IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/04/2004

Coram

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

W.P.No.36399 of 2002
and
W.P.M.P. No.1966 of 1997

P.Surya Rao .. Petitioner

-vs-

1. Oil & Natural Gas Corporation Ltd.,
rep. by its Chairman-cum-Managing Director,
Jeevan Bharathi, Tower-II,
124, Indira Chowk,
New Delhi-110 001.

2. The Director (Technical),
Oil & Natural Gas Corporation Ltd.,
Tel Bhavan, Dehradun-248 003.
Uttaranchal.

3. The Manager (P&A) TS,
Office of the Technical Services
Establishment
ONGC SEHD No.5,
Tel Bhavan, Dehradun-248 003,
Uttaranchal.

4. The Regional Director,
ONGC Limited,
SRBC Regional Office,
CMDA Towers,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8. .. Respondents

Petition under Article 226 of the Constitution of India
praying to issue a writ of certiorarified Mandamus for the reasons as stated therein.

For Petitioner : Ms.R.Vagai

For Respondent : Mr.R.Thiagarajan, SC
for M/s.Sarvabhauman

Associates for R1 to R4

:ORDER

The petitioner is aggrieved against the order of the third respondent dated 4-9-2002 in proceedings No.47/335/80/91-TBG dated 4-9-2002, wherein, the third respondent, while ordering reinstatement of the petitioner with effect from the date of joining of the service in Oil and Natural Gas Corporation Limited (in short 'ONGC') imposed certain conditions. The petitioner, therefore, seeks for setting aside the said order and consequently to direct the respondents to reinstate him 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 199 4, 1997 and 2000 respectively with due seniority over his juniors.

2. The petitioner joined the services of ONGC as Assistant Executive Engineer on 23-8-1980. He was promoted as Executive Engineer in the year 1985. He was subsequently promoted as Deputy Superintending Engineer in the year 1990. By an order dated 1-12-1990, he was kept under suspension due to vigilance enquiry on the allegation of ' corruption'. By a separate order dated 20-2-1991, the petitioner was directed to attend Office and sign attendance during the period of suspension. Subsequently on 30-10-1991, the suspension was revoked and the petitioner was allowed to perform his work. It is stated that the Central Bureau of Investigation sought for the sanction of the Disciplinary Authority to prosecute the petitioner for the offences punishable under the provisions of the Prevention of Corruption Act. On 14-12 -1993, the petitioner made a representation to the first respondent explaining his assets and sources and also requesting him not to grant sanction to the Central Bureau of Investigation. By proceedings dated 24-12-1994, the second respondent herein, accorded sanction under Sections 19(i)(c) of the Prevention of Corruption Act 1988 for prosecution of the petitioner for the offences punishable under Sections 13 (2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 or any other offences punishable under other provisions of law on the ground that there were enough material to suggest that the petitioner acquired disproportionate assets to his income. In the mean time, there was a Departmental Promotion Committee, in which, the promotion of the petitioner for the post of Superintending Engineer (Civil), (E4) level was considered and the result of the promotion was kept under a sealed cover, while his juniors were promoted.

3. The criminal case ended in conviction on 1-7-1996 in Calendar Case No.4 of 1994. The petitioner preferred a Criminal Appeal in C.A. No.552 of 1996 before the High Court of Andhra Pradesh. The said appeal was allowed on 7-11-2001 holding that the charge of corruption levelled against the petitioner was not proved. In the mean time, based on the conviction made by the Special Judge, Visakhapatnam in C.C. No.4 of 1994 dated 1-7-1996, the petitioner was issued with a show cause notice by the Disciplinary Authority on 27-8-1996 calling upon the petitioner to explain as to why a provisional conclusion to impose the penalty of dismissal should not be made. Though the petitioner challenged the said notice in W.P.No.14059 of 1996, this Court declined to interfere with the said show cause notice and the Writ Petition came to be dismissed on 15-4-1999.

4. The petitioner is stated to have submitted his reply on

14-5-19 99 requesting the Disciplinary Authority, not to pass the 'order of dismissal', but to await the result of the Criminal Appeal. However, by order dated 30-7-1999, the petitioner was dismissed from the service of the first respondent.

