

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P (C) No. 141/2011& CM. No. 9248/2012**

% *Judgment reserved on: 23rd July, 2013*
Judgment delivered on: 2nd September, 2013

BV SHRIHARI RAO Petitioner

Through: Mr. Ashok Rajagopalan and
Ms. Madhu Tyagi, Advs.

Versus

OIL AND NATURAL GAS CORPORATION LTD
AND ANR. Respondents

Through: Mr. V.M. Koura and Ms.P.K.
Benipal, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant petition has been preferred against the impugned order dated 02.12.2010, whereby, penalty of 'removal from service' has been imposed upon the petitioner.

2. To adjudicate the instant petition, it is necessary to record the background of this case. Petitioner was appointed for the post of Geologist on 06.07.1989. In the year 2009, he was in Level E4 and was posted at Rajahmundry in the State of Andhra Pradesh. He was the President of the Association of Scientific and Technical Officers (ASTO) of Rajahmundry Unit of ASTO, ONGC. In the month of

January, 2009, Officers of Public Sector Oil Companies had decided to go on nation-wide strike from 07.01.2009 to 09.01.2009. The petitioner, being the President of ASTO of Rajahmundry Unit, participated in the said strike. Being enraged by the Strike, respondent no. 1 decided to impose penalty of 'removal from service' on all the office bearers of the various units of ASTO including the petitioner herein.

3. Accordingly, by an order dated 08.01.2009 petitioner was slapped with a penalty of 'removal from service' in connection with the strike, which commenced on 07.01.2009.

4. Being aggrieved by the order dated 08.01.2009, petitioner preferred an appeal to the Chairman and Managing Director of respondent no. 1, the appellate authority under the CDA Rules.

5. By an order dated 29.01.2009, Board of Directors directed that the petitioner and 61 other office bearers of ASTO to be reinstated in service.

6. Vide the said order it was further directed that the petitioner shall be placed under suspension with immediate effect till further orders with Rajahmundry as Headquarters. Accordingly, disciplinary authority (Director, HR) issued a chargesheet dated 05.03.2009 calling upon the petitioner to show cause against the imputation of misconduct and misbehaviour in support of each article of charge which was annexed as Annexure-II to the said charge sheet.

7. After receiving the reply from the petitioner, Director (HR) vide its order dated 09.05.2009 appointed an Enquiry Officer to enquire into the charges framed against the petitioner and six others. The Enquiry Officer commenced the enquiry proceedings on 08.06.2009 and the enquiry was held at Rajahmundry.

8. It is pertinent to mention here that during his suspension, the petitioner was transferred from Rajahmundry to Bokaro, however, his relieving order was not issued, rather extended time to time. Thereafter, vide order dated 24.05.2010, respondent no. 1 advised the petitioner to join duty immediately and seek regularization of period of absence by appropriate leave.

9. Due to this action of the respondents, petitioner filed W.P.(C) 18601/2009 before the High Court of Andhra Pradesh by assailing his transfer declaring the said order as arbitrary, illegal and violative of Articles 14, 21 and 300(A) of the Constitution of India. Also sought to suspend the order dated 17.02.2009 of respondent no. 3 as arbitrary, illegal and violative. The said petition was dismissed by Hon'ble Single Judge of High Court of Andhra Pradesh by observing as under:

“I have perused the retention and transfer policy, which makes it clear that the impugned order is not in violation of any of the clauses of the said policy..... The legal position has been crystallized in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies. No employee as a matter of right can seek continuance of a particular place / station for an indefinite period.

Having regard to administrative exigencies, and the policy notified by the employer, it is always open for the employer to effect transfers, as per the requirements. In these circumstances, I see no discrimination meted out to the petitioner and it cannot also be said that his transfer is in violation of the policy notified.

For the foregoing reasons, the writ petition deserves to be dismissed and is accordingly dismissed, however, in the circumstances, without any order as to costs.”

10. The petitioner issued a letter dated 11.06.2010, wherein it is stated as under:

“The legality of the actions of the Management of ONGC in suspending me and subsequently transferring me to CBMDP while under suspension are the issues under consideration by the Hon’ble High Court of Andhra Pradesh, Hyderabad and is subjudice. Therefore, it may not be possible to join at CBMDP at this stage as it may amount to showing disrespect to the legal system of this country.”

“Subsequently, I came to know that the suspension imposed on me was revoked vide order dated 16.06.2009. The said order was not served on me till date to be received by me. However, I came to know about the said order only when a copy was filed in the High Court by the Management of ONGC along with their counter affidavit and that it was mentioned therein that I may join at CBMDP accordingly.

Since the very issues of suspension and transfer during suspension are before the court of decision, the revocation of suspension after giving effect to the transfer orders will not alter the nature of the case before the Hon’ble Court.”

11. On 18.06.2010, Bokaro Office of ONGC issued another Office

Memorandum to petitioner stating inter alia as follows:-

“4. Besides above, such your acts amounts to misconduct in terms of Rule 3 (i) and Rule 5 of ONGC CDA Rules.

5. This is to inform you that your continued unauthorized absence from duty without good and sufficient reasons has rendered by your liable to disciplinary action under ONGC CDA Rules.

Sh. Hari Rao, SG, ID No. 76491 is, therefore, advised to join for duty immediately in his own interest and seek regularization of the period of absence by appropriate leave which has to be supported with valid reasons and documents for the same.”

12. It is pertinent to note that the minutes of the 207th meeting of the Board of Directors of ONGC, held on 29.07.2010 at New Delhi is as under:

“207.21 WORK ARRANGEMENTS FOR HOLDING ADDITIONAL CHARGE OF DIRECTOR (HR) BY CMD AND TEMPORARY DELEGATION OF CERTAIN POWERS VESTED IN DIRECTOR (HR) AS PER BDP-2009

207.21.1 CMD apprised that Ministry of Petroleum & Natural Gas (MOP&NG) vide its letter dated 15th July, 2010 had conveyed the approval for acceptance of resignation of Dr. A.K. Balyan, the then Director (HR) from the services of ONGC with immediate effect. Further, MOP&NG vide its letter dated 29th July, 2010 has entrusted additional charge of Director (HR), ONGC on ad-hoc basis to CMD, ONGC for a period of 3 months from 16th July, 2010 or till regular incumbent is appointed or until further orders, whichever is the earliest.

