Supreme Court of India
Indian Oil Corporation Ltd. & Anr vs Ashok Kumar Arora on 5 February, 1997
Author: S.P.Kurdukar
Bench: J.S. Verma, Suhas C. Sen, S.P. Kurdukar

PETITIONER:
INDIAN OIL CORPORATION LTD. & ANR.

Vs.

RESPONDENT:
ASHOK KUMAR ARORA

DATE OF JUDGMENT: 05/02/1997

BENCH:
J.S. VERMA, SUHAS C. SEN, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.P.KURDUKAR, J.

The first appellant is a company incorporated under the Companies Act, 1956 and carries on business at various places/centres in India having its registered office at Bombay. The first appellant (for short `the Corporation') carries on its business of selling petrol and petroleum products at various places in India. The second appellant is the Director. Research and Development Centre, Faridabad in Haryana State.

2. The respondent-Ashok Kumar Arora joined the service of the Corporation as a Junior Stenographer on August 6, 1974 and thereafter came to be promoted as Senior Stenographer on December 26, 1977.

3. In the year 1964, it had come to the notice of the corporation that some of its employees were presenting false medical bills and getting them reimbursed from the Corporation. In order to verify the truth or otherwise of such claims, a vigilance enquiry was held by the office of Chairman of the Corporation (Indian Oil Corporation Ltd.) which unearthed a racket of its employees claiming reimbursements on presenting false medical bills. The report was accordingly submitted by the vigilance department to the Corporation identifying the respondent as the organiser and the

principal man behind the said racket amongst other employees of the Corporation. The Corporation after obtaining the approval of its Chairman on April 10, 1984 lodged the FIR of forgery and cheating by preferring claims on the basis of false medical prescriptions from Dr. Mrs. Puja Kundra and false medical bills showing the purchase of various medicines. The vigilance department also suggested to initiate proceedings against the employees who obtained the benefits by cheating the Corporation. This action was suggested under the Conduct, Discipline and Appeal Rules, 1980 of the Indian Oil Corporation Ltd. (for short `CDA Rules').

4. Pursuant to the FIR lodged on April 10, 1984, the investigating agency on completing the investigation filed a charge sheet in the court of Metropolitan Magistrate, Faridabad on May 1, 1985 against the respondent for the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code. In the meantime, on July 7, 1984, the respondent came to be arrested by the local police and was detained in the police custody for over 48 hours. The Corporation taking recourse to CDA Rules suspended the respondent on July 11, 1984 with effect from the date of his arrest and detention in the police custody for over 48 hours. The Addl. Chief Judicial Magistrate, Faridabad, on conclusion of the trial convicted the respondent on two counts i.e. under Sections 420 and 471 of the Indian Penal Code and sentenced him to undergo RI for two years and to pay a fine of Rs. 500/-; in default of payment of fine to undergo further imprisonment for a period of three months and RI for one year and to pay a fined of Rs. 500/-; in default of payment of fine t undergo further RI for three months respectively. Substantive sentences were directed to rune concurrently. On such convictions by an order dated February 21, 1989 dismissed the respondent from service of the Corporation.

5. The respondent being aggrieve by the order of conviction and sentence passed by the Addl. Chief Judicial Magistrate, Faridabad, preferred an appeal to the Session Court, Faridabad and the Addl. Sessions Judge vide his order dated July 13, 1989, allowed the appeal and set aside the convictions and sentence of the respondent and acquitted him of all the charges. The revision against the order of acquittal filed before the Punjab & Haryana High Court by the Corporation came to be dismissed. The S.L.P. to this Court was also dismissed. The net result, therefore, was that the respondent stood acquitted of the criminal charges.

6. The respondent who was dismissed from the service of the Corporation pursuant to the order dated February 21, 1989 filed a writ petition before the Punjab & Haryana High Court at Chandigarh challenging the said order on the ground that since he had been acquitted by the criminal courts, his order of dismissal was illegal and not sustainable. The respondent, therefore, sought the reliefs of reinstatement including the back wages etc. In the meantime, the respondent had also preferred an appeal under CDA Rules to the Appellate Authority challenging his order of dismissal from service of the Corporation passed on February 21, 1989. Since the departmental representation of the respondent was pending when the writ petition was filed, the High Court vide its order dated August 28, 1989 directed the Corporation to dispose of the respondent's representation expeditiously. In pursuance of the directions issued by the High Court, the Corporation considered the representation filed by the respondent and opined that having regard to the facts and circumstances of the case, it was necessary to hold a departmental enquiry against the respondent. The Corporation, therefore, in exercise of its power under Rule 26(4) CDA Rules directed that the departmental enquiry be held against the respondent and he be deemed to be under suspension from the date of his dismissal

order dated February 21, 1989.

7. The Corporation on February 22, 1990 charge sheeted the respondent for gross acts of misconduct which in the opinion of the Corporation constituted acts of dishonesty in connection with the business or the property of the corporation and acts subversive of discipline and good behaviour. On service of the charge sheet, the respondent submitted his reply on March 5, 1990 which was considered being not satisfactory by the Corporation. The Corporation, therefore, on May 25, 1990 directed that a domestic enquiry be held against the respondent.