5. As against the said order of the dismissal, the petitioner is stated to have filed an appeal which was also rejected on 2-2-2000 by the Appellate Authority. After the petitioner got acquitted in Criminal Appeal No.552 of 1996 on 7-11-2001 and after receiving the copy of the said order on 18-12-2001, he made a representation on 19-12-2001 to the first respondent for his reinstatement with all other benefits. Since, the said representation was not considered, it is stated that several reminders were made on 9-1-2002, 21-1-2002, 5-2-2002, 13-2-2002 and 20-3-2002. Ultimately, the impugned order came to be passed on 4-9-2002 stating that the reinstatement order was subject to the condition of joining, that there would be no benefits for the intervening period, that the said period would be treated as 'dies-non', hence there would be no career growth, that his pay fixation would be made afresh without any increment, that his postings would be at Assam and that the petitioner should accept the said order within 21 days or otherwise, it would be treated as though he was not interested in joining duty. The petitioner received the said order dated 7-9-200 2 and is stated to have sent a reply on 11-9-2002 requesting the respondents to reinstate with all consequential benefits and also to be posted at Chennai. He also sent a reminder on 18-9-2002 and since there was no reply, the petitioner came forward with the present Writ Petition, in which, an interim order was passed on 23-9-2002 restraining the respondents from denying reinstatement to the petitioner as Deputy Superintending Engineer at the Southern Region Business Centre, Regional Office at Chennai at current salary levels without imposing conditions (ii) to (vi) in the order dated 4-9-2002 issued by the third respondent. Subsequently, the said order was modified by orders dated 28-10-2002 and 5-11-2002 virtually directing the respondents to reinstate the petitioner and that the petitioner should report at Assam.

6. By virtue of the interim order, while the first respondent was directed to release all the emoluments for which, the petitioner would be entitled to receive from the month of December 2001 till the date of his reinstatement and also continue to pay him his future emoluments in accordance with the existing procedure, the petitioner had not been paid his wages from 30-7-1999 and that his promotions to the post of Superintending Engineer and the subsequent promotions were also not considered. Further the benefits payable to the petitioner during which period the petitioner was kept under suspension i.e. from 1-12-1990 to 30-10-1991 were also not paid.

7. While assailing the order impugned in this Writ Petition, Ms.R. Vaigai, learned counsel appearing for the petitioner, placed reliance upon Regulation 14.3 of the Oil and Natural Gas Commission (Pay and Allowances) Regulations, 1972 (As amended from time to time, up to 31-12-1987). The said Regulation 14.3(a) reads as under:

"14.3. (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 allowances 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 not 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.

(e) In a case falling under clause (c), the period of absence from duty shall not ber treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:-
Provided that if the employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the employee.
1. The order of the competent authority regarding the treatment of the period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extraordinary leave in excess of three months in so far as temporary employee are concerned.
2. In the case of persons who are not fully exonerated, the conversion of the period of suspension into leave with or without allowance has the effect of removing the stigma of suspension and all the adverse consequences following therefrom. The moment the period of suspension is converted into leave, it has the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it were found that the total amount of subsistence grant of compensatory allowances that an employee received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from the conclusion.
3. The competent authority has the discretion to pay

proportionate and allowances and teat the period as duty for any specified purpose or only to pay proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as 'not on duty'."

8. The learned counsel also drew the attention of this Court

to the judgment of the Andhra Pradesh High Court in Criminal Appeal No.552 of 1996, wherein, it was held as under:

"In the present case, the Court blow has failed to take into consideration certain amounts, which the appellant had claimed as additional income and in view of perusal of the entire record, I am of the opinion that the additional incomes which the appellant had claimed, are eligible to be taken into consideration and further as per the evidence of the investigating officer PW.15, he has admitted in unequivocal terms that even though the appellant had stated regarding the interest accrued on the fixed deposit of Rs.41,500/-, he has not recorded the same. Further the accused who was examined as D.W.1 also has categorically stated with regard to this amount and there is admittedly no cross-examination on this aspect. Further even though there is evidence to show that the father-in-law of the appellant bore the expenditure for engineering education of the eldest son of the appellant, the court below failed to consider the same and further the Court below misread Ex.P-11 as Ex.D-11 and thereby landed in a wrong reasoning. Therefore, in my view, the appellant has discharged the burden satisfactorily regarding accounting for his possession of disproportionate assets. Hence, I am of the view that the judgment cited by the learned counsel for the prosecution is of no use and not relevant to the facts of the present case and as such in applicable.
For the foregoing reasons, I pass the order as under:
The impugned judgment is set aside and the appeal is accordingly allowed. The fine amount of Rs.15,000/- paid by the accused shall be refunded and the bail bonds executed by him shall stand cancelled."

