

Kuldeep Kumar Sethee .. Vs. Mr. R.S. Sharma, Cmd, Ongc and ors.

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Court : Mumbai

Decided On : Nov-15-2010

Judge : A.a. Sayed; B. H. Marlapalle, Jj.

Appeal No. : WRIT PETITION NO. 2033 OF 2007

Appellant : Kuldeep Kumar Sethee ..

Respondent : Mr. R.S. Sharma, Cmd, Ongc and ors.

Advocate for Def. : Mrs. S.V. Bharucha; Mr. D.A. Dubey, Advs.

Advocate for Pet/Ap. : Mr. S.U. Kamdar; Divya Shah and Associate, Advs.

Judgement :

1. The petitioner came to be promoted from time to time and the last promotion he was granted was in the year 1995 to the post of Superintending Engineer (E & T) at E4 level. He claims that he was entitled for further promotion to E5 level on completion of three years of service in the post of Superintending Engineer and the subsequent promotions, but he being a whistle blower, exposed serious acts of corruption in ONGC and the management got annoyed and started harassing him, he was denied his due promotion to E5 level onwards, his ACRs were spoiled and he was hounded with disciplinary actions.

2. The petitioner approached this court in Writ Petition No. 1887 of 2000 praying for directions to grant him promotion to E5 level and the said petition was dismissed on 14/2/2001. In the year 2002-03, ONGC introduced an internet Portal

known as "ongcreports.net" so as to provide a platform "Forum" and "Feedback". It was intended that the employees could discuss work related issues and solve work problems of the employees and also to create database knowledge and ideas. However, it was not platform meant to malign, slander or accuse the management of ONGC on purported grounds of mal-administration, victimization or mismanagement of its resources. As per the petitioner, the Chairman and Managing Director (CMD) of ONGC in response to a letter by an employee exposing corruption in ONGC, exhorted all employees to come forward and expose corruption with the words "if you really love ONGC, speak up, thrash the rascals, that will be your best individual award, a clean conscience.". The petitioner claims that many employees have been using the Portal and responded the call of CMD and expressed their views of different matters, including management, promotion and corruption etc. However, ONGC had never proceeded against any such employee.

3. On 24/12/2004 the petitioner addressed an e-mail to the CMD pointing out corruption. He again sent an e-mail to CMD, the Directors and Chief Vigilance Officer of ONGC on 5/1/2005 pointing out the alleged casual attitude of key officials on job assignments and organograms. Before this, it appears that on 31/8/2004 the petitioner was counseled that his behaviour by posting comments on the Portal and making allegations against senior managers was unbecoming of an officer of his level and that he should not indulge in such acts in future. It appears that by letter dated 5/1/2005 his explanation was sought and it was indicated that he may have to face disciplinary proceedings. Instead of following the advice so given to him, he posted yet another e-mail on 7/1/2005 on the Portal. He did not stop here alone and on 10/1/2005 he addressed a letter to the Board of Directors pointing out acts of omissions and commissions in the matter of promotions etc. On 12/1/2005, he raised an issue with regard to misuse of office by some officers in the ONGC by an e-mail on the Portal. On the very next day i.e. 13/1/2005, he referred to the acts of omissions and commissions by Mr. S.D. Mathur, Deputy General Manager (Programme) and on 15/1/2005 he addressed yet another e-mail on the Portal to the CMD and purportedly urged to ensure transparency at the operations level in ONGC. In the e-mail dated 6/4/2005 he used insolent language, casting aspirations on the management, slandering CMD

of ONGC and alleging that the CMD and the Directors and key senior officers had committed illegitimate, unfair, discriminatory and emotional assaults on ONGC employees and had committed acts which were criminal in nature. He also alleged that there was abuse and misuse of power. This resulted in a show cause notice/charge-sheet dated 14/4/2005 addressed to the petitioner. He alleged to have committed the following gross misconduct:-

(a) leveling false and baseless allegations against the CMD and Directors of the Company,

(b) using insolent and impertinent language which were addressed to the higher Authorities,

(c) misusing the portal to cast aspersions on the integrity of the higher Authorities thus, spreading false rumors and (d) the petitioner had communicated with external Authorities about ONGC without prior permission of the competent authority.