207.21.2 It was further informed that presently about 18 senior executives report directly to Director (HR), and Dr. A.K. Balyan as Director (HR) was also assigned additional responsibility as Director-In-Charge Business Development. He was also on the Board of a number of JV companies. CMD stated that in view of the aforesaid orders of MOP&NG and considering the need to manage the various responsibilities of Director (HR) efficiently, it is deemed necessary to assign / delegate certain functions to other functional directors / senior executives (not below ED level). It was however clarified that the core responsibility for the functions of Director (HR) shall rest with CMD only, in conformity to the Government of India orders.”

13. Thereafter, ONGC issued an office order dated 03.08.2010, wherein it is stated as under:

“Re: Temporary Delegation of Powers of Director (HR)

Consequent upon entrusting of additional charge for the post of Director (HR), ONGC to CMD, ONGC by MOP&NG, the Board of Directors in its 207th meeting held on 29th July, 2010 have accorded approval for assignment and sub-delegation of certain existing delegated powers of Director (HR) to other Functional Directors and ED-Chief-ER/Chief-HRD as a temporary arrangement, till such time a regular incumbent is appointed as Director (HR) by the Government of India. However, the overall responsibility of HR area remains with CMD.”

14. The Petitioner had challenged the order of Single Judge of High Court of Andhra Pradesh before the Division Bench. Same was also dismissed vide judgment dated 16.08.2010 wherein it is observed as under:

“It needs to be placed on record that the learned counsel for the petitioner was pointedly asked to advance if anything in his armoury to justify non compliance with the order of transfer without any interim direction from the writ court or this court to the contrary. He was reminded about the legal obligation that is cast upon the appellant to discharge his duties attached to the office. He was also reminded that failure to discharge his duties could visit him with penalties. Responding thereto, he pleaded lack of knowledge of revocation of suspension on the part of the appellant. Amazingly denial of knowledge is urged notwithstanding the fact that the order of revocation of suspension accompanies the counter of the respondents filed on 07/12/2009. In the given facts is it ipsi dixit of the appellant or what, we would like to refrain from expression of opinion because we are not dealing with the consequences of non-compliance of the order of the employer.....”

15. Since the petitioner still refused to report to the Bokaro Office in spite of the dismissal of the appeal by the Division Bench of Andhra Pradesh High Court, show cause notice dated 03.11.2010 was issued to the petitioner. He filed reply dated 09.11.2010 to the said show cause notice.

16. Thereafter, vide order dated 02.12.2010, disciplinary authority imposed a penalty of ‘removal from service’ to the petitioner. Same is under challenge in the instant petition.

17. It is pertinent to mention here that petitioner filed an SLP in the Supreme Court which was dismissed vide order dated 01.04.2011 in the following terms:-

“Mr. Rakesh Dwivedi, ld. Senior Counsel appearing for

the petitioner, seeks leave to withdraw the petition, stating that since the petitioner has already challenged the order of the dismissal, he would like to urge all the grounds, including the allegation of suppression of the factum of revocation of order of suspension, before the Writ Court. Accordingly, the special leave petition is dismissed as not pressed.

We clarify that we have not expressed any opinion on the merits of the grounds urged in the present petition. The writ petition, stated to have been filed by the petitioner questioning the validity of the order of his dismissal shall be considered on its own merits, uninfluenced by any observation in the impugned judgment.”

18. The main ground of the instant petition is that impugned order is bad inter-alia for the following reasons:

- a) Director (Onshore) is not the competent authority.
- b) Order does not contain reasons for arriving at satisfaction for invoking Rule 41 (b) or for the penalty.
- c) Order does not contain reasons as to why several points raised by the petitioner were rejected.
- d) The order of transfer is bad.
- e) Only the authority that suspended him could revoke the suspension.
- f) The impugned order was passed on the basis of the directions of the CMD (who is also the Appellate Authority)

19. Counsel for the petitioner submitted that the affidavit in reply to the petition was filed by junior officer, who could not have had any knowledge of the basis of satisfaction of the Director (Onshore) either

for invoking the emergency clause 41(b) of CDA Rules or for awarding the penalty of removal service or for rejecting various other defences raised / contentions taken by the petitioner in his reply to show cause issued by respondent no. 2 or allegations made in the Writ Petition that the order of 'removal from service' was done at the behest of the appellate authority – the CMD. Such affidavit could not be relied upon especially as no reasons have been stated as to why respondent no. 2 or the CMD could not file an affidavit.

20. He further submitted that the perusal of Annexure P-22 clearly shows that the petitioner stated as under:

- “(a) he could not leave the Head Quarters as it was ordered by the Board of Directors.
- (b) he cannot be transferred under the F.I.F.O (First in First Out) principle of the Transfer Policy as many E-4 level officers of his discipline, with more years of stationed seniority, are still placed at Rajahmundry and
- (c) as per the MOU dated 29.07.1990 between the respondent no. 1 and the Association, the office bearers could not be transferred. The said MOU was circulated by the Respondent no. 1 on 10.09.1990. Many E-4 level officers of his discipline with more years of station seniority are still at Rajahmundry.
- (d) he was awaiting Revocation of Suspension Orders from the board of Directors, which had originally passed the suspension order.”

21. Ld. Counsel has raised the issue on competency of Director (Onshore) as under:

“13.1. It is the case of the Respondents that the Director (Onshore) got the authority to pass the impugned order by virtue of the minutes dated 29.07.2010. The power was stated to be a temporary delegation which was consequent upon entrusting of additional charge of Director (HR) to the CMD.