9. In the light of the said order of the High Court, as well as Regulation 14.3, the learned counsel submitted that the petitioner has been honourably acquitted in the criminal case giving a clean chit and therefore, the second respondent who was the Disciplinary Authority was bound to accept the said verdict without any demur, reinstate the petitioner and grant all the benefits which would have otherwise accrued to him, but for the suspension, which came to be made on 1-12-19 90 and also the order of dismissal dated 30-7-1999. In other words, while reinstating the petitioner, the petitioner should have got the restoration of his service right from 1-12-1990 inclusive of the promotions which he would have otherwise gained with all other monetary benefits payable to the petitioner. According to the learned counsel, this was not a case where the petitioner was involved in a criminal offence unconnected to his employment in order to state that there was any scope for the respondents to deny any part of the benefits which the petitioner would have otherwise entitled to, had he been continued in employment without being suspended and dismissed on the ground of the criminal prosecution as and from 1-12-1990.
10. It was further submitted that by virtue of Regulation 14(3)(a)(b) and (d), the competent authority ought to have fairly accepted the honourable acquittal as having fully exonerated the petitioner and treated the period of 'absence from duty' as a 'period spent on duty' for all purposes. It was therefore, contended that the impugned order depriving the petitioner all such benefits for which he is otherwise entitled to, is liable to be set aside and the respondents be directed to confer all the benefits.

11. In support of the above submissions, reliance was placed upon the Judgment reported in "1994 Supp (3) SCC 674 (SULEKH CHAND versus COMMISSIONER OF POLICE AND OTHERS)", wherein the Hon'ble Supreme Court has held as under in para 2:

"2. ..... The judgment acquitting the appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. The appeals are allowed. No costs."

12. In the judgment reported in "1999(3) SCC 679 (CAPT.M. PAULANTHONY versus BHARAT GOLD MINES LTD. AND ANOTHER)", the Hon'ble Supreme Court has held as under in paragraphs 34:

"34. .... The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

13. In the judgment reported in "1984 (2) SCC 433 (BRAHMA CHANDRA GUPTA versus UNION OF INDIA)", where also, dismissal came to be made pursuant to the conviction in the Criminal Court and which conviction was subsequently set aside in the appeal, the Hon'ble Supreme Court has held as under in para 6.

"6. Mr.R.K.Garg, learned counsel for the appellant wanted us to examine the scope and ambit of Article 193 and Mr.Gujaral learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial cour was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that

as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial court with this modification that the amount decree shall be paid with 9 per cent interest p.a. From the date of suit till realisation with costs throughout."

14. The learned counsel also placed reliance upon certain other judgments wherein, it was held how the withheld promotions should be subsequently considered. Reliance was also placed upon "AIR 1997 SC 180 2 (RANCHHODJI CHATURJI THAKORE versus SUPERINTENDENT ENGINEER, GUJARAT ELECTRICITY BOAD, HIMMATNAGAR (GUJARAT) AND ANOTHER); 1999(5) SCC 7 62 (BANK OF INDIA AND ANOTHER versus DEGALA SURYANARAYANA); 1991(2) SCC 335 (BABU LAL versus STATE OF HARYANA AND OTHERS); 1994(1) SCC 541 (MANAGEMENT OF RESERVE BANK OF INDIA, NEW DELHI versus BHOPAL SINGH PANCHAL); 1997(6) SCC 282 (BIR SINGH CHAUHAN versus STATE OF HARYANA AND ANOTHER) and 2002(8) SCC 385.