4. After being served with the show cause notice, he uploaded the show cause notice onto the ONGC portal and further threatened to forward all and any communication received by him from the management to the external authorities. Hence he was issued a second show cause notice on 22/4/2005. At this stage he approached this court by filing Writ Petition No. 1636 of 2005 in the second round and prayed for orders for just compensation to him. He also sought directions that till his promotion issue was resolved, all corporate level promotions be stayed by way of an interim injunction and for a further declaration that in all his pending ACRs his performance be deemed to be treated as outstanding. He further sought directions to promote him to the post of Chief Engineer (Electronics and Telecom) with effect from 1/1/1998. A host of other prayers were also made in this petition which was disposed by this court on 17/1/2006 with the observations that in the event an order passed at the end of the enquiry was adverse to the petitioner, it would not be acted for a period of four weeks after the same was served on the petitioner.

5. The petitioner, rather than submitting his reply to the charge- sheet, submitted a representation to the Chief Justice of this court on 19/4/2005. However, he submitted his reply to the charge-sheets on 12/5/2005 and Mr. H. P. Singh, Ex. DIG CBI was appointed as the Inquiry Officer, on or about 16/8/2005. The inquiry was conducted in which the petitioner appeared pursuant to the observation made by this court in the order dated 17/1/2006 and the Inquiry Officer submitted his reports in both the inquiries on 12/2/2006 and he held that the petitioner did not deny to have written the e-mails and that he was found guilty of committing the misconduct. A copy of the Inquiry Officer's report in both the charge- sheets was made available to him through two different memorandums addressed to him on 22/2/2006. On 30/3/2006, in the regular round of transfers, the petitioner came to be transferred to Mehsana from the Uran Plant. However, he refused to comply with the said transfer, as contended by the management. At this stage he approached this Court in the third round by filing Writ Petition No. 1898 of 2006 so as to (a) challenge the transfer, (b) quash the enquiry proceedings, (c) to restore the online rights available to him and (d) seek promotion to the post of Chief Engineer. This petition was dismissed on 25/7/2006. However, he was allowed to keep possession of the Mumbai premises so that his family could stay till the annual examination of his daughter to be held in March, 2007. On 9th March, 2007, he filed this petition for various reliefs and on 28/3/2007, the Director (HR) of ONGC passed an order and imposed the penalty of removal from service, not amounting to a disqualification for future employment. It appears that he filed an appeal against the said order to the CMD and the same was dismissed on 18/8/2007. Consequently, the petition came to be amended and thus the reliefs prayed for in this petition are to quash and set aside the order of removal dated 28/3/2007 confirmed by the Appellate Authority dated 18/8/2007 and also to grant him all consequential benefits of promotion etc. while challenging the legality of the enquiry proceedings as well as the transfer order. By way of interim relief, he also prayed for stay on all promotions.

6. The charges in the first charge-sheet dated 14/4/2005 were of gross misconduct and enumerated as under:

(a) The delinquent had vide his comments dated 6/4/2005 uploaded on "Feedback Forum" of ongcreports.net addressed to C&MD;, Directors and others have leveled false and baseless allegation on them of allowing officers of ONGC to misuse their powers.

(b) He used insolent and impertinent language in his comments dated 6/4/2005 which was addressed to the higher authorities of the Company.

(c) He misused the internal news portal i.e. ongcreorts.net to cast aspersions on the integrity of the higher authorities, thus spreading false rumors amongst the ONGC employees. (d) Admittedly he communicated with the external authorities about ONGC without prior permission of the competent authority. Whereas in the second charge-sheet dated 22/4/2005 he was charged of following acts of misconduct:

(a) The delinquent misused the internal news portal i.e. ongcreports.net to upload a confidential document (a part of the Memorandum served to him on 15/4/2005) on "Feedback Forum" of ongcreports.net without prior permission of the competent authority.

(b) He, in his communication dated 19/4/2005 uploaded on "Feedback Forum" of ongcreports.net has threatened to forward any/all communications received by him from the management to the external authorities.

(c) He acted in contravention to the lawful orders of his superiors by submitting an informal defense statement against the Memorandum dated 15/4/2005 through e-mail for furthering his personal interest by generating en-masse sympathy.

