

Director (Marketing) Indian Oil Corpn. ... vs Santosh Kumar on 23 May, 2006

Equivalent citations: 2006 AIR SCW 2849, 2006 (11) SCC 147, (2006) 3 LAB LN 703, (2006) 3 SCT 314, (2006) 2 LAB LJ 1043, (2006) 5 SCJ 286, (2006) 5 SERV LR 267, (2006) 3 ESC 298, (2006) 43 ALL IND CAS 34 (SC), (2007) 1 SERV LJ 46, (2006) 110 FAC LR 568, 2006 LAB LR 771, (2006) 4 SUPREME 578, (2006) 6 SCALE 358, 2006 ALL CJ 3 1866, (2006) 2 CURLJ(CCR) 487

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Bench: Ar. Lakshmanan, Lokeshwar Singh Panta

CASE NO.:

Appeal (civil) 6979 of 2004

PETITIONER:

DIRECTOR (MARKETING) INDIAN OIL CORPN. LTD. & ANR.

RESPONDENT:

SANTOSH KUMAR

DATE OF JUDGMENT: 23/05/2006

BENCH:

Dr. AR. LAKSHMANAN & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T Dr. AR. LAKSHMANAN, J.

Director (Marketing) and General Manager (Operations), Indian Oil Corporation Ltd. are the appellants before us. The respondent is a dismissed employee of the Appellant-Corporation. The respondent joined the appellant

- Indian Oil Corporation Limited (hereinafter referred to as "The Corporation") in the year 1987. He was posted as Assistant Manager (Operation) at Hissar Depot of the Corporation in the year 1995. He was charge-sheeted on account of irregular supply of High Speed Diesel to the purchasers without following the procedure. The incident happened at Hissar Depot and 12 KL of High Speed Diesel was supplied twice from 17.6.1996 to 19.6.1996 against the same challan by the respondent. A charge-sheet was issued to the respondent. Eight charges were framed against the respondent. The Enquiry Officer submitted his report which is available at page 26 to 40 of the paper book. The Enquiry Officer found the respondent guilty of charge Nos. 1,4,5,6,7 and 8. The other charges have not been proved. The Disciplinary Authority agreed with the findings of the Enquiry Officer after

taking into all aspects of the case into consideration. The Enquiry Officer proposed to inflict upon the respondent the major penalty of "dismissal" as a measure of disciplinary action against him. All papers relating to this case, in respect of respondent, were placed before General Manager (Operations), CDA for his perusal and orders. The Disciplinary Authority after perusing the records and the replies submitted to the show cause notice together with all papers relating to the disciplinary proceedings and after applying his mind ordered for inflicting upon the respondent the penalty of "dismissal" as a measure of disciplinary action against him. The period of suspension of respondent was, however, treated as suspension only.

An appeal was filed against the order of penalty of "dismissal". The Disciplinary Authority placed all the papers relating to the case before the Director (Marketing), Appellate Authority for his perusal and orders.

The Director (Marketing)- Appellate Authority passed the order rejecting the appeal of the respondent.

Aggrieved against the order of dismissal, the respondent preferred Civil Writ No. 11144 of 2000 before the High Court of Punjab & Haryana alleging that even though a detailed reply and representation was submitted to the show cause notice, the same has not been gone into and without appreciating the stand taken by the respondent, the Disciplinary Authority and the Appellate Authority have mechanically passed an order affirming the penalty of dismissal upon the respondent.

Several other grounds had also been taken on merits of the claim by the writ petitioner (respondent herein). The Writ Petition was contested by the Corporation by filing its counter in the affidavit. It was also specifically stated in the counter-affidavit about the punishment awarded to the respondent for theft and fraud etc. and the imposition of punishment of "dismissal" from the service. Before the High Court, a solitary contention was raised on behalf of respondent stating that despite a detailed response preferred by the respondent herein, the Appellate Authority passed the order dated 15.5.2000 without considering any of the issues raised by the respondent herein as petitioner in the writ petition. The learned Judges of the High Court had also perused the records placed before them by the Corporation. It is seen from the impugned order passed by the High Court that the Judges were satisfied that no reasons whatever had been recorded in either not accepting the issues raised by the respondent in response to the show cause notice nor had the claim of the respondent made in the various grounds raised by him in his appeal been considered. The learned Judges of the Division Bench felt that the orders of punishment dated 30.12.1999 as well as the order dated 15.5.2000 by which the respondent's appeal had been rejected are cryptic and non-speaking orders and, therefore, the orders passed by the Disciplinary Authority and Appellate Authority are liable to be set-aside on the ground of non-application of mind. The High Court also held that the action taken by the authorities is arbitrary. However, the learned Judges, while setting- aside the order of dismissal as well as the appellate order, issued a direction to the appellant-Corporation to reinstate into service with continuity in service with all consequential benefits. Liberty was also reserved to the appellant to re-initiate the enquiry from the stage of consideration by the Punishing Authority and pass appropriate orders in accordance with law. Aggrieved by the above judgment, the

Corporation has come up in appeal before us.

We have heard Mr. Jagat Arora, learned counsel for the appellant and Mr. Manjit Singer, learned counsel for the respondent. The learned counsel for the Corporation submitted that all the documentary records were placed before the Disciplinary Authority and also before the Appellate Authority and that the Disciplinary Authority and the Appellate Authority after perusing the entire record and the report of the Enquiry Officer came to the conclusion that the order of dismissal passed by the Disciplinary Authority and the Appellate Authority does not call for any interference. The learned counsel also submitted that the findings of fact recorded by the Disciplinary Authority and the Appellate Authority is not liable to be interfered with and that there is no requirement for giving detailed reasons when the Disciplinary Authority and Appellate Authority are in agreement with the findings of the Enquiry Officer. In support of the above contentions, the learned counsel for the appellant placed strong reliance on the judgment reported as National Fertilizers Ltd. and Anr. Vs. P.K. Khanna, 2005(7) SCC 597 to which one of us (Hon. Lakshmanan, J.) was a party. Alternatively the learned counsel for the appellant also submitted that the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits ought not to have been issued at the stage when the High Court itself found that the enquiry had not been properly conducted and the officers had not applied their minds before passing the order of dismissal.

We have also perused the order passed by the General Manager (Operations) which is available at page 51 and the order passed by the Director (Marketing) who is the appellate authority. A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.

For the sake of convenience, we extract both the orders available at page 51-52 of the paper book:

"I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97 in the capacity of the Competent Disciplinary Authority.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point in his appeal dated 25.3.2000 which may warrant any change in the said final order passed by me as the Competent Disciplinary Authority.

The appeal of Shri Santosh Kumar is hereby forwarded to Director(M)-the Appellate Authority for his kind consideration and orders.

General Manager (Operations) I have carefully gone through Shri Santosh Kumar, Emp. No. 19957, Ex-AM(Ops) Hissar Depot's appeal dated 25.3.2000 together with all papers relating to the disciplinary case initiated against him vide charge-sheet No. IR/1461/(N-113) dated 24.6.97. Shri Santosh Kumar has preferred an appeal against

the order of penalty of "Dismissal", inflicted upon him by GM(Ops.) - the Competent Disciplinary Authority vide reference No. IR/1461/(N-113) dated 30.12.1999 as a measure of disciplinary action against Shri Santosh Kumar.

I have applied my mind and I find that Shri Santosh Kumar has not brought out any point which may warrant my interference with the said orders passed by the Competent Disciplinary Authority. Accordingly, I hereby reject the appeal of Shri Santosh Kumar. Let Shri Santosh Kumar be advised accordingly.

Director (Marketing)"

A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs.