

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 02, 2017

Judgment delivered on: December 20, 2017

+ W.P.(C) 5237/2000
YOGENDRA SINGH

..... Petitioner

Through: Mr.Ashok Agarwal & Ms.Slomita Rai,
Advs.

versus

INDIAN OIL CORPORATION LTD.

..... Respondent

Through: Mr.V.N.Koura, Mr.P.Banipal,
Mr.Abhinav Tandon, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:-

“In the premises aforesaid the Petitioner most humbly prays that this Hon’ble Court may be pleased to:

*(a) declare that the impugned orders dated 08.12.1998, 26.06.1998 and 08.09.1992 (**Annexures- A, B and C respectively**) of the Respondent are illegal, arbitrary, unconstitutional and bad in law and direct the Respondent to provide to the Petitioner all the consequential benefits;*

(b) pass any such further order or direction as this Hon’ble Court may in the facts and circumstances of the present case deem fit and proper in favour of the Petitioner and against the Respondent: and

(c) allow the present Writ Petition with costs.”

2. In substance, the challenge in the writ petition is to the orders dated December 08, 1998, June 26, 1998 and September 08, 1992. Vide order dated September 08, 1992, the respondents have, on the failure of the petitioner to report for duty by a stipulated date August 24, 1992 invoked Rule 8 of the CDA Rules of the Corporation and struck off the name of the petitioner from the Rolls of the Corporation with effect from August 25, 1992. Vide order dated June 26, 1998, the respondents have imposed a penalty of withholding of four increments due on January 01, 1997, January 01, 1998, January 01, 1999 and January 01, 2000 on the petitioner with cumulative effect and also treated the period between August 25, 1992 to December 03, 1993 as a period not spent on duty for all purposes and vide order dated December 8, 1998, the appeal of the petitioner against order dated June 26, 1998 was dismissed.

3. Some of the relevant facts are, in terms of appointment letter dated June 21, 1978, the petitioner was appointed as Civil Engineer in Mathura Refinery Project with effect from June 20, 1978. It is the case of the petitioner that while he was working as Maintenance Manager (Civil) he was, vide order dated April 19, 1991 transferred to Guwahati Refinery from Mathura Refinery as Maintenance Manager (Civil). He reported at Guwahati Refinery on June 29, 1991. It is his case, that between July 1991 to October 1991, the petitioner was given the Vigilance Investigation Assignment in Madras Refinery Limited for which he submitted his final report on October 01, 1991 to the Joint Secretary (Marketing) in the Ministry of Petroleum and Natural Gas. On October 23, 1991, he submitted a leave application to his Controlling Officer namely Mr. R.P. Kakati for sanction of seven days

Special Compensatory off with effect from November 04, 1991 to November 12, 1991 together with an application dated October 23, 1991 for approval of LTC encashment towards LTC Block year of 1989-1990. After availing one day sick leave on November 02, 1991, the petitioner took a train journey on Sunday morning i.e November 03, 1991. On November 12, 1991, vide a telegram, the petitioner applied to Mr. R.P. Kakati for extension of his leave upto November 22, 1991 due to serious condition of his father.

4. It is his case, on November 30, 1991, he applied to Mr. Kakati for grant of sick leave with effect from November 25, 1991 due to his sickness AS rest was advised by his Doctor. On December 20, 1991, the petitioner again gave a telegram informing Mr. R.P. Kakati about his disease of Spondilitis-C-Sciacitia and therefore, requested him to extend his sick leave upto January end for treatment. It is his case, vide a confidential letter dated December 24, 1991, the Joint Secretary (M) in the Ministry of Petroleum and Natural Gas wrote a letter to the Chairman, IOC stating the directives of Central Vigilance Commission to investigate certain irregularities at Madras Refinery Ltd. It is also his case that in the said letter, the Joint Secretary requested the Chairman of the respondent Corporation to depute the petitioner for the said purpose. On January 03, 1992, a telegram was sent by Mr. K.C. Joseph, Additional General Manager (HR) of the respondent Corporation to the Joint Secretary (M) of the Ministry of Petroleum and Natural Gas that on contacting Guwahati Refinery, he has been informed that the petitioner was on leave for about a month and the Guwahati Refinery are trying to get in touch with him at his leave address. It is averred in the petition that on January 07, 1992, the PA of the Head of the Personnel and Administration Department at (R&D) Centre, Faridabad left a message at the residence of the petitioner that he should contact Mr. K.C. Joseph, Additional

General Manager (HR). It is the petitioner's case that he met with Mr. K.C. Joseph on January 07, 1992. It is also his case that on the directives of Mr. Joseph, he met the Joint Secretary (M) in the Ministry of Petroleum and Natural Gas and undertook the investigation pertaining to MRL. It is also his case that he apprised the status of the assignment to Mr. Joseph at New Delhi.