15. As against the above submissions made on behalf of the petitioner, Sri R.Thiagarajan, learned senior counsel appearing for the respondents, at the outset, fairly stated that 'the ONGC Pay and Allowances Regulations are applicable to the petitioner. However, according to the learned senior counsel, Regulation 14(3) in particular, clause (b) of said Regulation will have no application to the case on hand as according to the learned senior counsel, the said clause (b) will apply only to a case where a delinquent was proceeded against by way of departmental proceedings which ultimately ended in the imposition of the capital punishment of dismissal. The learned senior counsel would contend that where the punishment came to be imposed by virtue of Regulation 41 of the 'ONGC Conduct, Discipline and Appel Regulations 1976, which provide 'Special Procedure in Certain Cases', where a penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge, then Regulation 14(3)(b) cannot be applied. In furtherance of the said submission, the learned senior counsel relied upon "2004(1) SCC 121 (UNION OF INDIA AND OTHERS versus JAIPAL SINGH); AIR 1997 SC 1802 (RANCHHODJI CHATURJI THAKORE versus SUPERINTENDENT ENGINEER, GUJARAT ELECTRICITY BOARD, HIMMATNAGAR(GUJARAT) AND ANOTHER); 1997(3) SCC 636 (KRISHNAKANT RAGHUNATH BIBHAVNEKAR) and 2004(1) SCC 43 (UNION OF INDIA versus MADHUSUDAN PRASAD)".

16. In "2004(1) SCC 121 (UNION OF INDIA AND OTHERS versus JAIPAL SINGH)", an earlier dictum of the Hon'ble Supreme Court in `RANCHHODJI CHATURJI THAKORE versus SUPERINTENDENT ENGINEER, GUJARAT ELECTRICITY BOARD, HIMMATNAGAR(GUJARAT) AND ANOTHER" reported in (1996) 11 SCC 6 03' was followed and it was held as under in paragraphs 4 and 5:

"4. ..... On going through the same, we are in respectful agreement with the view taken in Ranchhodji (1996) 11 SCC 603. 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."

17. In the judgment reported in "1997(3) SCC 606 (KRISHNAKANT RAGHUN BIBHAVNEKAR versus STATE OF MAHARASHTRA AND OTHERS)", the Hon'ble Supreme Court has held as under in para 4:
"4. ..... The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits as enumerated in paras 5 and 6 of the additional affidavit."

18. The Judgment reported in "AIR 1997 SC 1802 (RANCHHODJI CHATURJI THAKORE versus SUPERINTENDENT ENGINEER, GUJARAT ELECTRICITY BOARD, HIMMATNAGAR(GUJARAT) AND ANOTHER)" was the one subsequently followed in the Judgment reported in 2004(1) SCC 121 (cited supra).

19. In the judgment reported in "2004(1) SCC 43 (UNION OF INDIA versus MADHUSUDAN PRASAD)", the Hon'ble Supreme Court has stated the legal position as under in para 6:

"6. The above case was concerning an employee, who was found guilty in an enquiry but the report was not furnished to the employee and the show cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed that appropriate order should be passed regarding the back wages. In the instant case, the Appellate Authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given a show cause notice prior to his dismissal from service. There was fault ont he part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. We do not think this is a fit case where Fundamental Rule 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed."

20. In the light of the above referred to judgments, in particular, the judgments reported in "AIR 1997 SC 801" (cited supra) which was also subsequently followed in "2004(1) SCC 121" (cited supra), Shri R.Thiagarajan, learned senior counsel appearing for the respondents, contended that, acquittal in a criminal case would not ipso facto enable the petitioner to claim all the benefits as a matter of course and that when the ratio of the above said decisions are applied, it would show that only where the order of dismissal came to be issued based on departmental proceedings and such dismissal order came to be ultimately set aside resulting in fully exonerating the delinquent, there would be scope for invoking Regulation 14(3) (b) and not in a case where the dismissal came to be issued by invoking Regulation 41 read along with Regulation 34 of the ONGC Conduct, Discipline and Appeal Regulations. The learned senior counsel, therefore, contended that none of the relief as claimed by the petitioner could be granted and that the order impugned in the Writ Petition cannot be found fault with.