7. Both the charge-sheets were issued under Rule 36 of the ONGC Conduct, Discipline and Appeal Rules, 1994 (for short the D & A Rules). It was alleged that by writing letters via e-mail in the Feedback Forum of ongcreports.net to the CMD and Directors as well as CVO etc. the delinquent had acted in contravention of Rule 25(3) of the D & A Rules and his writing letters by e-mail on 10/1/2005 to the Chief Justice of this court, on 20/12/2005 to the Union Minister for Petroleum and Natural Gas and the CVO and CBI, had acted in contravention of Rule 25(4) of the

D & A Rules. It was further alleged that he had failed to maintain devotion to duty and indulged in gross misconduct in using disrespectful language in his letters addressed to higher authorities and spreading false rumors about them and thus he acted in a manner prejudicial to the interests of the company and rendered himself liable for the disciplinary action under Rule 36 of the D & A Rules. In the second charge-sheet, it was alleged that by his acts of threatening to forward any/all communications received by him from the management to the external authorities and also to continue making confidential matters public through the internet and e-mails he had failed to maintain devotion to duty and rendered himself liable for disciplinary action under the provisions contained in Rule 4(1)(b) and (c) and Rule 14(i) read with Sl.No.1,2,7,9(ii), 27, 30 and 33 of Schedule II referred to at Rule 3(j) of the D & A Rules.

8. The petitioner submitted a joint reply to both the charge-sheets on 12/5/2005 and denied that his comments on the e-mail had spread any false propaganda amongst the employees of ONGC and there was no case to believe or suggest that the employees were misled. He also stated that he had high regards for the integrity, capability and dynamic leadership of the CMD and Directors and CVO. He also offered to express his apology for any unintended inappropriate projection which might have been misinterpreted. He also mentioned about approaching this court by filing Writ Petition No. 1636 of 2005. He stated that the ONGC Officers are highly qualified, of matured minds and not illiterate or school kids to be impressed by his e-mail on the Feedback Forum. Thus, he denied the charges of gross misconduct. The Inquiry Officer commenced the enquiry proceedings and in view of the admitted position of the uploading of e-mails addressed to the CMD as well as various authorities outside ONGC, the management examined only one witness i.e. Shri Pallab Bhattacharya, who was the DGM (Corporate Communication) at New Delhi. He was examined on 30/9/2005 and on 17/10/2005 before the Enquiry Officer. On 30/9/2005 his depositions were in respect of the first charge-sheet dated 15/4/2005 and the depositions recorded on 17/10/2005 were in respect of the second charge-sheet dated 22/4/2005. On both dates the petitioner cross-examined Mr. Bhattacharya. This witness was examined only with an intention to bring on record the purpose of the portal Feedback Forum on ongcreports.net and that it was meant only for the employees of ONGC for

channelizing information which is organization specific for the employees at large. This witness pointed out that there were two platforms for the employees in ongreports and the first one was called "Forum" and second one was "Feedback". Forum was meant for an issue probably thrown by an employees which then comes under discussion by other employees, whereas Feedback is meant for an issue which already exists and employees are commenting on that and the issues should be organization related. He also stated that since the platform is meant to deal with organization related issues, the comments/views posted by an employee should be organization specific without propagating individual grievances either against the organization or co-employees. The platform could not be used to cast aspersions against management, including C&MD, Directors and senior officers. It was clarified that this platform was not meant for use by the employees for their personal matters to be taken at the official level, though it was open to the employees for posting their comments.

9. The Enquiry Officer considered the e-mails uploaded by the petitioner, the depositions of Mr. Bhattacharya and the written submissions made by the Presenting Officer and submitted his two separate reports on 12/2/2006. The Enquiry Officer held that charges leveled in the charge- sheet dated 14/5/2005 were proved. He held that the portal dated 6/4/2005 uploaded by the petitioner on the Feedback Forum not only spread confusion amongst the employees for all practical purposes but also led them to have anti management outlook which was again uncalled for, for the broader interest of the organization, management and employees. All the charges leveled against the petitioner were held to be proved. By two separate memorandums dated 22/2/2006 while forwarding the copies of the enquiry report under Rule 37(2) of the D & A Rules so as to provide an opportunity for making representation against the findings of the enquiry officer, he was called upon to submit such representation within 10 days from the date of receipt of the memorandum. On 17/3/2006 he submitted a reply by e-mail to the Director (HR). He asked the Director (HR) to verify whether the entire matter was approved by the CMD in writing and also relied upon the order passed by this court on 17/1/2006 dismissing Writ Petition No. 1636 of 2005. On 12/5/2005, he submitted yet another reply addressed to the Director (HR) on the letterhead of ONGC (Mumbai Region). He reiterated that he was not guilty of spreading rumors