5. It is averred that on January 13, 1992, a telegram was sent by the petitioner to Mr. Kakati at Guwahati Refinery in continuation of his earlier message of December 20, 1991 for extension of his sick leave till his next medical check-up during last week of February, 1992. It is averred that on March 03, 1992, the Petroleum Ministry wrote a letter to the Additional GM (HR) of the respondent Corporation requesting him to advise the petitioner to contact the Section Officer (Vigilance) in the Ministry of Petroleum for completing the investigation assigned in the MRL case. It is also averred that on March 12/13, 1992, on receipt of the letter dated March 03, 1992 from the Ministry of Petroleum, the respondent Corporation had left a message regarding Ministry's assignment at the residence of the petitioner as he was found out station. That on March 13, 1992 Mr. Joseph wrote back to the Ministry of Petroleum amongst other things that the Corporation has traced out the petitioner to his residential address at Faridabad.

6. The petitioner referred to a Medical Certificate dated March 14, 1992 whereby he was declared medically fit by the attending Doctor in his home town at Gwalior to resume duties on March 16, 1992. On returning from Gwalior, he again reported to the Ministry of Petroleum on March 16, 1992 for completion of the investigation assigned and started continuously working with vigilance section of the Ministry. It is his case that he submitted his findings/ report to the Ministry with a list of balance jobs required to be completed vide letter dated March 31, 1992. It is his case that he apprised all

concerned Authorities in the respondent Corporation the progress/status of the assignment by endorsing a copy of the covering letter to Mr. Joseph and the GM, Guwahati Refinery as well as to Mr. R.P. Kakati.

7. It is averred that on April 14, 1992, he was in receipt of a telegram from Guwahati Refinery wherein it was stated that he was advised vide telegram dated February 05, 1992 that his leave from November 25, 1991 has not been sanctioned. He was, once again called to report for duty by April 15, 1992 with an explanation for his absence to the satisfaction of the respondent, failing which it will be presumed that he had left the services of the Corporation on his own accord. It is the stand in the petition that the telegram dated February 05, 1992 was never received by the petitioner. In response thereto, it is averred that the petitioner has on April 15, 1992 sent an express telegram to the respondent, wherein he has stated that he has already given reasons for his overstaying in the leave being medical and had requested the respondent not to take any action till the receipt of detailed reasons. Suffice to state, he had sent a letter dated April 18, 1992 wherein he has explained that since March 16, 1992, he has been working for the Joint Secretary (M), in Charge of Vigilance for Ministry of Petroleum and Natural Gas at New Delhi in connection with a vigilance case investigation and in respect thereof, he had already submitted his preliminary report on March 31, 1992. It is stated in the writ petition, that on April 28, 1992, the Ministry of Petroleum and Natural Gas wrote to the CMD of the MRL, New Delhi requesting them to extend all possible help and cooperation to the petitioner in order to complete the task at the earliest. It is stated that he visited Madras on May 26, 1992 to May 30, 1992 for which all required arrangements including tickets etc were made by the Madras Refinery Ltd, Madras.

8. According to the petitioner, he received a letter dated August 04, 1992

from the respondent whereby the petitioner was asked to report for duty immediately and in no case, later than August 30, 1992, failing which it was said that it will be presumed; that he had no interest or intention to continue in the employment and he has voluntarily abandon the Corporation service. On receipt of the same, he vide his communication dated August 12, 1992 apprised the Authorities at Guwahati Refinery that he is in the process of compilation and final typing of his final report on the investigation assigned by the Ministry and he be allowed to report in the next week. The said communication was followed by a detailed letter dated August 14, 1992 by the petitioner reiterating the stand. On August 17/18, 1992 the petitioner completed the special assignment with the Joint Secretary of Ministry of Petroleum & Natural Gas and submitted his final report to the Joint Secretary (M) of the Ministry of Petroleum and Natural gas. He simultaneously apprised the concerned Authorities in the respondent Corporation about the completion of his assignment with the Ministry by endorsing a copy of the covering letter to Mr. Joseph, GM (HR) at IOC Headquarters, to the General Manager, Guwahati Refinery as well as to Sh. R.P. Kakati. On August 22, 1992, the petitioner received another letter from the Guwahati Refinery whereby he was asked to rejoin his duties latest by August 24, 1992. On receipt of the same, the petitioner sent a telegraphic message to the respondent to Guwahati Refinery thereby stating that he was reaching Guwahati on August 26, 1992 for reporting to the respondent for duty. The petitioner on August 27, 1992 joined the duties at Guwahati but he was not given work and was kept idle till September 08, 1992. On September 08, 1992 the petitioner was served with an impugned order whereby his services were terminated by way of striking off his name from the rolls of the respondent Corporation with effect from August 25, 1992. On September

