

E S Ranganathan vs Union Of India And Others on 5 August, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 10659/2024

E S RANGANATHAN

Through: Dr. B.T. Kaul, Adv
U.D. Bhargava and Mrs. Bhav
Advocates

UNION OF INDIA AND OTHERS

Through: Mr. Siddhartha Sh
Government Standing Counse
Mr. Vinay Kumar Garg, Seni
Ankur Chhibber, Mr. Nikunj
Rekhi, Advocates along wit
Senior Manager (Law), GAIL

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 05.08.2024 CM APPL. 43869/2024 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 10659/2024 and CM APPL. 43868/2024 (stay)

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to the impugned communication dated 23.05.2023 and the Memorandum of Charge ('MoC') dated 18.05.2023 issued by Respondent No. 3, on the ground that the MoC has not been issued by the Disciplinary Authority of the Petitioner as prescribed under Rule 29 of GAIL Employees' (Conduct, Discipline and Appeal) Rules, 1986 (hereinafter referred to as the '1986 Rules').

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4. It is the case of the Petitioner that the impugned MoC has not been issued by the Disciplinary Authority and is, therefore, non-est and the disciplinary proceedings ought not to continue against the Petitioner. It is urged that Petitioner joined Gas Authority of India Limited ('GAIL') as Assistant Executive Engineer on 14.10.1985 and earned promotions from time to time. Petitioner was promoted to the post of Executive Director (E-9 Grade) in the pay scale of Rs.62000-80000 with allowances vide order dated 01.04.2014. Petitioner was appointed to the post of Managing Director, IGL on secondment/deputation vide order dated 02.06.2016. While the Petitioner was posted and working at IGL, Respondent No. 1 vide order dated 22.06.2020 communicated approval of the Competent Authority for appointment of the Petitioner to the post of Director (Marketing), GAIL in the pay scale of Rs.1,80,000-3,40,000 w.e.f. date of assumption of charge of the post on or after 01.07.2020 till the date of superannuation i.e. 31.05.2023 or until further orders, whichever was earlier. After approval by the Appointments Committee of Cabinet, Petitioner was appointed as Director (Marketing), GAIL, w.e.f. 01.07.2020 vide order dated 29.09.2020, issued in the name of the President of India.

5. It is averred that an FIR was registered against the Petitioner and seven others under Section 120B IPC read with Sections 7, 7(A) and 8 of Prevention of Corruption Act, 1988 and substantive offences thereof. Petitioner was taken in custody of CBI on 16.01.2022 and thereafter placed under 'deemed suspension' under Rule 25 of 1986 Rules vide order dated 18.01.2022. Petitioner was remanded to judicial custody by CBI Court on 22.01.2022 whereafter final charge sheet was filed by the CBI on 15.03.2022. Petitioner was admitted to regular bail on 23.03.2022 by the This is a digitally signed order.

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6. Petitioner joined his duties as Executive Director w.e.f. 06.09.2022. While the Petitioner was pursuing his remedies for revocation of the suspension, the impugned communication dated 23.05.2023 was received by GAIL from the Ministry of Petroleum and Natural Gas, intimating that the Minister (PNG) was the Disciplinary Authority with respect to the Petitioner. By order dated 26.05.2023, representation dated 02.11.2022 made by the Petitioner against the suspension was rejected and by the same order, he was informed that Minister (PNG) was his Disciplinary Authority in accordance with Rule 29 of 1986 Rules.

7. Disciplinary proceedings were initiated against the Petitioner by issuing the MoC dated 18.05.2023 under Rule 28 of 1986 Rules, containing four Articles of Charge. Corrigendum dated 23.05.2023 was issued partially modifying the MoC. Petitioner retired on superannuation on

31.05.2023 while under suspension.

8. Learned counsel for the Petitioner contends that Rule 30(2) of 1986 Rules empowers only the Disciplinary Authority to inquire into the truth of any imputation of misconduct or misbehavior against an employee of GAIL. Rule 29 of 1986 Rules deals with 'Disciplinary Authority' and provides that the Disciplinary Authority as specified in Schedule I-B or any Authority higher than it may impose any of the penalties in Rule 28 of 1986 Rules.

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9. Mr. Vinay Kumar Garg, learned Senior Counsel appearing on behalf of Respondent No. 2/GAIL opposes the writ petition and defends the impugned orders. It is argued that GAIL is a Government Company and is governed by 'Articles of Association' of GAIL (India) Limited. It is submitted that under Article 86(d), the President has the power, subject to provisions of Section 152 of the Companies Act, 2013, to appoint such number of functional directors on whole time basis as deemed fit, in consultation with the Chairman/CMD of the Company, on such terms and conditions,

remuneration and tenure, as the President may determine from time to time. Therefore, the President is the Controlling Authority and the MoC issued under the directives of the President cannot be termed non est. Even otherwise, under Rule 29 of 1986 Rules, any authority higher than the Disciplinary Authority can impose the penalties specified in Rule 28 of 1986 Rules and assuming that CMD is the Disciplinary Authority, the power of the President, being the higher and the Controlling Authority remains. Relying on Article 91, it is further urged that the President has the power to issue directives as mentioned therein and exercising this power, communication was sent on 23.05.2023 by the concerned Ministry stating that Minster (PNG) is the Disciplinary Authority in case of the Petitioner and GAIL is bound by the said directive. In this context, reliance is placed on the judgment of the Supreme Court in Director General, ESI and Another v. T. Abdul Razak, (1996) 4 SCC 708, wherein it was held by the Supreme Court that it is not necessary that the Authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the Controlling Authority who may be an officer subordinate to the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/08/2024 at 23:29:27 Appointing Authority.