or misinformation amongst the employees of ONGC and against the management and senior officers. On 28/3/2007 the Director (HR) passed an order imposing against the petitioner the penalty of removal from service which shall not be a disqualification for the future employment from the date of the order. It was pointed out in the said order that after the memos dated 22/2/2006 were addressed to the petitioner and the Enquiry Officer's findings were forwarded to him, he did not submit any representation and vide subsequent letter dated 14/1/2007 he was given a second opportunity to submit his reply. The petitioner had submitted his reply dated 22/12/2006 and on careful consideration of the same as well as the enquiry officer's findings, it was proved that he had failed to maintain devotion to the duty and indulged in gross misconduct of using disrespectful language in his letter addressed to the higher authorities and spreading false rumors about them. He had misused the internal news portal of ONGC for furthering his personal interests, threatening the superiors to forward all communications received by him from the management to the external authorities and to continue making confidential matters public through the internet and e-mails.

10. The petitioner submitted his appeal against the said order to the CMD and it came to be dismissed by the order dated 18/8/2007. The Chairman and Managing Director of ONGC in the said order stated that he had carefully considered the appeal submitted by the petitioner, the findings of the Enquiry Officer in both the reports, the facts brought forward in the appeal and other facts and circumstances of the case on record and having applied his mind to the totality of the case, he was satisfied that there was no material brought on record by the petitioner in order to take a different view than the view taken by the disciplinary authority. Hence under Rule 51 (2)(c)(i) of the D & A Rules, the appeal submitted by the petitioner was rejected and the punishment imposed by the disciplinary authority was confirmed.

11. The learned counsel for the petitioner, in addition to his oral arguments, placed before us the synopsis of his written arguments and submitted that there was no case of any misconduct made out, the charge- sheets were absolutely vague and general, there was no evidence in the enquiry to link the petitioner with the alleged misconduct. The petitioner was not provided the list of witnesses and their

statements and on that count the enquiry was vitiated. It was further submitted that under the jurisdiction of judicial review, this court can set aside the findings, if there was no evidence in support. It was also alleged that the appellate authority failed to apply his mind and to record reasons. Even otherwise, the punishment imposed on the petitioner was highly disproportionate, even if it was assumed that the charges of misconduct were proved against him. In support of these arguments, the learned counsel for the petitioner relied upon the following decisions:-

(a) Union of India and ors. vs. K. K. Dhawan [(1993) 2 SCC 56].

(b) Sawai Singh vs. State of Rajasthan [(1986) 3 SCC 454]. (c) Bank of India and anr. vs. Degala Suryanarayana [(1999) 5 SCC 762.

(d) Kuldeep Singh vs. Commissioner of Police and ors. [(1999) 2 SCC 10].

(e) Narinder Mohan Arya vs. United India Insurance Co.Ltd. and ors. [(2006) 4 SCC 713]

(f) State of Uttar Pradesh and ors. vs. Ram Daras Yadav [(2010) 2 SCC 236]

12. The learned counsel for the ONGC, on the other hand, submitted that the enquiry conducted against the petitioner was in keeping with the principles of natural justice and there was no procedural error so as to vitiate the said enquiry on any count. The charges leveled against the petitioner have been duly proved and the findings recorded by the enquiry officer cannot be termed to be perverse. It was also submitted that the past conduct of the petitioner indicated that despite showing him leniency, he continued to unleash his allegations against the management and the senior officers with more vigor and in uncontrolled as well as unpardonable language. The learned counsel for the ONGC submitted that the petitioner by his own acts duly proved that he was a habitual offender and despite the fact that he was counseled in the year 2004 he did not show any improvements and continued to make public statements against the Board of Directors as well as CMD. While protecting the petitioner's right to express his views on the Feedback Forum, it was necessary to have a proper balancing of the