08, 1992 itself, he protested against the termination of his services from the respondent Corporation. He on September 12, 1992, submitted the detailed representation to the GM of the respondent Corporation against his termination. On September 17/22, 1992, the Ministry of Petroleum wrote a letter to the respondent thereby asking the respondent to appraise the Ministry as to whether the petitioner had been formally allowed to assist the Ministry into investigation and if so, a copy of the IOC's letter deputing him for investigation into the case may be furnished to the Ministry immediately. On October 07, 1992, the petitioner submitted a brief resume of his case as desired by the Director (R&P) of the respondent Corporation while interviewing the petitioner regarding factual position of the petitioner's case in his office at New Delhi. The Chief Manager (HR), Headquarter of the respondent Corporation vide his letter dated October 12, 1992 informed the Ministry that they had never deputed or allowed the petitioner to assist the Ministry in the said investigation. Be that as it may, on November 05, 1992 the petitioner submitted an Appeal to the Chairman of the respondent Corporation against his termination order dated September 08, 1992 on which the petitioner received an office order dated November 18, 1993 directing the petitioner to report to the General Manager, Guwahati on or before December 04, 1993. The petitioner accordingly reported for duty on December 03, 1993 at Guwahati Refinery and an office order to that effect dated December 06, 1993 was issued by the respondent Corporation.

9. It is his case that he has been continuously working with the respondent pursuant to order dated November 18, 1993. While working so, on December 13, 1993 the petitioner received a charge sheet whereby certain charges of misconduct were leveled against him. The petitioner on receipt of the same, filed his written explanation dated December 27, 1993 thereby

denying the correctness of the allegations. He also requested the respondent for furnishing copy of the documents since the respondent neither supplied the demanded documents nor given any reply. Pursuant thereto, one K. Vijay was appointed as an Inquiry Officer. Later, he was replaced by another Inquiry Officer. Be that as it may, the Inquiry Officer conducted the inquiry. In his report, the Inquiry officer has proved the charges against the petitioner, which resulted in the order of penalty dated June 26, 1998, as referred to above. The appeal dated September 05 1998 filed by the petitioner was also rejected vide impugned order dated December 08, 1998.

10. The respondent has filed their counter affidavit wherein, apart from making some preliminary submissions, it is their case that the petitioner while working as Maintenance Manager (Civil) was made In-charge of execution works related to additional facilities required for the refinery and lining up of related civil maintenance works. To assist him in effective performance of his duties related to Guwahati Refinery, adequate manpower was provided to him at subordinate levels. After reporting for work at Guwahati Refinery on June 29, 1991, on November 01, 1991 the petitioner applied for sick leave for November 02, 1991 in combination of 7 days Special Compensatory off w.e.f November 04,1991 and left his place of posting i.e Guwahati Refinery, without waiting for any sanction/authorization for leave for the anticipated sickness or sanction of the above Special Compensatory off, with full knowledge that neither the sick leave applied for in advance of sickness nor the said special compensatory off applied for in combination with sick leave for November 02, 1991 (with intervening Sunday on November 03, 1991) was permissible under the relevant rules of the Corporation. He left station and duties at Guwahati Refinery, and instead of returning for duty on November 12, 1991 he sent a telegram requesting for

extension of leave upto November 22, 1991 on grounds of sickness of his father, and continued to remain absent without enquiring whether his leave has been sanctioned or not. The petitioner did not join duties after November 22, 1991, but on the contrary, requested for further extension of leave vide a telegram dated December 01, 1991 on the grounds of his own sickness from November 25, 1991. He, however, did not mention the expected date of his reporting back for duty nor he sent any proof or particulars of his sickness, and again continued to be absent without enquiring whether his leave had been sanctioned or not. Thereafter, the petitioner remained absent without caring to send any information whatsoever regarding his absence. It is stated, since the petitioner was continuing with his prolonged and unauthorised absence from Guwahati Refinery, he was advised by a telegram dated February 05, 1992 at his Faridabad address that his leave beyond November 25, 1991 was not sanctioned, and that his continued absence was unauthorized and has been viewed seriously. He was advised to report for duty latest by February 11, 1992 failing which it would be presumed that he was no longer interested in his employment and action would be taken as per Rules of the Corporation. However, the petitioner neither responded to the said letter, nor reported for duty, but continued his unauthorized absence. It is their case, since the question of the petitioner's continued employment was involved, the petitioner was, vide telegram dated April 09, 1992 given another opportunity to report for duties latest by April 15, 1992 with an explanation for his absence to the satisfaction of the Management, failing which it shall be presumed that he has left the service of the Corporation on his own accord and the case shall be treated as a case of relinquishment from the service without notice from his side and action would be taken as per Rules of the Corporation. In response, the petitioner sent a telegram which

was received on April 17, 1992 followed by a letter dated April 18, 1992 stating therein he was suffering from spondilitis and was declared to be medically unfit for four and half months w.e.f November 25, 1991. He also enclosed a medical certificate in that regard. Vide letter dated April 18, 1992, the petitioner also claimed that he has been working since March 16, 1992 for Joint Secretary, Incharge of Vigilance in the Ministry of Petroleum & Natural Gas, New Delhi. It is stated, the petitioner was informed by the respondent Corporation by a letter dated August 04, 1992 that the leave prayed beyond November 25, 1991 cannot be sanctioned on the grounds mentioned and that the explanation given by him for not joining duty was unacceptable. He was also informed that even the medical certificate dated March 14, 1992 furnished by him certified him to be fit for resuming duties from March 16, 1992, and that inspite of this he had not resumed duties. The petitioner was also informed; that it was a matter of surprise to the Management that inspite of his being an employee of the Corporation, he claimed to have been working for the Ministry of Petroleum & Natural Gas without any written approval of the Corporation. It was also made clear to him that he could not work for the Ministry as claimed. He was reminded that his unauthorized absence for almost 9 months continuously has caused the work to seriously suffer. He was given a final opportunity to report for duty in no case later than August 13, 1992, otherwise it will be presumed, he has no interest or intention in continuing the employment and will be treated as having voluntarily abandoned the services of the Corporation. The respondent Corporation wrote to the petitioner again on August 17, 1992 giving him yet another opportunity to join duties by August 24, 1992. However, the petitioner did not join duties by August 24, 1992. It is stated, since the petitioner was given various opportunities to join his duties at

Guwahati Refinery and the last opportunity expired on August 24, 1992, the respondent Corporation was constrained to treat him as having abandoned his employment with the Corporation on his own accord and his name was struck off from the rolls of the Corporation w.e.f August 25, 1992 vide order dated September 08, 1992 and the petitioner was intimated accordingly.

11. It is stated, in response, the petitioner submitted a representation dated September 12, 1992 to the GM (Guwahati Refinery) appealing to him to withdraw the letter dated September 08, 1992. The petitioner was informed by the Corporation through its letter dated November 17, 1992, that it is beyond the scope of the General Manager to re-examine/review the decision taken by Director (R&P) in this regard. The petitioner then preferred an appeal dated November 05, 1992 addressed to the Chairman against the order dated September 08, 1992 wherein his name was struck off from the rolls of the Corporation w.e.f. August 25, 1992. In response, vide office order dated November 18, 1993, the petitioner was directed to report to GM, Guwahati Refinery on or before December 04, 1993. The petitioner reported for duty on December 03, 1993. The petitioner was chargesheeted for his alleged acts of misconduct and the same was received by him on December 24, 1993. In response, he submitted his written explanation dated December 27, 1993, denying the allegations made in the chargesheet. Finding his explanation to be unsatisfactory, by an order dated January 11, 1994, the Disciplinary Authority, namely Director (R&P) instituted an enquiry into the charges of misconduct leveled against the petitioner. Sh. Rajendra Prasad, Principal, IMA was appointed as an Enquiry Officer. It was also ordered that the proceedings of the enquiry be completed by June 30, 1994. However, the petitioner thereafter proceeded on earned leave from January 24, 1994 to February 19, 1994. By a fax message dated February 16, 1994, he requested

for extension of leave from February 20, 1994 to March 31, 1994 due to death of his son in a fatal road accident in Delhi on February 05, 1994. Accordingly, earned leave from February 20, 1994 to March 12, 1994 and Extraordinary leave without pay from March 13, 1994 to March 31, 1994 was sanctioned. Thereafter, the petitioner sought extension of leave upto April 30, 1994 on the ground of his wife's mental and physical condition. Accordingly, earned leave from April 01, 1994 to April 06, 1994 and Extra Ordinary Leave without pay from April 07, 1994 to April 30, 1994 was sanctioned. By a letter dated April 30, 1994, the petitioner again requested for extension of leave till June 15, 1994. He also requested for his transfer to Delhi. The petitioner was informed by letter dated July 07, 1994 that it is not possible to accede to his request for transfer to Delhi and that it will not be possible to sanction his leave/request for regularization of absence beyond June 15, 1994. He was also advised to resume duty at Guwahati Refinery at the earliest and cooperate with the enquiry proceedings. The petitioner finally re-joined on December 08, 1994.

12. It is stated, by its letter dated December 12, 1994 the respondent Corporation informed the petitioner that he was being permitted to rejoin duty without prejudice to the decision of the Corporation in respect of period of his absence. On November 11, 1994, the first sitting of the enquiry was held at which the petitioner was not present, and the proceedings were accordingly adjourned. Enquiry proceedings were thereafter held on December 08, 1994 where the petitioner requested for time to prepare for the enquiry. The petitioner thereafter applied for and was granted Extraordinary leave without pay from January 02, 1995 to January 13, 1995, sick leave from March 13, 1995 to April 01, 1995, earned leave from June 26, 1995 to September 30, 1995 and earned leave from December 04, 1995 to December

12, 1995. The Enquiry thereafter proceeded with the participation of the petitioner. The Enquiry Officer prepared his report dated November 19, 1996 wherein he held the petitioner to be guilty of the charges leveled. The report of the Enquiry Officer was forwarded to the petitioner by a letter dated May 02, 1997 for making representation, if any against the findings of Enquiry officer within two months of the receipt of the Enquiry Report. The petitioner submitted a representation dated July 30, 1997 to the Disciplinary Authority. After considering the enquiry report and the petitioner's representation and other related factors, the Disciplinary Authority by an order dated June 26, 1998 awarded the punishment of withholding of four annual increments due on January 1, 1997, January 1, 1998, January 1, 1999 and January 1, 2000 with cumulative effect to the petitioner. The Disciplinary Authority also ordered that the period from August 25, 1992 till December 03, 1993 shall not be treated as on duty for all purposes. The petitioner preferred an appeal dated September 05, 1998 addressed to the Chairman against the order date June 26, 1998 passed by the Disciplinary Authority. The appeal by the petitioner was considered by the Chairman of the respondent Corporation, who by an order dated November 26, 1998 rejected the appeal and observed that the Charge sheeted officer had not brought out any ground or fact or any extenuating circumstance that may warrant review of order dated June 26, 1998 passed by the Disciplinary Authority. Agreeing with the orders passed by the Disciplinary Authority, the Chairman disposed of the appeal. The said Order was communicated to the petitioner by a letter dated December 08, 1998 of the General Manager of the respondent Corporation, which is under challenge in the present petition.

13. So far as the contention of the petitioner that he was working for the Ministry of Petroleum & Natural gas w.e.f March 16, 1992, it is their case,

vide a confidential D.O. letter dated December 24, 1991, the Joint Secretary (Marketing), Ministry of Petroleum & Natural Gas, requested the Chairman of Indian Oil Corporation Ltd. to depute the petitioner for making certain technical assessments in a vigilance case in respect of purchase of certain properties by Madras Refineries Ltd. at Madras. In response, the respondent Corporation through its letter dated January 3, 1992 informed the Joint Secretary (Marketing) in the Ministry of Petroleum & Natural Gas that the petitioner was reported to be on leave and efforts were being made to get in touch with him at his leave address to see whether his services could be made available to the Ministry. The Ministry informed the Corporation through its letter dated March 3, 1992 that the investigation has yet to take place for which the request was made in December, 1991 and requested the Corporation to advise the petitioner to get in touch with the Ministry immediately in this connection. In response to the aforesaid letter dated March 03, 1992, the Corporation informed the Ministry through its letter dated March 13, 1992 that the petitioner has been absenting from duty for the last 4-5 months and has not reported back at Guwahati Refinery. The Corporation offered the Ministry the services of an alternative Civil Engineer posted in Delhi in place of the petitioner. The petitioner by a letter dated March 31, 1992 addressed to the Joint Secretary, CVO, Vigilance, Ministry of Petroleum & Natural Gas referred to some work done by him in the Ministry, and endorsed a copy of this letter to the General Manager (Personnel), Indian Oil Corporation Limited. On receipt of the said letter, the Corporation forthwith informed the Ministry through its letter NO. P/F-1/1728 dated April 9, 1992 that the petitioner had been absenting duty at Guwahati Refinery for a past 5 months, and that he was taking recourse to the communication addressed to the Ministry to establish his claim that he was

still doing duty on behalf of the Ministry. The Ministry was advised not to entertain any communication from the petitioner for the said assignment, and that if the Ministry required assistance another officer will be deputed by the Respondent Corporation for the said purpose. On receipt of the said letter, the Ministry of Petroleum & Natural Gas through its letter dated June 16, 1992 requested the Corporation for information in respect of the exact period for which the Petitioner had been absenting from his duties at Guwahati and the time a person would have normally taken to complete the task assigned to him. It was also indicated that the view of the petitioner may also be obtained in the matter. In response, the Corporation through its letter dated July 10, 1992 informed the Ministry that the Petitioner has been absenting from duty in spite of various communications addressed to him. It was also clearly indicated to the Ministry that the Corporation is proceeding with action for termination of his services from the Corporation. It was further made clear to the Ministry that the Petitioner has not been assigned any task in connection with the vigilance case of the Ministry, and that he cannot be assigned any task either in the Corporation or outside the Corporation. The services of an alternate officer were again offered. The Corporation issued another letter dated July 30, 1992 to the Ministry stating that it is not possible to spare the services of the petitioner for the Ministry's job since he had run away from his duty post at Guwahati Refinery. It was also again made clear to the Ministry that the Corporation had not given any clearance to the petitioner for working with the Ministry, and that if the petitioner approaches the Ministry, he should be clearly told that his services are not required by the Ministry. The Ministry of Petroleum & Natural Gas informed the Corporation through its letter dated August 7, 1992 that the Corporation may proceed against the petitioner as necessary, and that as for deputation of another officer in place

of the petitioner, the Government would ask as and when any service of an Engineer is required in future. The Ministry through its letter dated September 22, 1992 sought to know whether the petitioner had been formally allowed to assist the Ministry into the investigation and if so a copy of IOC's letter deputing him for investigation be furnished to them. In response to the said letter the Corporation by its letter dated October 12, 1992 clarified to the Ministry that the petitioner was never deputed or allowed by the Corporation to assist the Ministry in the investigation and in view of his continued absence and failure to join duty by August 24, 1992, he was deemed to have deserted / abandoned his employment with the Corporation on his own accord and therefore he lost lien on the post / service of the Corporation. His name was struck off from the rolls of the Corporation w.e.f August 25, 1992. The respondents have justified the impugned action and seeks the dismissal of the writ petition.