21. Having heard the learned counsel for the respective parties, I am unable to accept the stand of the respondents that Regulation 14(3)(b) will not get attracted to the case of the petitioner inasmuch as, the dismissal order came to be made pursuant to criminal conviction. In this context, it would be relevant to refer to the initial order issued to the petitioner on 30-7-1999. In the said order, it has been specifically stated to the following effect:

"And whereas, taking into consideration the circumstances of criminal charge and this conviction on the criminal case U/s.13(1)(c) r/w 1 3(2) of PC Act, 1988 and also his representation dated 14-5-1999, I being competent disciplinary authority to impose penalty under rule 34 of ONGC (CDA) Rules, 1994, in exercise of the powers conferred under rule 41(a) of ONGC Conduct, Discipline and Appeal Rules, 1994, have come to the conclusion that

Shri P.Surya Rao, Dy.SE(C) is not a fit person to be retained in the service of ONGC and the penalty of dismissal from service be imposed on him. Accordingly the penalty of dismissal from service of ONGC is imposed on Shri P.Surya Rao, Dy.SE(C) with immediate effect. The period of suspension of Shri P.Surya Rao, Dy.SE(C) will be treated as non-duty period with effect from 1-12-1990 to 29-10-1999."

22. The said order came to be passed by the second respondent herein claiming himself to be the 'competent Disciplinary Authority'.

23. In this context, when Rule 34 of ONGC Conduct, Discipline and Appeal Rules is perused, the said rule makes it clear that the competent authority can impose by way of penalty for good and sufficient reasons either major or minor penalties. Clause 34(ix) specifically provides 'dismissal from service' as one of the major penalties. Rule 35 of the Conduct, Discipline and Appeal Rules specifically defines the 'Disciplinary Authority'. Rule 41 provides the 'Special Procedure in respect of certain cases' and the opening words of the said Rule 41(a) is relevant for our present purpose which is to the following effect.

41. Special Procedure in Certain Cases:
Notwithstanding anything contained in Rule 36 to 40,
(a). Where the Employe 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.

In Clause (b), it is specifically provided that-

Where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, the Disciplinary Authority may consider the circumstances of the case and pass such order as it deems fit.

Again in 41(c), it is provided that,

Where the Board is satisfied for reasons to be recorded in writing that the interest of the security of the Company, it is not expedient to hold an inquiry in the manner provided in these Rules it may pass such orders as it may deem fit."

24. Therefore, even in respect of a conviction on a criminal charge, the Disciplinary Authority has been specifically vested with the power under Rule 41 to deal with such cases in a particular manner, which also provides for in appropriate cases holding of an enquiry in the manner provided in the Rules. Therefore, it was left to the decision of the Disciplinary Authority while invoking Rule 41 to decide as to whether or not to hold an enquiry independently or to pass appropriate orders imposing penalty in the manner in which it deems fit. It was pursuant to such a power vested with the second respondent, the show cause notice came to be issued on 27-8-1996

wherein, the second respondent, taking note of the conviction made by the Special Judge, Visakhapatnam in C.C.No.4 of 1994 under Secti on 13(2) read with 13(1)(e) of the Prevention of Corruption Act 1988, took a decision to award an appropriate penalty under Rule 34 of the Rules considering the gravity of the criminal charge and the conviction. Accordingly, its provisional conclusion that the petitioner was not a fit person to be retained in service and therefore, the proposed punishment of dismissal from service, was made known to the petitioner, wherein, he was called upon to submit his explanation. The petitioner thereafter submitted his reply on 14-5-1999 stating reasons as to why the proposed punishment shall not be imposed, and to await the result of the criminal appeal. However, the second respondent not being convinced of the reasons submitted by the petitioner, ultimately imposed the punishment of dismissal by order dated 30-7-1999.