right to express personal views and the allegations being made against the senior functionaries in the organisation. The individual freedom of the petitioner to express such views cannot be expanded or misused to level wild and reckless allegations against the senior functionaries of the organisation and that too on the internal portal of ONGC. It was also submitted that in a writ petition filed under Article 226 of the Constitution, this court is not required to embark upon reappreciating the evidence recorded by the domestic tribunal and so long as there is some evidence to support the conclusion arrived at by the enquiry officer, the same has to be sustained. The power of this court to interfere with the quantum of punishment is extremely restricted and can be exercised only in rare and shocking cases. If all the procedural requirements have been met, the High Court would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee and if the decision of the employer is found to be within the legal parameters, there would be no case to interfere with the managerial decision to award a particular punishment. While exercising the power of judicial review, the High Court or a tribunal cannot interfere with the discretion exercised by the disciplinary authority and confirmed by the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or it would shock the conscience of the court/tribunal. In support of these arguments, the learned counsel for the ONGC placed reliance on the following decisions:-

- (a) M. H. Devendrappa vs. Karnataka State Small Industries Development Corporation [(1998) 3 SCC 732].
- (b) Bank of India and anr. vs. Degala Suryanarayana [AIR 1999 SC 2407]
- (c) Chairman and Managing Director, VSR and ors. vs. Goparaju Sri Prabhakara Hari Babu [(2008) 5 SCC 569].
- (d) Praveen Bhatia vs. Union of India and ors. [(2009) 4 SCC 225].
- (e) Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulabhia M. Lad [(2010) 5 SCC 775]

13. We have gone through both the charge-sheets, the replies submitted by the petitioner to the same, the depositions of Mr. Bhattacharya, the written submissions made by the Presenting Officer and the enquiry officer's findings. In Rule 3(j) of the D & A Rules the term "misconduct" has been defined as under: "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."

Rule 25 is titled as pressing of claim or seeking redress of a grievance in service matters. As per Rule 25(3), a representation to the Director or the Chairman and Managing Director of the Company shall not be made unless all means of seeking redress from lower authorities have been completely exhausted. As per Rule 25(4), no representation, appeal, petition or memorial shall be addressed by an employee to the Director or the Chairman and Managing Director of the Company personally or to any outside Authority or an Authority not specified under these Rules. Provided that an employee belonging to scheduled caste or scheduled tribe may write directly to the Commissioner for Scheduled Castes and Scheduled Tribes on matters relating to appointments against the reserved quota. Rule 36 of the D & A Rules has listed the nature of penalty i.e. minor penalties and major penalties. Removal from service which shall not be a disqualification for future employment is a major penalty under Rule 34(viii) of the D & A Rules. Rule 36 of the D & A Rules provides for the procedure of imposing the major penalty and as per subrule (3) thereunder, where it is proposed to hold an inquiry against an employee under the said Rule and Rule 37, the Disciplinary Authority shall draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges and also follow the procedure as laid down thereunder. Rule 37 of the D & A Rules deals with the action on inquiry report. We have no doubt in our mind that the procedural requirements as laid down in Rules 36 and 37 of the D & A Rules have been fully met and the disciplinary proceedings do not suffer from any procedural infirmities or on account of the breach of principles of natural justice, in the instant case.

14. Schedule -II annexed to the D & A Rules has listed the acts and omissions constituting misconduct and some of the relevant acts and misconduct are

reproduced hereunder:

(2) Use of insolent or impertinent or unparliamentary language in any official correspondence or in any representation including appeal.

(7) Spreading false rumours or giving false information which tends to bring into disrepute the Company or its employees or spreading panic among them.

(9)(ii) Commission of any act subversive of discipline or of good behaviour.

(15) Shouting defamatory or disrespectful slogans or issuing or distributing pamphlets and hand bills or levelling malicious or false allegations.

(27) Publication of any article, journal, paper or book on any subject prejudicial to the Company or connected with any work of the Company without the prior permission of the competent authority.

(30) Acting in a manner prejudicial to the interest of the Company.