14. Mr. Ashok Agarwal, learned counsel for the petitioner would submit that the impugned orders are ab-initio, illegal, arbitrary, discriminatory, unjust, unreasonable, perverse, contrary to the terms and conditions of employment, violative of the principles of natural justice and as such violative of Articles 14, 16 and 21 of the Constitution of India read with the Conduct Discipline and Appeal Rules, 1980 of the Indian Oil Corporation and as such bad in law. It is his case that vide letter dated February 08, 1996, the Inquiry Officer had informed the petitioner that proceedings of inquiry would be held on February 20, 1996, February 21, 1996 and February 22, 1996. The petitioner vide his communication dated February 20, 1996 requested the Inquiry Officer that no witness should be examined on that date. In spite of the said request from the petitioner, the Inquiry Officer allowed the Presenting Officer to start examination. During the course of the

proceedings, the Presenting Officer submitted a list of 13 documents and one witness before the Inquiry Officer and further submitted a list of witnesses. The Presenting Officer examined MW 1 and the inquiry was adjourned for the next date i.e February 21, 1996 for cross examination of the said witness. This procedure to allow the Presenting Officer to examine the witness on February 20, 1996 has caused great prejudice to the case of the petitioner. The Presenting Officer had put leading questions to MW 1 in order to get answer favourably to the case of the Management. Even on February 21, 1996 when the petitioner pointed out to the Inquiry officer that he should get the copy of the examination of the Management Witness held on February 20, 1996 and the documents as requested by the petitioner vide his letter dated November 07, 1994, which have not been given and he should be allowed to inspection of his personal file, which was not allowed. The documents were very important for his defence and have a direct bearing on the case and the same were not allowed except, if they are available, the same be produced before the next sitting. Even on the 5th sitting held on March 26, 1996, the Presenting Officer submitted three additional documents, requested to bring one more witness namely Mukut Dutta as additional witness and eleven documents for inspection. After going through the relevant documents, the petitioner had stated all the documents are available and have a direct bearing on the case and therefore, made a request that whatever paper is not marked as confidential, copies of the letters be provided to him. The Presenting Officer denied the same on the ground that they are confidential. The Inquiry Officer instead of directing the Presenting Officer to supply the copies of those documents to the petitioner directed to maintain status quo and in view of this order of the Inquiry officer, eleven documents were not supplied to the petitioner, which has caused great prejudice to the petitioner.

This has also caused great prejudice to the petitioner as he was handicapped in cross examining the witness in the absence of those documents. Even on the next date of hearing i.e on March 27, 1996, the petitioner stated he wanted original of the exhibits submitted by the Presenting Officer so far. In spite of the fact that the Presenting Officer stated that he would do so, the same was never done. The petitioner has asked for his leave application for 7 days SCO from November 04, 1991 and his application for LTC encashment and other intimation about extension of leave from time to time sent to Guwahati Refinery should be shown to him. The Presenting Officer mentioned that the specific application for 7 days SCO was not available in the personal file. On the other documents, the Presenting Officer stated that he would come back next day after looking into the file. Accordingly, the cross examination of MW 2 Mr. Dutta was deferred to the next day.

15. It is the case of the petitioner, in the proceedings held on March 28, 1996, the petitioner cross examined MW 2 Mr. Dutta. In the proceedings held on March 29, 1996, the Inquiry Officer arbitrarily agreed with the stand of the Presenting Officer that personal file of the petitioner was confidential and could not be shown to the petitioner, though Inquiry Officer directed the Presenting Officer to make available the dispatch record of telegram dated April 09, 1992 for inspection to the petitioner but the same was not available. It is also the case of the petitioner, as canvassed by Mr. Agarwal that the petitioner demanded copies of documents/inspection of as many as 21 documents having direct bearing on the case of the petitioner. The same were not produced by the respondent nor shown to the petitioner. Rather, the Inquiry officer held that the petitioner should defend his case based on whatever documents/paper/communication etc are available with him. It is also observed by the Inquiry Officer that since the petitioner did not produce

any witness, the petitioner should submit his written statement including his summing up brief in defence of his case with the help of whatever documents were available to by May 14, 1996. The Inquiry Officer also asked the Presenting Officer to do the same. Interestingly, the Presenting Officer in the sitting on June 12, 1996, submitted two copies of written briefs to the Inquiry Officer. The Inquiry Officer gave only one of the copies to the petitioner on the alleged ground that the petitioner's copy will be given to him when he would submit his written brief. The said action of the Inquiry officer was arbitrary. According to Mr. Agarwal, the impugned orders including the charge sheet dated December 13, 1993 suffers from the vice of non application of mind. In substance, it is his submission that the Inquiry Officer during the course of the inquiry has acted as a Presenting Officer rather than an Inquiry Officer. The stand of the Inquiry Officer that the personal file of the petitioner is a confidential file need not be shown to the petitioner shows the malice on the part of the Inquiry Officer. That apart, the proceedings are in violation of Rule 31(3) of the CDA Rules, 1980 of the Indian Oil Corporation, inasmuch the Inquiry Officer was required to ask the petitioner to present his defence and produce his evidence. In the present case, the Inquiry officer had not asked the petitioner to present his defence and produce his evidence and the petitioner was not aware of the procedure or implication of not producing himself as a witness and thus great prejudice has been caused to the petitioner resulting in violation of the Rules and principles of natural justice. The Inquiry Officer has also violated Rule 31(14) of the CDA Rules, inasmuch as no opportunity was afforded to the petitioner to examine him or on behalf of himself, if he so prefers. When the petitioner had not examined himself, it was obligatory on the part of the Inquiry officer to question on the circumstances appearing against him in the

evidence for the purpose of enabling the petitioner to explain any circumstances appearing in the evidence against him. But the Inquiry Officer has not done it, thus mandatory Rules 13, 14 and 15 under Clause 31 of the CDA Rules, 1980 have been violated, which vitiated the proceedings of inquiry.

16. It is his submission that the report of the Inquiry Officer is perverse, inasmuch as the findings of the Inquiry officer based on no evidence. The Inquiry Officer has not taken into consideration the material evidence on record and on the other hand taken into consideration extraneous and foreign material. The findings of the Inquiry Officer are bad in law, inasmuch as the allegations of misconduct were not proved in law. He would state, that the Inquiry Officer has not even discussed the defence set by the petitioner. The opinion formed by the Inquiry Officer is contrary to the record. The Inquiry Officer has overlooked the fact that the material witnesses have been held back by the respondent. Mr. Joseph could have been a star witness to throw light on the fact that the petitioner proceeded to work in the Ministry under the authority of the respondent. The Inquiry Officer had ignored the letter dated March 13, 1992 of the respondent addressed to the Secretary, Government of India, Ministry of Petroleum and Natural Gas, which clearly proves that the petitioner was assigned the work with the Ministry regarding some investigation. The order of the Disciplinary Authority and the Appellate Authority are bad in law and have been passed in mechanical manner without application of mind. It is also his submission that the findings does not justify the penalty as the same is excessive. He also states, that the punishment order dated June 26, 1998, could not have been retrospective as it had withheld the increments due on January 01, 1997 and January 01, 1998. That apart, it is his submission that the impugned order

dated September 08, 1992 terminating the services of the petitioner with effect from August 25, 1992 is arbitrary, illegal, contrary to the terms and conditions of the employment and punitive in nature. That apart, the petitioner being a permanent employee, the same could not be terminated in the manner that has been done. Even otherwise, it is his case that the petitioner having joined back the services, the order dated September 08, 1992 need to be reviewed.

17. Mr. V.N. Kaura, learned counsel for the respondent, on the other hand justified the impugned orders, by stating that they have been passed in compliance with the principles of natural justice and the rules. According to him, it is a clear case where the petitioner did not obey the lawful orders issued calling upon him to join back. He stated that, the enquiry officer, has held the charges against the petitioner have been proved in view of sufficient evidence on record. As there is evidence on record to prove the charges, this Court would not re-appreciate the same and come to a different conclusion. He stated the scope of judicial review is very limited only to see that principles of natural justice have been followed. The final decision is beyond the judicial scrutiny. He seeks the dismissal of the writ petition.

18. Insofar as the submissions made by Mr. Ashok Agarwal, Mr. Kaura would submit that the petitioner was given the copies of general documents exhibited as Ex.1/15 before the Enquiry Officer and also the confidential documents, which were filed and marked as Ex.C-1 to C-11 were given to the petitioner for inspection. The inspection of the documents is as good as giving the same to the petitioner as he was within his right to prepare notes on the basis of such inspection. He denied that the Enquiry Officer had allowed the Presenting Officer to continue to examine the Management evidence in spite of the objections by the petitioner. He also stated that the

petitioner was given opportunity to engage a Co-Officer to defend himself. However, he failed to bring the Co-Officer. He also stated that the Enquiry Officer had directed the petitioner to file written submissions, although the petitioner sought time to file the same as the submissions were under preparation. The said submissions were duly considered by the Enquiry Officer. He denied that the findings of the Enquiry Officer are perverse. He denied that the Enquiry Officer was biased. He also denied that the proceedings were conducted in violation of principles of natural justice.

19. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the impugned orders passed by the respondents, which included the order of imposing penalty of withholding of four annual increments due on January 01, 1997, January 01, 1998, January 01, 1999 and January 01, 2000 with cumulative effect and the dismissal of appeal thereof are just and proper and the petitioner is entitled to the reliefs as prayed for.