25. Therefore, the above referred to factors and a reading of the initial show cause notice dated 27-8-1996 and also the ultimate order of punishment dated 30-7-1999 would reveal that the second respondent, in exercise of its powers under Rule 34 read along with Rule 41, took a conscious decision, not to resort to any further enquiry, but to solely rely on the conviction of the petitioner by the Special Court in C.C.No.4 of 1994 dated 1-7-1996, and decided to impose the penalty of dismissal by way of punishment on the petitioner. Therefore, such action of the second respondent could only be characterized as ' power exercised' mainly by invoking Rule 34 and by also resorting to the enabling Rule 41 which was available to the second respondent in cases of conviction on a criminal charge. Further, it will have to be noted that prior to suspension of the petitioner on 1-12-1990, when the whole controversy as regards the petitioner's accumulation of assets, disproportionate to his income came to light, there was a specific order of sanction made by the second respondent himself in his order dated 24-12-1994. A reading of the said proceedings also disclose that the second respondent in effect dealt with the case of the petitioner by virtue of his status as Deputy Superintending Engineer in the ONGC and the very sanction order was instituted in the light of the fact that the proposed criminal action under the provisions of Prevention of Corruption Act, 1988 was in relation to the petitioner's employment in the ONGC and not with reference to any other personal conduct of the petitioner which required initiation of such criminal action. Therefore, looked at from any angle, it was clear that the petitioner's employment had every nexus to the initiation of the criminal proceedings and such initiation also required the intervention of the second respondent as the Disciplinary Authority, and in fact, the second respondent had acted in the manner he was expected to act in such a situation as a Disciplinary Authority. Therefore, it is very difficult to comprehend or accept the present stand of the respondents that the criminal proceedings had nothing to do with the ONGC nor the Disciplinary Authority when it came to the question of the ultimate order of dismissal which came to be inflicted on the petitioner. On the other hand, every singular fact relating to the conduct of the petitioner which unfortunately led to the initiation of the criminal proceedings and also the ultimate result of the passing of the order of dismissal was in furtherance of disciplining the conduct of one of the employees of the ONGC and the necessary rules which provided for initiation and also ultimate imposition of the punishment was fully applied by the concerned authority which has culminated in the order of dismissal dated

30-7-1999. In such a situation, there is no scope to hold that irrespective of all the above said factors, it should be held that the ultimate order of dismissal dated 30-7-1999 came to be passed merely based on the conviction by the Special Judge in C.C.No.4 of 1994 on 1-7-1996.

26. When such a conclusion is inevitable, thereafter the question is as to how far the invocation of Regulation 14(3) is to be considered. Under Regulation 14.3(a), whenever an employee who had been dismissed, removed, compulsorily retired or suspended was reinstated, the authority competent has to order the reinstatement and consider and make a specific order 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 on the date of his retirement on superannuation, as the case may be, and the Authority should also state as to whether or not the said period should be treated as a period spent on duty. In order to pass an order under Regulation 14.3(a), it is further provided under Regulation 14.3(b) as to how to construe the case when the employee has been fully exonerated. For better appreciation of the said regulation, it requires to be extracted:

"14.3(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."

27. It is also necessary to refer Regulation 14.3(d) since invocation of Regulation 14.3(b) would involve the application of Regulation 14.3(d) as well.

14.3(d) reads as under:-

"14.3(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."

28. In the case on hand, after the dismissal order dated 30-7-1999, the criminal appeal preferred by the petitioner as against the conviction made by the Special Judge in C.C.No.4 of 1994 came to be allowed by the High Court of Andhra Pradesh in Crl.Appeal No.552 of 1996 on 7-11-2001. It would be sufficient if the last part of the said Judgment is looked into for our present purpose which is to the following effect:-

"In the present case, the Court blow has failed to take into consideration certain amounts, which the appellant had claimed as additional income and in view of perusal of the entire record, I am of the opinion that the additional incomes which the appellant had claimed, are eligible to be taken into consideration and further as per the evidence of the investigating officer PW.15, he has admitted in unequivocal terms that even though the appellant had stated regarding the interest accrued on the fixed deposit of Rs.41,500/-, he has not recorded the same. Further the accused who was examined as D.W.1 also has categorically stated with regard to this amount and there is admittedly no cross-examination on this aspect. Further even though there is evidence to show that the father-in-law of the appellant bore the expenditure for engineering education of the eldest son of the appellant, the

court below failed to consider the same and further the Court below misread Ex.P-11 as Ex.D-11 and thereby landed in a wrong reasoning. Therefore, in my view, the appellant has discharged the burden satisfactorily regarding accounting for his possession of disproportionate assets. Hence, I am of the view that the judgment cited by the learned counsel for the prosecution is of no use and not relevant to the facts of the present case and as such in applicable.
For the foregoing reasons, I pass the order as under:

The impugned judgment is set aside and the appeal is accordingly allowed. The fine amount of Rs.15,000/- paid by the accused shall be refunded and the bail bonds executed by him shall stand cancelled."