15. The disciplinary authority having considered the findings of the enquiry officer, recorded that the petitioner failed to maintain devotion to duty and indulged in gross misconduct of using disrespectful language in his letters addressed to higher authorities and spreading false rumours about them. The disciplinary authority also recorded that the petitioner had misused the internal news portal of ONGC for furthering his personal interests threatening the superiors to forward all communications received by him to the external authorities and had continued making confidential matters public through the internet and e-mails. The e-mails and letters uploaded on the internet by the petitioner do not leave any manner of doubt to hold that the disciplinary authority was justified in concurring with the findings recorded by the Enquiry Officer holding that the charges leveled against the petitioner were duly proved. There was no other evidence that was required to be adduced by the management in support of both the charge-sheets and the comments uploaded by the petitioner on the internet / e-mail or the Feedback Forum spoke for themselves and there was no manner of doubt that the petitioner behaved as if he had lost his balance while making reckless and slanderous allegations. In his comments dated 6/4/2005, he, inter alia, alleged,

"...illegitimate, unfair and discriminatory emotional assaults by C&MD;, Directors, Key Officers and other senior officers on ONGCians are also criminal in nature, by way of failing to establish quasi-judicial system of administration of justice; right to information; neglect of representations and write ups of officers; unfair overruling of seniority, discrimination and illegitimate non-defining of posts postings, job assignments, organograms, ACRs, etc. , leading to abuse and misuse of powers as well as unfair promotions and transfer etc." The petitioner was holding the responsible post of Superintending Engineer (Electronics and Telecom) and certainly his behaviour was unbecoming of an officer of E4 level.

16. In the case of K. K. Dhawan (Supra) a three Judge Bench of the Supreme Court held that a disciplinary action can be taken in the following cases against an officer:

"(a) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty; (b) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(c) if he has acted in a manner which is unbecoming of a Government servant;"

In the case of Kuldeep Singh (Supra), the Supreme Court held, "It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

17. It is well settled that the strict rules of evidence are not applicable to departmental enquiry proceedings and the only requirement of law is that the allegation against the delinquent officer must be established

by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. In the case of Union of India vs. H. C. Goel [AIR 1964 SC 364], the Constitution Bench held,

"The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

In the case of B.C. Chaturvedi vs. Union of India [(1995) 6 SCC 749], the Supreme Court held,

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the

litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In the case of DG, RPF vs. Sai Babu [(2003) 4 SCC 331], the Supreme Court reiterated the legal position about the High Court's power to cause interference in the quantum of punishment imposed by the disciplinary authority in the following words:

"6..... Normally, the punishment by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/ establishment in which the delinquent person concerned works."

18. In the instant case, we have noted that in addition to the serious charges leveled against the petitioner amounting to gross misconduct on his part, his behaviour, pre and post charge-sheet period, would itself manifest a serious concern even to outsiders and more particularly keeping in mind the post he holds i.e. Superintending Engineer (E & T) with ONGC. We have noted the chain of litigation he has drawn the ONGC into before this court. Despite the fact that on 17/1/2006, while disposing off Writ Petition No. 1636 of 2005, this court did not accept any of his contentions so as to give directions for promotion from 1/1/1998, he consistently went on writing to the higher authorities that the whole issue was subjudice before this court. He was not participating in the enquiry nor was he responding to the notices and, therefore, this court in the order dated 17/1/2006 noted that he would cooperate with the enquiry officer so as to enable him to complete the same at the earliest and only after this remand, he appeared before the Enquiry Officer. He was using the petitions filed before this court as a weapon to browbeat the higher authorities as is clear from the various letters he has uploaded on the e-mails and which record is placed before us. It is no doubt true that some of the employees on the Feedback Forum have raised their grievances

regarding transfers etc., but while doing so they refrained from making any personal allegations against any senior officer. The petitioner, on the other hand, had crossed all limits of organizational discipline and, therefore, the decision arrived at by the disciplinary authority that he was unfit to be continued in service, in our opinion, cannot be said to be perverse or unwarranted or by way of victimization or mala fides. By his own behaviour within the organization and through several of his communications, the petitioner proved himself to be unworthy of being retained on the rolls of ONGC. The appellate authority was, therefore, justified in concurring with the view taken by the disciplinary authority in awarding the punishment of removal from service. Hence, no case has been made out to cause interference with the quantum of punishment awarded to the petitioner by the disciplinary authority and confirmed by the appellate authority, under Article 226 of the Constitution.

19. In the premises, this petition fails and the same is hereby dismissed. Rule discharged. No order as to costs.

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