8. On November 10, 1991, the respondent filed another writ petition before the High Court of Punjab & Haryana being writ petition No. 3170 of 1992 praying therein, inter alia, for the grant of certain reliefs including a direction to reinstate him in service with effect from July 7, 1984 and release the salary and other consequential benefits with effect from the said date i.e. July 7, 1984.

9. During the pendency of this writ petition, the Enquiry Officer appointed by the Corporation held the enquiry and submitted his report dated June 26. 1992. The Inquiry Officer found the respondent guilty of acts of misconduct. he held as under;-

> "The nexus of the delinquent in collusion with Dr. J.K. Kundra in fabricating and furnishing prescriptions and bills and providing the same to other employees as well as presenting them himself with the purpose of cheating the Corporation and to make wrongful gain to him and wrongful loss to the Corporation is established. The bills on the letter head of Dr. S.C.Saxena and Dr.(Ms.) Puja Kundra are in the same handwriting. Dr. J.K.Kundra made available false and forced bills to Shri Arora, who in turn, to Shri Kirat Singh, Shri Ram Ashray and Shri Amar Singh. The aforesaid employees in turn paid the premium of Peerless Policy and for this purpose Shri Arora was personally interested to earn commission on Peerless premium as the Agency of Peerless was in the name of his wife.
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> It stands proved that Shri Arora was guilty of procuring and getting false medical bills reimbursed from the office of the I.O.C. for himself and other employees and it is further proved that he had submitted false and fabricated medical bills and got reimbursed on the strength of the same having full knowledge that they were false and bogus documents. He has thus been dis-honest in connection with the business and property of I.O.C. I further hold that the above acts are subversive of discipline or of good behaviour."

The Corporation (Disciplinary Authority) on perusal of the report of the Enquiry Officer vide its order July 21, 1992 passed an order dismissing the respondent from service of the Corporation with immediate effect. It further directed that no recovery of payment already made to the respondent during the period of suspension will be effected. The respondent was directed to contact the finance department for collecting his dues, if any, on any working day within a period of one month from the date of issuing the order.

10. The respondent on July 23, 1992 filed an appeal against his order of dismissal from service to the Appellate Authority who after considering the grounds taken up in the appeal memo and other materials on record, vide its order dated September 28, 1992, dismissed the said appeal.

11. The respondent being aggrieved by the order passed by the Appellate Authority on September 23, 1992 filed yet another writ petition being CWP No. 13934 of 1992 before the Punjab & Haryana High Court challenging the legality and correctness of the order of dismissal dated September 28, 1992 passed by the Appellate Authority.

The first appellant-Corporation filed the detailed written statement pleading, inter alia, that the writ petition was not maintainable since the respondent had already filed the writ petition No. 3170 of 1992 and this court cannot sit over the order of the Disciplinary Authority as an Appellate Court/Authority. The respondent had not exhausted the alternative remedy available under the Industrial Disputes Act, 1947 and, therefore, the writ petition be dismissed as pre-mature. The writ petition raised several disputed questions of facts which cannot be decided in a writ jurisdiction. The impugned order of dismissal does not suffer from any illegality and this court in exercise of its extra jurisdiction should not interfere with the order passed by the Disciplinary Authority after holding the enquiry. The Corporation, therefore, prayed that the writ petition be dismissed.

12. Both the writ petitions bearing C.W.P. Nos. 3170 of 1992 and 13934 of 1992 were heard together by the Division Bench of the High Court and the learned court vide its impugned judgment dated May 27, 1993 allowed both the writ petitions filed by the respondent and passed the following order:-

> "In view of the aforesaid position, we are satisfied that the impugned order imposing the punishment of dismissal of the petitioner is wholly arbitrary. Accordingly we allow both these writ petitions and quash the impugned orders dated 21- 7-1992 (annexure P-12) and 9-10- 1989 (annexure P-3) eg. deeming the petitioner under suspension from the date of his original dismissal, i.e. 21-2-1989. Resultantly, the petitioner stands reinstated to his service and he shall be entitled to the back wages by way of arrear of salary and allowances etc. to which he would have been entered (entitled), had he not been placed under suspension and dismissed from service."

13. The appellants thereafter filed review application No. 429/93 in CWP no. 13934 of 1992 and review application No. 430/93 in CWP No. 3170 of 1992 praying therein that the judgment dated May 27, 1993 he reviewed and re-called on the grounds set out in the review applications. The High Court however did not agree with the contentions raised in the review applications and consequently vide its impugned order dated November 25, 1993 dismissed both the review applications.

14. Feeling aggrieved by the orders dated May 27, 1993 as well as November 25, 1993 passed by the High Court in writ petitions as well as in review applications, the appellants on obtaining leave, have filed these appeals challenging the legality and correctness of the orders passed by the High Court. Since these appeals arise out of a common judgment, they are being disposed of by this judgment.

