, the finding of guilt of the writ petitioner will remain. But we are of the view that the choice of the appropriate penalty from among the various penalties is a decision taken on the subjective satisfaction of the decision maker. We are unable to decide whether the remaining charges would have been sufficient to create the very same satisfaction in the mind of the disciplinary authority. We are also unable to decide to what extent the various charges contributed to the satisfaction of the disciplinary authority to impose the extreme penalty. To say that the remaining charges would have been sufficient to sustain the order of dismissal, would be to substitute an objective judicial test for the subjective decision of the executive authority who is authorised by law to take the decision. In this background, it is apposite to quote the decision of the Apex Court in Zora Singh, wherein it was held:

"The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise."

10. In view of the above legal position, we hold that the penalty imposed on the writ petitioner is unsustainable in law for the reliance placed on Clause 4 Part II of the Rules. Though for different reasons, we affirm the decision of the learned single Judge.

11. Now it is for the appellate authority to take decision as to what must be the penalty which should be imposed on the delinquent employee. The learned single Judge has suggested a penalty that may be appropriate on the facts of the case. Going through the judgment, we feel that the learned Judge only wanted the imposition of a penalty commensurate with the misconduct proved other than a penalty resulting in loss of job to him. We feel that the exercise of discretion made by the learned single Judge that the penalty should be something other than dismissal or removal from service cannot be said to be perverse warranting interference at our hands. We notice that the writ petitioner is a member of the scheduled caste. There is no allegation that he has taken the loans etc. for giving undue pecuniary advantage to the dealers concerned. Nor is there any allegation that they have gained any advantage by succumbing to the demands made by

the writ petitioner. Therefore, we affirm the discretion exercised by the learned single Judge subject to the modifications and clarifications mentioned, above. Therefore, we remit the matter for fresh decision by the appellate authority in the light of the observations contained hereinabove. The authority will be free to take any decision regarding penalty to be imposed on the writ petitioner except the penalty of dismissal or removal from service. The said authority shall take a decision within two months from the date of receipt of a copy of this judgment.

12. The Writ Appeals are disposed of as above.