10. Issue notice.

11. Mr. Siddhartha Shankar Ray, learned Central Government Standing Counsel accepts notice on behalf of Respondents No.1 and 3.

12. Mr. Ankur Chhibber, learned counsel accepts notice on behalf of Respondent No.2.

13. Counter affidavits be filed within two weeks from today.

14. Rejoinders be filed before the next date of hearing.

15. List on 30.08.2024.

16. Having heard learned counsel for the Petitioner and learned Senior Counsel for GAIL, this Court finds prima facie merit in the contention of the Petitioner. It is an undisputed position that Petitioner was appointed as Director (Marketing), GAIL vide order dated 29.09.2020 but it is equally undisputed that his tenure was terminated and he was pre-maturely repatriated to the post of Executive Director (E-9 Grade) vide order dated 30.08.2022, a substantive post on which he held lien, when he was on a tenure appointment as Director (Marketing). The disciplinary rules applicable to the Petitioner are 1986 Rules. Rule 28 of 1986 Rules provides the minor and the major penalties that can be imposed on an employee of GAIL and Rule 30 of 1986 Rules prescribes the procedure for imposing major penalties. Rule 30(1) provides that no order imposing any of the major penalties specified in Clauses (e), (ee), (f) and (g) of Rule 28 shall be made except after an inquiry held in accordance with Rule 30. Sub-rule (2) of Rule 30 provides that whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any

imputation of any misconduct or misbehavior against an employee, it may itself inquire into or This is a digitally signed order.

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"SCHEDULE I-B (Under Rule - 29) Schedule indicating the grade / level of the employees, Disciplinary Authority, Appellate Authority and Reviewing Authority
Grade AUTHORITIES / Minor Penalties, Major Penalties and Suspension - Full Powers Level Disciplinary Authority Appellate Authority Reviewing Authority (DA) (AA) (RA) E-9 E-8 CMD HR Committee Board of Directors E-7 E-6 Functional Director CMD HR Committee E-5 E-4 E-3 Executive Director Functional Director CMD This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/08/2024 at 23:29:30 E-2 E-1 E-0 Chief General Manager Executive Director Functional Director S-7 S-6 S-5 S-4 S-3 S-2 General Manager Chief General Manager Executive Director S-1 S-0 Post (level): Executives: Executive Director (E-9), Chief General Manager (E-8), General Manager (E-7), Deputy General Manager (E-6), Chief Manager (E-5), Senior Manager (E-4), Manager (E-3), Senior Officer/Executive Trainee (E-2), Officer/(E-1), Asst. Officer (E-0) Non-executives (S-7 to S-0)."

17. Coming to the position in law, in B.V. Gopinath (supra), the Supreme Court held as follows:-

"51. Ms Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Additional Solicitor General, the respondent is not claiming that the rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Additional Solicitor General, CAT as well as the High Court erred in quashing the charge-sheet as no prejudice has been caused to the respondent.

52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to This is a digitally signed order.

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It is further held that: (SCC p. 422, para 4) "4. ... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post."

18. In this context, learned counsel for the Petitioner has also rightly placed reliance on a recent judgment of the Supreme Court in Sunny Abraham (supra), wherein the Supreme Court restated the proposition of law that only the Disciplinary Authority can accord approval at both stages i.e. for initiation of inquiry as also for drawing up or to cause to be drawn up the charge memorandum and in case the charge sheet does not have the approval of the Disciplinary Authority at the time of its issuance, it is rendered fundamentally defective, not capable of being validated retrospectively. The Supreme Court observed that what is non-existent in the eyes of law cannot be revived retrospectively as life cannot be breathed into the still born charge memorandum. In my prima facie view, the MoC not having been approved and issued by the CMD, the Disciplinary Authority of the Petitioner, the same is non est.

19. The argument raised on behalf of GAIL prima facie cannot be accepted and reliance on Articles 86(d) and 91 is misconceived. Article 86(d) deals with the powers of the President to appoint such number of This is a digitally signed order.

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Functional Directors on whole time basis as deemed fit and on such terms and conditions, remuneration and tenure, as the President may determine from time to time. Article 91 deals with the powers of the President to issue directives and stipulates that the President is empowered to issue such directives or instructions as may be considered necessary in regard to conduct of business and affairs of the company and further provides that in particular, the President shall have the powers to: (a) give directives to the company as to exercise and performance of its functions in matters involving National security or substantial public interest; (b) to call for returns, accounts and other information with respect to property and activities of the company; and (c) to determine annual, short and long term financial and economic objectives of the company in consultation with the Board. In my view, none of these Articles prescribe the Disciplinary Authority for an Executive Director (E-9 Grade), for which a specific provision exists in the disciplinary rules i.e. GAIL Employees' (Conduct, Discipline and Appeal) Rules, 1986 and both prima facie operate in two different fields. The judgment in Director General, ESI (supra), is inapplicable to the present case as the issue therein was delegation of the power of the Director General, ESIC, the Disciplinary Authority, in favour of the Regional Director, which is not the case here since the Disciplinary Authority of the Petitioner is the CMD.

20. This Court is conscious of the fact that the power of judicial review to interfere in disciplinary proceedings at the stage of charge sheet is limited and circumscribed and ordinarily, the disciplinary proceedings should not be scuttled. However, it is also settled that in rare and exceptional cases, interference in disciplinary proceedings is warranted, where the charge sheet This is a digitally signed order.

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21. In view of the aforesaid, it would be a travesty of justice if the disciplinary proceedings continue against the Petitioner pursuant to the impugned Memorandum of Charge, prima facie non-est. Accordingly, it is directed that the disciplinary proceedings against the Petitioner shall remain stayed, till the next date of hearing.

JYOTI SINGH, J AUGUST 05, 2024/kks/shivam This is a digitally signed order.

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