15. Mr. N.B. Shetye, Learned Senior Counsel appearing in support of these appeals urged that the High Court had committed a serious jurisdictional error while interfering with the order of dismissal dated July 21, 1992 and order dated February 21, 1989 removing respondent's name from the rolls of R & D Centre. He urged that the High Court could not have re-appreciated the evidence adduced by the parties during domestic enquiry and interferred with the findings recorded by the Enquiry Officer and affirmed by the Disciplinary Authority. The High Court cannot sit over the findings of the Enquiry Officer as an Appellate Court/Authority and, therefore, the impugned judgments of the High Court are unsustainable. He, therefore, prayed that the appeals be allowed and the impugned orders passed by the High Court be quashed and set aside.

16. The respondent Mr. Ashok Kumar Arora appeared in person and tried to justify the orders passed by the High Court. He submitted that the Enquiry Officer had totally misconstrued the materials on record and erroneously found him guilty of the charges levelled against him. There was no sufficient material before the Enquiry Officer to hold him guilty of misconduct and, therefore, the High Court has rightly interferred with the findings of the Enquiry Officer. He also submitted that there is patent discrimination while awarding the extreme penalty of dismissal against him whereas other employees were let off on minor punishments. The order passed by the Disciplinary Authority was thus discriminatory and the High Court had committed no error while ordering his reinstatement. There is no substance in the appeals and the same be dismissed.

17. We have give our anxious thought to the various contentions raised before us and have gone through the materials on record since the respondent was appearing in person. On careful scrutiny of the materials on record, we are of the considered view that the impugned orders passed by the High Court are unsustainable for the following reasons.

18. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non- observance of principles of natural justice, denial of reasonable opportunity; findings are base on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is catena of judgments of this Court which had settled the law on this topics and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this topic viz., State of Andhra Pradesh Vs. S.Sree Rama Rao, 1963 (3) SCR 25, State of Andhra Pradesh Vs. Chitra Venkata Rao, 1976(1) SCR 521, Corporation of City of Nagpur and Anr. Vs. Ramachandra, 1981 (3) SCR 22 and Nelson Motis Vs. Union of India and Anr., AIR 1992 SC 1981.

19. The Enquiry Officer on appraisal of the materials before him held that the respondent was actively involved and a brain behind procuring false medical certificates and medical bills not only for himself but for other employees and on the basis of which the reimbursement claims were made by the respondent and other employees. The corporation sanctioned these reimbursement claims of the various employees which had resulted into monetary loss to the corporation. Before the Enquiry Officer except the respondent other employees of the Corporation admitted the charges and consequently a minor penalty was awarded to them. The respondent contested the charges levelled

against him and denied that he was instrumental in cheating or committing forgery of the medical bills. On consideration of report and findings of the Enquiry Officer, the Disciplinary Authority took a lenient view in respect of other employees. Having regard to the involvement of the respondent in the entire episode, the Disciplinary Authority awarded him the penalty of dismissal from service. The order of dismissal passed by the Disciplinary Authority against the respondent was also affirmed by the Appellate Authority. Curiously enough, the High Court in its impugned judgment compared the case of the respondent with the other employees who have been awarded a lesser penalty and opined that there is a discrimination resorted to by the Disciplinary Authority in the matter of awarding the punishment. It is this action of the Disciplinary Authority in awarding the penalty being discriminatory and violative of Article 14 of the Constitution. In support of this reasoning, the High Court placed reliance on the decision of this Court in Sengara Singh and others Vs. State of Punjab and others, 1983 (3) S.L.R. 685 and the passage therefrom was reproduced in the impugned judgment which is distinguishable on facts. We have gone through the impugned judgment of the High Court dated 27th May, 1993 and were of the view that the High Court was wrong in interferring with the punishment awarded by the Disciplinary Authority. The High Court has totally overlooked the finding of the Enquiry Officer and affirmed by the Disciplinary Authority that the respondent w as instrumental in obtaining forged medical bills not only for himself but also for other employees and he was the main actor behind the cheating to the corporation. It is because of this finding, the Disciplinary Authority, in our opinion, rightly considered the award of penalty/punishment to the respondent differently than the other employees who although got the benefit of reimbursement on the forged bills but they accepted their guilt before the Enquiry Officer. Having regard to the facts and circumstances of this case, we are of the opinion that the High Court had committed serious jurisdictional error while interferring with the quantum of punishment. There is neither any discrimination resorted to by the Disciplinary Authority nor the punishment awarded to the respondent was disproportionate to his misconduct. The impugned judgment and order of High Court, therefore, are unsustainable.

20. Coming to the next submission of the respondent that he was denied a reasonable opportunity by the Enquiry Officer, we find that the same is devoid of any merits. The respondent was unable to illustrate in what manner he was denied a reasonable opportunity.

21. The impugned orders made in the review applications filed by the appellants are also unsustainable. In the review applications, all these contentions were specifically taken up, yet the High Court without adverting to any of these contentions has dismissed these review applications without assigning sustainable reasons.

22. In the result, the appeals filed by the appellants are allowed. The impugned judgments and orders of High Court dated may 27, 1993 and November 25, 1993 are quashed and set aside. In the circumstances, there will be no order as to costs.