29. The above said paragraph in the order of the High Court of the Andhra Pradesh makes it clear that the petitioner discharged his burden satisfactorily regarding accounting of his possession of disproportionate assets and therefore, he was to be acquitted honourably. Ultimately, the judgment impugned therein was set aside and the fine amount paid by the petitioner was also directed to be refunded to the petitioner. In such circumstances, when Regulation 14.3(b) is considered, it will have to be held that the application of the said regulation would come into play. Since I have already held that the punishment of dismissal imposed on the petitioner on 30-7-1999 by virtue of invocation of Rule 34 read along with 41 was purely by way of punishment for the alleged improper conduct of the petitioner in the course of his employment with the ONGC, it is axiomatic that invocation of Rule 14.3(b) would get attracted. It was then the bounden duty of the Disciplinary Authority to have passed specific orders as to in what manner the absence of the petitioner is to be treated in the event of the petitioner being reinstated back into service. In the case of the petitioner, after setting aside the conviction by the High Court of Andhra Pradesh on 7-11-2001, the petitioner had repeatedly approached the respondents for the restoration of his service. The petitioner is stated to have applied on 18-12-2001 along with the copy of the judgment of the Andhra Pradesh dated 7-11-2001 seeking for his reinstatement along with consequential benefits. He has also sent reminders on various dates between 9-1-2002 and 20-3-2002. Finally, the order of reinstatement which has been impugned in this Writ Petition came to be made only on 4-9-2002.
30. It is also required to be stated that the said order was not passed by the second respondent who is admittedly the Disciplinary Authority in the case of the petitioner, but the said order came to be issued by one Thiru M.K.Basu, in his capacity as Manager (P & A) TS. There is no indication in the order as to whether the Regulation 14.3(b) was applied at all while ordering the reinstatement. Though in Clause (i) of the said order, it is stated that the reinstatement of the petitioner would be effective from the date of rejoining of his service in the ONGC, a reading of the other Clauses (ii) to (vi) of the said order, only disclose that virtually it was by way of fresh employment in the post of Deputy Superintending Engineer without any consequential benefits pursuant to reinstatement. Further paragraph 2 of the said order imposed still more stringent condition that unless he expresses his decision within 21 days from the date of issuance of the said order, it would be presumed that he was not interested to rejoin the service of the

ONGC. It was in those circumstances, when the petitioner came forward with the present Writ Petition, by way of interim orders, the petitioner's services were directed to be restored by ordering release of all the emoluments which the petitioner would be entitled to receive commencing from December 2001 till the date of reinstatement and continue to pay him his future emoluments in accordance with the existing procedure. Of-course, it was stated in the said order that such payment would be subject to the result of the Writ Petition. In fact, it is highly doubtful whether the authority who passed the order impugned in the Writ Petition could have any jurisdiction at all to pass the said order inasmuch as admittedly it is the second respondent which is the competent authority, to have invoked Regulation 14.3 while ordering reinstatement.

31. Be that as it may, when dissecting the impugned order dated 4-9 -2002, it will have to be held that the provisions contained under Regulation 14.3(a) and (b) read along with (d) were completely ignored and a novel procedure has been followed by imposing certain conditions for which, in my opinion, there was absolutely no provision at all either in the Pay and Allowance Regulations or in the Conduct, Discipline and Appeal Regulations. In any event, when once it can be safely concluded that the petitioner's case at the time of his reinstatement would attract application of Regulation 14.3(a) and (b), then the competent Disciplinary Authority, viz., the second respondent herein is bound to pass an order by invoking the specific provisions contained therein. Inasmuch as, specific power has been vested with the second respondent to exercise and pass appropriate orders under Regulation 14.3(a), (b) and (d), it is but proper that such exercise is allowed to be carried out in accordance with the said provision. However, it will have to be stated that while invoking Regulation 14.3(a) and (b), the second respondent should take note of the judgment of the Andhra Pradesh High Court, by virtue of which only, the petitioner's reinstatement had to be necessarily ordered by the second respondent. When once the said situation on the second respondent has become imminent, whatever said by the Andhra Pradesh High Court in its judgment dated 7-11-2001 in Crl.Appeal No.552 of 1996, is binding upon the second respondent and it will have to be stated that the said judgment has completely exonerated the petitioner of the charges for which the prosecution case came to be launched against him. In effect, the second respondent will have to invoke Regulation 14.3(a), (b) and (d) and pass appropriate orders inconsonance with the said provisions.