13.2 The office order dated 03.08.2010, however, clarifies that overall responsibility of HR area remains with CMD. In other words, the Director (Onshore) was only to be acting on behalf of the CMD. The minutes of the board meeting dated 29.07.2010 clarifies that core responsibility for the functions of Director (HR) shall rest with CMD only. Thus, the delegation of the power to impose major penalty could not have been sub-delegated to Director (Onshore).

13.3 In order to get over the Petitioner's oral submissions that Director (Onshore) could not have acted as Director (HR) after 15.10.2010, the Respondents annexed further documents to an affidavit filed on 06.07.2012. In the said documents they enclosed a letter purported to have been received from the Government of India by which the CMD was empowered to act as Director (HR) for a further period. The Respondent did not produce any document by which the Board has passed any resolution empowering the CMD to continue to act as Director (HR) as it did by its resolution dated 29.07.2010.

13.4 The power to assign / delegate is contained in 207.21.2 which stipulates that 18 senior executives report directly to Director (HR). Director (HR) had additional responsibility of business development. The CMD stated that in view of the Orders of Ministry and the need to manage various responsibilities of Director (HR) efficiently it was necessary to assign / delegate certain functions (not powers) to other functional Directors / senior executives. The Decision of the Board of Directors further clarified that the core responsibility for the functions of Director (HR) shall rest with CMD only.

13.5 The CMD stated that in view of the Orders of the Ministry and the need to manage various responsibilities of Director (HR)

efficiently it was necessary to assign / delegate certain functions (not powers) to other functional Directors / senior executives.

13.6 Thus the Board of Directors did not authorize the delegation of disciplinary powers or authority.

13.7 The delegation of powers contained in the Office Order dated 03.08.2010 is itself stated to be a temporary delegation.

13.8 In any event the power to remove a person would always vest with the appointing authority. This power cannot be delegated to any other authority as it would violate the basic principle of Industrial Jurisprudence that “only he who appoints can remove”. Further, a perusal of the Schedule attached to Annexure P-16 shows that it is a delegation of powers. Thus the power to act as a disciplinary authority cannot be sub-delegated on the maxim “*delegatus non potest delegare*”. The CDA Rules do not contain any provisions for further delegation of powers. In other words, only the CMD could have exercised the powers of Director (HR) and the same could not have been sub-delegated to the Director (Onshore).

13.9 It is therefore clear the impugned order has been passed by a person who could not have any authority to pass the order as the responsibility of the functions of Director (HR) rested with the CMD only.”

22. Ld. Counsel submitted that the alleged competent authority has not recorded the satisfaction for invoking Rule 41(b) or for the penalty. The impugned order does not give the basis of satisfaction as to why an enquiry could not be conducted. It does not disclose any independent material on the basis of which such a satisfaction could be arrived at.

23. When there was a pending enquiry in which the petitioner had participated, there could not have been any valid reason to invoke Rule

41 (b).

24. It is pertinent to mention here that the petitioner was removed from service for participating in the strike on 07.01.2009 and the order of 'removal from service' was made on 08.01.2009 by invoking Rule 41 (b) without giving any show cause. Thus, it is clear that Rule 41 (b) is invoked for urgent actions.

25. In the instant case, petitioner was transferred on 17.02.2009. A show cause notice was issued on 03.11.2010 and that too after the notice of filing a Writ Petition No. 7473/2010 was served upon the respondent no. 1.

26. Further submitted that invocation of Rule 41 (b) is bad in law for the following reasons:-

a) The Respondents have not produced any independent material to show why it was not reasonable practical to conduct the enquiry.

b) There was no urgency in the matter except probably for the reasons set out in Para 6 of the Writ Petition.

c) A perusal of the CDA Rule 41 (b) would show that the respondent no. 2 was bound to give reasons for arriving at the satisfaction as to why it was not reasonably practical to hold the enquiry.

d) The reason set out in the order is that (i) the petitioner did

not obey the order of transfer and (ii) Director (Onshore) was not satisfied with the reply given by the petitioner. These are not reasons for invoking the said clause.

27. To strengthen his arguments, on the issue raised above, ld. Counsel for the petitioner has relied upon a case of ***Jaswant Singh v. State of Punjab & Ors. 1991 1 SCC 363*** wherein it is held as under:

“It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at p. 270 (of 1985 (Supp)2 SCR 131):at P. 1479 of AIR 1985 SC 1416) of Tulsi Ram's case:

A disciplinary authority is not expected to dispense with a disciplinary authority lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail.”

28. Ld. Counsel for the petitioner further submitted that decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in the court of law, it is incumbent on those who support the order to show that the satisfaction is based on

certain objective facts and is not the outcome of the whims or caprice of the concerned authority.

29. Ld. Counsel submitted that as per the CDA Rules, the order of removing the petitioner from service is an appealable order. The main ground for 'removal from service' is that the petitioner did not join duty at Bokaro even after the suspension was revoked. The impugned order does not set out any reasons for rejecting the other contentions but only records that the contentions are rejected.

30. To strengthen his arguments, ld. Counsel has relied upon a case of *S.N. Mukherjee v. Union of India, AIR 1990 SC 1984*, wherein it is held as under:

“An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power.”

31. He submitted that order of 'removal from service' is arbitrary and violative of principles of natural justice. The impugned order has been made vindictive and the procedure of enquiry was given a go-bye only to hasten the process of removal.

32. The provisions for appeal is not an equally efficacious remedy. He submitted that the impugned order was made by Director (Onshore) exercising power to take HR as the alleged delegatee of the CMD.

33. As per the CDA Rules, CMD is the Appellate Authority in respect of major penalties. The petitioner belongs to category E-4. This is therefore a case where an appeal to an order of CMD (through his delegate) would lie to the CMD himself. This is no appeal in the eyes of law. This is more so when it is the case of the petitioner that order of removal was passed without an enquiry only on the instructions of CMD himself. This allegation has been met by the respondents by stating that it was a figment of the petitioner's imagination.

34. It is further submitted that petitioner sought to have the grievance redressed by the Management, but no reply was given to him. Provision for appeal is, therefore, not an efficacious remedy so as to oust the jurisdiction of this court. In any event, the existence of an alternate remedy is not an absolute power for entertaining a writ. The alternate remedy must be an equally efficacious one.

35. Ld. Counsel for the petitioner submitted that petitioner has not challenged the propriety of the order dated 02.12.2010, but he has challenged the legality of the order on the ground that it is violative of Article 41 (b) of the Constitution.

36. The Rules operate entirely in the realm of private law and private contract is untenable as it is not part of the pleading. In any

event, even contracts between the state and the citizens are amenable to writ jurisdiction of this court, settled law is that the Respondent is “State” within the meaning of Article 12 of the constitution.

37. The order dated 02.12.2010, as has been passed by disciplinary authority, is erroneous. Respondent no. 2 is not the ordinary party in so far as the petitioner is concerned. As per the Government’s order and resolution of respondent no. 1, which was brought on record by the respondents, it was the Chairman and the Managing Director who was authorized to act as Director (HR) and even this authority had expired prior to passing of the order.

38. As per the CDA Rules, the Chairman and the Managing Director is the Appellate Authority against an order passed by the Director (HR). This would, thus, be a case of Appeal from Ceaser to Ceser and is not a provision for appeal in the eyes of law. The existence of a provision for appeal is not a bar to invocation of the writ jurisdiction especially, when the provision is not equally efficacious remedy.

39. The petitioner has relied upon a case of ***Isha Beevi on behalf of the Minor Umaiben Beevi and Ors. Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Ors. AIR 1975 SC 2135***, wherein it is held as under:

“We may point out that the reliefs claimed in the Writ Petitions were Writs of Certiorari, and Mandamus and Prohibition. It is clear to us, after perusal of those so called "orders" sought to be quashed that they were only notices of commencement of recovery proceedings by

attachment of certain properties. Final orders could only be passed after the appellants have had their opportunities to object under Rule 11 of the 2nd Schedule of the 1961 Act because the notices purport to be only preliminary notices under Rule 48 of the 2nd Schedule to the 1961 Act. These proceedings could only be quashed even at this stage, if they were entirely without jurisdiction. Otherwise, a prayer for quashing proceedings would, obviously, be premature. No occasion for the issue of a writ of Mandamus can arise unless the applicants show non-compliance with some mandatory provision and seek to get that provision enforced because some obligation towards them is not carried out by the authority alleged to be flouting the law. The grievance of the appellants, however, is that the tax recovery officer had no jurisdiction whatsoever to start tax recovery proceedings against them. They have, therefore, asked for writs of prohibition. The existence of an alternative remedy is not generally a bar to the issuance of such a writ or order. But, in order to substantiate a right to obtain a writ of prohibition from a High Court or from this Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It is not enough if a wrong section of provision of law is cited in a notice or order if the power to proceed is actually there under another provision.”

40. On the issue of *res judicata*, as rightly submitted by the petitioner that the orders passed by Division Bench of Andhra Pradesh High Court both in Writ Appeal No. 301/2010 and Review Petition No. 1558/2010 were the subject matter of the SLP. The Hon’ble Supreme Court vide its order dated 01.04.2011 specifically recorded that the Writ Petition filed by the petitioner questioning the validity of the order of his dismissal shall be considered on its own

merit, uninfluenced by any observation in the impugned judgment. Thus, it is clear that, the Supreme Court has given liberty to this court to decide the validity of the order of transfer, (which the petitioner allegedly disputed) which is the main reason for 'removal from service'. Thus, the order of Andhra Pradesh High Court did not become final especially when the High Court did not decide the question whether there could be a transfer when a person is under suspension.

41. The respondents were made aware of the order of the Supreme Court, but they did not take any steps to seek any clarification from the Apex Court. The submissions also go on the premise that the SLP is only against the order of Review whereas it was against the order passed in Writ Appeal.

42. Respondents have filed counter-affidavit to the instant petition and taken preliminary objection that to the impugned order dated 02.12.2010, passed by respondent no.2, an equal efficacious remedy is available to the petitioner by way of an appeal to the appellate authority under Rule 45 of the ONGC Conduct, Discipline and Appeal Rules, 1994.

43. The various facts and events stated in the petition prior to the issuance of the impugned order dated 02.12.2010 referred to and pleaded in the Writ Petition, were also pleaded by petitioner in a Writ Petition filed before the High Court of Andhra Pradesh vide Writ

Petition No. 18601/2009 which was dismissed by Id. Single Judge of the said High Court vide order dated 08.04.2010.

44. Against the order of the Single Judge, the petitioner preferred an appeal before the Division Bench of the same Court vide Appeal No. 301/2010 and the same was also dismissed vide order dated 16.08.2010.

45. It is further stated that in the absence of Director (HR), the additional charge of the Post of Director (HR) was entrusted to the Chairman and Managing Director, ONGC by the Ministry of Petroleum and Natural Gas. Thereafter, the Board of Directors of ONGC in a meeting held on 29.07.2010 accorded approval for assignment and sub-delegation of certain existing delegated powers of Director (HR), *inter alia*, to other Functional Directors as a temporary arrangement till such time a regular incumbent was appointed as Director (HR) by the Govt. of India. Thereafter, by Office Order dated 03.08.2010, the Officers who were earlier reporting directly to the Director (HR), were directed to report, *inter alia*, to other Functional Directors as per the list annexed as Annexure-1 of the Office Order.

46. In terms of said Office Order, the Director (Onshore) was the competent authority under the delegation of powers during the relevant time, and as such, was duly authorized to pass the impugned order dated 02.12.2010. The revocation of the petitioner's suspension order, the issuance of the transfer order dated 17.02.2009 to the petitioner and the events connected with the same, have already been considered by

ld. Single Judge and Division Bench of the High Court of Andhra Pradesh.

47. On the very same ground, petitioner's challenge against the transfer order dated 17.02.2009 was duly rejected by the High Court of Andhra Pradesh.

48. It is admitted by the respondents that the appointing authority for E1 to E4 Level Officers, as the petitioner is, is the Director (HR); yet, as already stated above, during the relevant time when the show cause notice was issued to the petitioner, the post of Director (HR) was vacant and powers of appointing authority as well as to act as the disciplinary authority for the employees in the E1 to E4 level had been delegated to the Director (Onshore) in terms of Office Order dated 03.08.2010. The order passed by the Disciplinary Authority is subject to an Appeal under Rule 45(b) of the Conduct, Discipline and Appeal Rules. For convenience, same is reproduced as under:

*“45. ORDERS AGAINST WHICH APPEAL LIES:.....
an Employee (including one who has ceased to be such)
may prefer an appeal against all or any of the following
orders, namely:*

*(b) an order imposing any of the penalties specified in
Rule 34, whether made by the Disciplinary Authority or
by any Appellate or Reviewing Authority;”*

(e) The attendant Rules 46 and 51 of the said Rules provide as follows:

“46. APPELLATE AUTHORITIES:

*An employee including a person who has ceased to be in
the service of the Company, may prefer an appeal*

against all or any of the orders specified in Rule 45 to the Competent Authority (as specified in the Schedule I of these Rules)”

“51. CONSIDERATION OF APPEALS:

(1) In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 33 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 34 or enhancing or reducing a penalty imposed under the said Rule, the Appellate Authority shall consider:

(a) Whether the procedure herein prescribed in these Rules had been complied with and the principles of natural justice observed.

(b) Whether the findings of Disciplinary Authority are warranted by the evidence on the record; and

(c) Whether the penalty imposed is adequate, inadequate severe; and pass orders:

(i) Setting aside, reducing confirming or enhancing the penalty; or

(ii) Remitting the case to the authority which imposed or enhanced or reduced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

(3) In the case of an appeal against any order specified in Rule 45, the Appellate Authority shall consider all the circumstances of the case and pass such orders as it may deem just and equitable.”

49. Ld. Counsel appearing on behalf of the respondents has submitted that petitioner has approached this court without availing of the alternate remedy of appeal, therefore, this court has no jurisdiction to interfere with the order passed by the Disciplinary Authority.

50. To strengthen his arguments on this issue, ld. Counsel has relied upon a case of *Star Papers Mill Ltd. V. State of UP, 2006 10 SCC 201*, wherein it is held that Article 226 of the Constitution confers all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the jurisdiction to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

51. The Constitutional Bench of the Supreme Court in the case of *State of MP v. Bhailal Bhai AIR 1964 SC 1006* held that the remedy provided in writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power.

52. In the case of *Punjab National Bank v. O.C. Krishnan 2001 6 SCC 569* it is held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

53. Counsel for the respondent submitted that the present writ is barred by *res-judicata*. He submits that petitioner has impugned the order of removal primarily on the ground that the punishment is for his

disobedience of the transfer order and since the order of transfer was invalid his disobedience of the order of transfer was justified. He submitted that prior to the present Writ Petition, his Writ Petition before the Id. Single Judge and Division Bench of the same High Court have already been dismissed. Thereafter, petitioner filed an SLP before the Supreme Court. Same was also dismissed vide its order dated 01.04.2011. Consequently, the order of the Id. Single Judge, as confirmed by the Division Bench upholding the validity of the transfer, has become final and binding on the petitioner. The principle of *res-judicata* is applicable to writ proceedings and the petitioner cannot therefore challenge or impugn the validity of the order of transfer in the present petition.

54. Ld. Counsel has relied upon a case of ***Pandit M.S.M. Sharma v. R. Shree Krishna Sinha & Ors. 1961 1 SCR*** wherein it is held as under:

“This Court has laid it down in the case of Raj Lakshmi Dasi v. Banamali Sen : [1953]4SCR154 that the principle underlying res judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. In that case the rule of res judicata was applied to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of res judicata, and not the provisions of s. 11 of the code of Civil Procedure, were applied to the case. The rule of res judicata is meant to give finality to a decision arrived at after due

contest and after hearing the parties interested in the controversy.”

55. Ld. Counsel submitted that impugned order dated 02.12.2010 has considered all the facts and recorded as under:

“The undersigned after going through the case records and the facts and circumstances of the case, is convinced that Shri B.V. Shrihari Rao, despite being ordered / advised by his superior authorities to join his duty at CBM-Development Project, Bokaro through various communications made to him in this regard has wilfully disobeyed all such orders and absented himself from duty un-authorizedly since 24 May, 2009.

The fact, that consequent upon revocation of his suspension vide orders dated 16.06.2009, he has taken a conscious decision not to join his duties at the transferee location and thereby wilfully causing to prolong his suspension, further substantiates that he is not willing to serve the company any more.

Now, therefore, considering that reasonable opportunity has already been given to the employee through the various memoranda and notices including the final show cause notice dated 03.11.2010 evidently demonstrated total disregard of various office orders by Shri Hari Rao by not joining his duties at CBM-D Project, Bokaro; his unwillingness to abide by the revocation of suspension order; and also his failing to offer any plausible explanation to the Show Cause Notice dated 03.11.2010; the undersigned is convinced that holding of inquiry in a manner as prescribed under Rule 36 to 40 of ONGC CDA Rules, 1994 is not reasonably practicable and, therefore, it is a fit case for invoking Rule 41 (b) and to pass orders as deemed fit based on circumstances and merits of the case.”

56. Ld. Counsel submitted that there is no infirmity in the order, but if the petitioner still has any grievance, he should address the grievance by filing an Appeal in accordance with the Conduct, Discipline and Appeal Rules. Therefore, the present petition is misconceived.

57. He further submitted that there was no need to conduct an enquiry and removal orders passed under the Rules discussed above. He has relied upon a case of **Ashok Kumar Sonkar v. Union of India & Ors. JT 2007 (6) SC 127** wherein it is held as under:

“28. A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

29. In Aligarh Muslim University and Ors. v. Mansoor Ali Khan : AIR2000SC2783 , the law is stated in the following terms:

25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord

Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

30. *In Karnataka State Road Transport Corporation and Anr. v. S.G. Kotturappa and Anr. : (2005)IILLJ161SC , this Court held:*

...The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given....

31. *In Punjab National Bank and Ors. v. Manjeet Singh and Anr. : AIR2007SC262 , this Court opined:*

The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice.”

58. To adjudicate the instant petition, it is necessary to deal with the Show Cause Notice dated 03.11.2010 issued to the petitioner which is as under:-

“Whereas, in connection with his participation in OSOA/ASTO strike started on January, 7, 2009, Shri B.V. Srihari Rao, S.G., Id No. 76491, ONGC Rajahmundry Asset was imposed with penalty of ‘removal from service’” vide order No.O-DHR/D&A/16/2008-2009 dated 08.01.2009.

Whereas, in consideration of appeal against the aforementioned orders dated 08.01.2009, vide order No. O-DHR/D&A/16/2008-09 dated 29.01.2009 Shri Srihari Rao was reinstated in service; however, he was placed under suspension till further orders.

Whereas, Shri Srihari Rao, was transferred from Rajahmundry to CBM-Dev. Project, Bokaro vide order No. DDN/CE/GEOL/AT-2009 dated 17.02.2009 with date of relieving as 27.02.2009.

Whereas, in consideration of his requests, the date of his relieving from Rajahmundry was extended at three occasions to 01.04.2009 to 15.04.2009 and 15.05.2009

vide orders dated 03.03.2009, 02.04.2009 and 24.04.2009 respectively.

Whereas, Shri Srihari Rao was relieved from Rajahmundry w.e.f 15.05.2009 vide order NO. RJY/HR/ESTT-1/DS/76491 dated 14.05.2009. Accordingly, Shri Srihari Rao was supposed to join at CBM-Dev. Project, Bokaro latest by 24.05.2009 after availing admissible joining time.

Whereas, Shri Srihari Rao did not comply with the aforementioned transfer order and did not report to CBM-Dev. Project, Bokaro for joining on transfer.

Whereas, vide order No. O-DHR/D&A/16/2008-09 dated 16.06.2009, concerning revocation of his suspension; also Shri Srihari Rao was again advised to join his duty at CBM-Dev. Project, Bokaro.

Whereas, Shri Srihari Rao has neither reported for joining his duty at CBM-Dev. Project Bokaro nor did submit any valid reasons for not joining his duty.

Whereas, GM-HR, CBM-Dev. Project, Bokaro vide memorandum NO. BKRO/ONGC/CBM/HR-ER/Estt./76491 dated 18.11.2009 advised Shri Srihari Rao to join his duty at Bokaro immediately and to seek regularization of his absence through appropriate leave; else he may be liable for action under ONGC Rules and Regulations.

Whereas, I/C HR-ER CBM-Dev. Project, Bokaro vide another memorandum NO. CBMDP/BKRO/D&A/76491/2010 dated 24.05.2010 again advised Shri Srihari Rao to join his duty at Bokaro immediately and to seek regularization of his absence through appropriate leave; else his continuous un-authorized absence may leave him liable for action under Rule 14 (5) of ONGC Leave Rules, 1995, as well as under provisions of ONGC CDA Rules, 1994.

Whereas, Shri Srihari Rao was further informed by I/C HR-ER CBM-Dev. Project, Bokaro vide memorandum No. CBMDP/BKRO/D&A/76491/2010 dated 18.06.2010 that his continuous un-authorized absence amounts to misconduct under provisions contained in ONGC CDA Rules, 1994 and has thereby rendered him liable for disciplinary action under Rule ibid.

Now, therefore, in view of above, Shri B.V. Srihari Rao is directed to explain as to why he has been unauthorizably absenting from duty with effect from 15.05.2009/24.05.2009 and as to why he disobeyed the orders of his superior authorities and further as to why action should not taken against him under Rule 5 (2), 4(1)(b), (c) and items Number 1,5,30 and 32 annexed to Rule 3 (j) of ONGC CDA Rules, 1994 for his aforementioned un-authorized absence and disobedience of lawful orders of his superior authorities.

Accordingly, Shri B.V. Srihari Rao is hereby directed to explain as to why the proposed action should not taken against him under ONGC CDA Rules, 1994. The explanation of Shri B.V. Srihari Rao against this show-cause notice must reach the undersigned within 10 days of the receipt of this notice.

59. It is important to note that petitioner replied Show-Cause Notice on 09.11.2010 and mainly submitted as under:-

“I submitted appeals for revocation of suspension and for cancellation of the transfer order.

A memorandum dated 05.03.2009 with some charges for a major penalty was issued by the Director (HR) and I replied denying the charges. An inquiry was initiated by the Director (HR).

As a suspended executive, I could not hand over any charge as my services were temporarily under abeyance, not entitled to attend the office, not entitled for any leave,

not entitled to take over any charge to discharge any duties and not entitled for the full emoluments.

I joined Rajahmundry in 2001 and many of my senior colleagues who were not suspended and who had more station seniority were available at Rajahmundry as on 15.05.2009. I was also the President of recognised ASTO Rajahmundry as on 15.05.2009.

Therefore, I appealed for the revocation of suspension and for the cancellation of my transfer.

Again, I have submitted an appeal dated 13.08.2009 for revocation of suspension and for cancellation of transfer. I categorically mentioned in the said letter that I was awaiting the order of revocation of suspension.”

60. After considering the reply of the petitioner, the Disciplinary Authority passed the impugned order dt. 02.12.2010, whereby, penalty of ‘removal from service’ has been imposed upon the petitioner.

61. I have heard ld. counsel for the parties.

62. Admittedly, earlier also, the petitioner was removed from service vide order dated 08.01.2009 and was reinstated vide order dated 29.01.2009 by the order issued by Executive Director (EF) as under:

“Now therefore the Board of Directors as the Appellate Authority having perused the appeal of Shri B.V. Srihari Rao, having gone through the undertaking facts and circumstances of the case and in exercise of the powers under rule 51 (2) of ONGC CDA Rules 1994 have decided to set aside the said order of the Disciplinary Authority and to remit the case to the CDA with the direction to complete the necessary disciplinary action under the CDA Rules.

Further, it has been directed that Shri B.V. Srihari Rao is placed under the suspension with immediate effect and he shall remain under suspension until further orders with Rajahmundry as HQ.”

63. In the year 2009, the petitioner was in level E4 and was posted at Rajahmundry in the State of Andhra Pradesh. At that time, he was the President of the Association of Scientific and Technical Officers (ASTO) of Rajahmundry Unit of ASTO, ONGC. In the month of January, 2009, Officers of Public Sector Oil Companies had decided to go on nation-wide strike from 07.01.2009 to 09.01.2009. The petitioner, being the President of ASTO of Rajahmundry Unit, participated in the said strike. Being enraged by the Strike, respondent no. 1 decided to impose penalty of ‘removal from service’ on all the office bearers of the various units of ASTO including the petitioner. Accordingly, by an order dated 08.01.2009 petitioner was slapped with a penalty of ‘removal from service’ in connection with the aforesaid strike.

64. Being aggrieved by the order dated 08.01.2009, petitioner preferred an appeal to the Chairman and Managing Director of respondent no. 1, the Appellate Authority under the CDA Rules. By an order dated 29.01.2009, Board of Directors directed that the petitioner and 61 other office bearers of ASTO to be reinstated in service. However, further directed that the petitioner shall be placed under suspension with immediate effect till further orders with Rajahmundry as Headquarters. Accordingly, disciplinary authority (Director, HR) issued a chargesheet dated 05.03.2009 calling upon the

petitioner to show cause against the imputation of misconduct and misbehaviour in support of each article of charge which was annexed as Annexure-II to the said charge sheet. After receiving the reply from the petitioner, Director (HR) vide its order dated 09.05.2009 appointed an Enquiry Officer to enquire into the charges framed against the petitioner and six others. The Enquiry Officer commenced the enquiry proceedings on 08.06.2009 and the enquiry was held at Rajahmundry. It is pertinent to mention here that during his suspension, he was transferred from Rajahmundry to Bokaro, however, his relieving order was not issued rather extended time to time. Thereafter, vide order dated 24.05.2010, respondent no. 1 advised the petitioner to join duty.

65. Being aggrieved with the above action of the respondent, the petitioner filed W.P.(C) 18601/2009 before the High Court of Andhra Pradesh by assailing his transfer order. The said petition was dismissed. Being aggrieved, the petitioner challenged the same before the Division Bench of Andhra Pradesh High Court, the same was also dismissed. Thereafter, the petitioner preferred an SLP before the Apex Court. Since the petitioner still refused to report at Bokaro Office in spite of the dismissal of the appeal by the Division Bench of Andhra Pradesh High Court, show cause notice dated 03.11.2010 was issued to the petitioner. He filed reply dated 09.11.2010 to the said show cause notice. Thereafter, vide order dated 02.12.2010, disciplinary authority imposed a penalty of 'removal from service' on the petitioner. Same is under challenge in the instant petition.

66. It is pertinent to mention here as stated above that petitioner

filed an SLP in the Supreme Court which was dismissed vide order dated 01.04.2011 as not pressed. Accordingly, the Apex Court has not expressed any opinion on the merits of the grounds urged in the petition. However, liberty was granted to the petitioner of questioning the validity of the order of his dismissal which shall be considered on its own merits, uninfluenced by any observations in the impugned judgment passed by the High Court of Andhra Pradesh.

67. On the issue of *res judicata*, as rightly submitted by the petitioner that the orders passed by Division Bench of Andhra Pradesh High Court both in Writ Appeal No. 301/2010 and Review Petition No. 1558/2010 were the subject matter of the SLP. The Hon'ble Supreme Court vide its order dated 01.04.2011 specifically recorded that the Writ Petition filed by the petitioner questioning the validity of the order of his dismissal shall be considered on its own merit, uninfluenced by any observation in the impugned judgment. Thus, it is clear that, the Supreme Court has given liberty to this court to decide the validity of the impugned order. Therefore, there is no bar to adjudicate the instant petition on the limited issue of legality of the impugned order.

68. The main ground raised in the instant petition is that the impugned order of dismissal from service is bad in law for the reasons that the Director (Onshore) was not the competent authority to issue the same. Also raised the issues that the impugned order does not contain reasons for arriving at satisfaction for invoking Rule 41 (b) or for the penalty; the order does not contain reasons as to why several

points raised by the petitioner were rejected; the impugned order was passed on the basis of the directions of the CMD (who is also the Appellate Authority).

69. The impugned order is of dated 02.12.2010. In the minutes of the 207th meeting of the Board of Directors of ONGC, held on 29.07.2010, prior to issuing the impugned order, at New Delhi, the CMD apprised that the Ministry of Petroleum & Natural Gas vide its letter dated 15th July, 2010 had conveyed the approval for acceptance of resignation of Dr. A.K. Balyan, the then Director (HR) from the services of ONGC with immediate effect. Further, the aforementioned Ministry vide its letter dated 29th July, 2010 has entrusted additional charge of Director (HR), ONGC on ad-hoc basis to CMD, ONGC for a period of 3 months from 16th July, 2010 or till regular incumbent is appointed or until further orders, whichever is the earliest. It was further clarified that the core responsibility for the functions of Director (HR) shall rest with CMD only, in conformity to the Government of India orders.