32. In this context, heavy reliance was placed by Mr.R.Thiagarajan, learned senior counsel appearing for the respondents, on the judgments of the Hon'ble Supreme reported in 2004(a) SCC 121 and also AIR 19 97 SC 1802 as well as 2001(1) SCC 43 (cited supra). In the judgment reported in "2004(1) SCC 121 (UNION OF INDIA AND OTHERS versus JAIPAL SINGH)", the Hon'ble Supreme Court, while following its earlier judgment reported in AIR 1997 SC 1802 (cited supra) has held as under para 4:

"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 special leave petition at the threshold without detailed reasons therefor 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 therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji (1996(11) SCC 603). 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 as not n 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 b e done within thirty days from today."

(Underlining is mine)

The learned senior counsel would contend that in the light of the decision of the Hon'ble Supreme Court referred to above, it will have to be held that invocation of Regulation 14.3(b) will not arise in a case where the ultimate order of dismissal came to be passed pursuant to conviction in criminal proceedings.

33. In the first blush, though such a proposition propounded on behalf of the respondents appears to be attractive, I find that the Hon'ble Supreme Court itself in the highlighted part of the above said extracted portion of the judgment has shown the distinction as to cases in which the prosecution came to be made at the behest of the department and in a case where the prosecution was due to a personal conduct of an individual as a common citizen. Therefore, in a case where the prosecution was at the behest of the department, it will have to be necessarily stated that such cases would stand on a different footing than the cases where the involvement in any criminal act led into conviction was due to a personal conduct of a person de hors his employment in any public service. Such a distinction can be easily spelt out from the specific expressions contained in the above said part of the judgment of the Hon'ble Supreme Court. In fact, in the light of the fact that in the said case, the concerned person came to be convicted of a charge under Section 302 IPC, there was no reference to any rule or regulation concerning the said criminal prosecution vis-a-vis his employment which resulted in his dismissal from service. Therefore, when such a specific Rules

and Regulations are prevailing and invocation of which had necessarily to be made by virtue of the fact that the criminal prosecution was a sequel to the conduct of the employee in the course of his employment which had nexus to his employment, then different considerations would follow and in such cases, where the rules provided for the manner in which such case should be dealt with, it goes without saying that the appropriate Disciplinary Authority should have exercised such power in the manner expected of him and in the absence of such exercise having been made, it would be appropriate for this Court to interfere and set right such wrong orders passed by the concerned Disciplinary Authority. Therefore, even by applying the ratio of the above referred to judgments, I am of the view that the case on hand will have to be treated differently, which called for invocation of Regulation 14.3 and the appropriate orders ought to have been passed by the second respondent in exercise of such powers vested in him under the said Regulation.

34. In the judgment reported in 2004(1) SCC 43 (cited supra), wherein, it was found that the conduct of the concerned employee had every nexus to the ultimate order of dismissal, unfortunately none of the procedures were followed and in such circumstances, the Hon'ble Supreme Court held that the employer had no right to invoke a consequential rule under FR 54 to pass any discretionary order. On the other hand, in the case on hand, admittedly, the Disciplinary Authority consciously exercised his powers under Rule 34 read along with Rule 41 at the time when the petitioner was convicted by the Special Judge, Visakhapatnam in C.C.No.4 of 1994. At the risk of repetition, it will have to be stated that there was a specific show cause notice issued making specific reference to Rule 34 and also stating that the said proposed punishment was by way of penalty for the improper conduct of the petitioner which resulted in his conviction by the Criminal Court. Therefore, it is difficult to ignore such conscious efforts made by the second respondent while passing the ultimate order of dismissal on 30-7-1999 and hold that it was a simple order of dismissal based on the conviction of the petitioner in a criminal case and therefore, there was no necessity to invoke Regulation 14.3(b).

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 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 considered 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 respondents 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 to 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 and such 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.

Index: Yes
Internet: Yes

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To

1. The Chairman-cum-Managing Director,
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