70. Thereafter, vide office order dated 03.08.2010 issued by ONGC it was conveyed that temporary delegation of powers of Director (HR) with the overall responsibility of HR area remained with CMD.

71. Vide the present petition the petitioner has raised the issue of competency of Director (Onshore) who has issued the impugned order dated 02.12.2010. The case of the Respondents is that the Director (Onshore) got the authority to pass the impugned order by virtue of the

minutes dated 29.07.2010. The power was stated to be a temporary delegation which was consequent upon entrusting of additional charge of Director (HR) to the CMD. The office order dated 03.08.2010, however, clarified that overall responsibility of HR area remains with CMD. In other words, the Director (Onshore) was only to be acting on behalf of the CMD. The minutes of the Board meeting dated 29.07.2010 clarifies that core responsibility for the functions of Director (HR) shall rest with CMD only. Moreover, the delegation of the power to impose major penalty could not have been sub-delegated to Director (Onshore). The Director (Onshore) could not have acted as Director (HR) after 15.10.2010 in view of the letter received from the Government of India that the CMD was empowered to act as Director (HR) for further period. The Respondent did not produce any document by which the Board had passed any resolution empowering the CMD to continue to act as Director (HR) as it did by its resolution dated 29.07.2010.

72. The power to delegate is contained in 207.21.2 of the minutes of the 207th meeting of the Board of Directors of ONGC, held on 29.07.2010 at New Delhi, which stipulates that 18 senior executives report directly to Director (HR). Director (HR) had additional responsibility of business development. The CMD clarified that in view of the Orders of Ministry and the need to manage various responsibilities of Director (HR) efficiently it was necessary to assign / delegate certain functions to other functional Directors / senior executives. Accordingly, only certain functions were delegated, not

the powers of Director (HR). The decision dated 29.07.2010 of the Board of Directors further clarified that the core responsibility for the functions of Director (HR) shall rest with CMD only.

73. In view of the Orders of the Ministry and the need was to manage various responsibilities of Director (HR) efficiently, therefore, it was necessary to assign / delegate certain functions, not powers, to other functional Directors / senior executives. Thus, the Board of Directors did not authorize or delegated the disciplinary powers or authority to Director (Onshore). The delegation of powers contained in the Office Order dated 03.08.2010 is itself stated to be a temporary delegation.

74. It is pertinent to mention that this power cannot be delegated to any other authority as it would violate the basic principle of service jurisprudence that “only he who appoints can remove”. A perusal of the Schedule attached to Annexure P-16 at page 163 of the petition shows the delegation of powers. According to the said ‘Schedule of Delegation of Powers in respect of Disciplinary Power’, the Disciplinary authority of E-1 to E-4 level of employees is the Director (HR) not the Director (Onshore). Moreover, the power to act as a disciplinary authority cannot be sub-delegated on the maxim “*delegatus non potest delegare*”. The CDA Rules do not contain any provisions for further delegation of powers. In other words, only the CMD could have exercised the powers of Director (HR) and the same could not have been sub-delegated to the Director (Onshore).

75. It is, therefore, clear that the impugned order has been passed by a person who did not have any authority to pass the order as the responsibility of the functions of Director (HR) rested with the CMD only. The impugned order was made by Director (Onshore) exercising power to take HR as the alleged delegatee of the CMD. As per the CDA Rules, the CMD is the Appellate Authority in respect of major penalties. The petitioner belongs to category E-4. Therefore, an appeal to an order of CMD (through his delegate) would lie to the CMD himself.

76. In view of the above discussion, I am of the considered opinion that the impugned order dated 02.12.2010 passed by the Director (Onshore) is without jurisdiction. Consequently, the same is liable to be quashed.

77. Now, I will deal with the issue of arriving at satisfaction for invoking Rule 41(b) of CDA Rules by the disciplinary authority.

78. While invoking Rule 41(b), the disciplinary authority is bound to give reasons for arriving at the satisfaction as to why it was not reasonably practical to hold the enquiry. The disciplinary authority is not expected to dispense with its authority lightly or arbitrarily or out of ulterior motives or merely in order to avoid holding of an inquiry or because the department's case against the government servant is weak and must fail. As has been held in the case of *Jaswant Singh (supra)*, Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before it that it is not reasonably practicable to hold a departmental enquiry.

79. In the present case, the respondents have not produced any independent material to show why it was not reasonably practical to hold an enquiry. Moreover, there was no urgency in the matter to take a drastic decision and passing the impugned order, whereby the petitioner has been removed from service. The reason set out in the order is that the petitioner did not obey the order of transfer and Director (Onshore) was not satisfied with the reply given by the petitioner. In my considered opinion, these are not sufficient reasons for invoking Rule 41(b) by the disciplinary authority. A decision to dispense with the departmental enquiry cannot be rested solely on *ipsi dixit* of the concerned authority.

80. As per the CDA Rules, the order of removing the petitioner from service is an appealable order. The ground for removal from service is that the petitioner did not join duty at Bokaro even after the suspension was revoked. The impugned order does not set out any reason for rejecting the other contentions but only records that the contentions are rejected. Therefore, the order of removal from service is arbitrary and violative of principles of natural justice. The said impugned order has been made vindictive and the procedure for enquiry was given a go-bye only to hasten the process of removal. Therefore, in my considered opinion, the impugned order cannot be sustained in law.

81. In the result, the writ petition is allowed on the grounds discussed above. The petitioner be reinstated in the service and he shall be entitled to all consequential benefits, except the back wages.

82. No order as to costs.

CM No.9248/2012 (for recalling the order)

With the disposal of the writ petition, the instant application has become *infructuous*. The same is disposed of accordingly.

SURESH KAIT, J.

SEPTEMBER 02, 2013

Jg/RS/sb