20. There is no dispute that the charges imposed against the petitioner inter-alia were (i) that he left Guwahati Refinery without sanction; (ii) he did not report for duty on February 11, 1992 and April 15, 1992; (iii) he remained absent without permission with effect from November 04, 1994 and continued to remain absent even after receiving telegrams dated February 05, 1992, April 09, 1992 and letters dated August 04, 1992 and August 17, 1992 in an unauthorized manner. He remained unauthorizedly absent on the pretext of working with the Ministry of Petroleum and Natural Gas, which was without any authority or permission of the Management. Despite being conveyed vide letter dated August 04, 1992 and acknowledging the receipt of the said letter, he did not report for duty on August 13, 1992. Thereafter, yet another opportunity was given to him to report for duty by August 24, 1992, which was not complied with.

21. The department had examined two witnesses and had produced sixteen documents in total to prove the charge against the petitioner. The petitioner produced six documents, which included various annexures annexed with Ex.D-2. The analysis of the documents produced by the respondent is as under:-

- “1. That the Ministry on December 24, 1991, wanted the help of the petitioner for making certain technical assessment in the vigilance case pertaining to Madras Refinery Ltd.*
- 2. That the Ministry was initially informed by the Addl. GM (HR) that the petitioner was reported to be on leave and effort was being made to contact him at his leave address to see whether his services could be made available.*
- 3. On March 3, 1992, the Ministry informed the Addl. GM (HR) that the petitioner was yet to take up investigation of the case for which request was made in December, 1991. The Ministry was again informed that the petitioner was neither available at his duty station nor at his residence at Faridabad. Ministry was offered an alternative officer in place of the petitioner.*
- 4. The Ministry was again informed that the petitioner had been absenting from his duties from Guwahati Refinery for past five months and that he was taking recourse to the communication addressed to the Ministry from IOCL Hqrs. to establish his claim that he was doing duty on behalf of the Ministry. Hence, the Ministry was advised not to entertain any communication from the petitioner for the subject assignment and the Ministry was again indicated that the services of an alternate officer could be made available by IOC for the purpose.*
- 5. Vide letter dated June 16, 1992, a communication was received by the Ministry under which they wanted to ascertain the period for which the petitioner had been absenting from duties at Guwahati Refinery and the time which would have normally been required by a person to complete the assignment of the Ministry. It was also indicated therein to obtain the views of the petitioner on the*

matter. This communication also shows that the petitioner was not in contact with the ministry. The above letter of the Ministry was duly replied under which his absents from duties were reiterated and it was indicated that the Corporation would be proceeding with action for the termination of the services. It was also clearly mentioned that since the petitioner had been absenting from duty place at Guwahati Refinery, he cannot be assigned any task within or outside the Corporation. The services of an alternate officer was again offered on which a confirmation was sought from the Ministry.

- 6. Since there was no response from the Ministry for quite some time after making the above offer, the position was once again clearly communicated that the services of the petitioner cannot be spared for the Ministry's work. In view of a copy of the letter received from the petitioner addressed to the Ministry and a copy marked to Guwahati Refinery stating his claim that he was working on the Ministry's assignment, it was made absolutely clear that IOC had not given any clearance to the petitioner for working with the Ministry and hence, if the petitioner approaches the Ministry, he should be told that his services are not required for the Ministry.*
- 7. The Ministry informed IOC Hqrs. that IOC may proceed against the petitioner as it may deem necessary and in case they require the services of an alternate officer, the same would be made known to IOC in due course.*
- 8. The Ministry further sought to know whether the petitioner was formally allowed by IOC to assist the Ministry of Petroleum & Natural Gas on the Vigilance investigation of MRL and if so, a copy of the IOC's letter deputing the petitioner for investigation into the case be furnished to them. It was clarified that the petitioner was never deputed or allowed by IOC to assist the Ministry in the Vigilance assignment and that in view of his continued absence and failure to join duties he was deemed to have deserted / abandoned his employment in the Corporation on his own accord and therefore he lost his lien on the post / service of the Corporation. His name was also struck off from the*

rolls of the Corporation.”

22. The case as set up by the petitioner in the inquiry was the following>-

- *That vide DO letter from Jt. Secretary (M), MOP&NG dated December 24, 1991 (which the petitioner is mentioning as December 26, 1991) addressed to the Chairman his services were requested for by the Ministry.*
- *That Shri K.C. Joseph, GM (HR), Hqrs. on January 7, 1992 asked the petitioner to contact him while he was suffering from sickness at his home town and on January 8, 1992, he met Shri K.C. Joseph and counseled him about the problems faced by him in Guwahati in discharging his duties due to excessive undue interventions both from within and outside the organisation at Guwahati, which were alarming when he was given the responsibility of tendering and contracting as well as AF contract jobs during the month of August, 1991.*
- *That he assured GM(HR), Hqrs. for joining Guwahati Refinery at the earliest possible as soon as he is allowed by his family members based on Doctor's advice.*
- *That Shri Joseph, GM(HR) Hqrs. advised him to call on the Ministry in connection with the request received from the Jt. Secretary (M) vide letter dated December 24, 1991 with an assurance that Guwahati Refinery will be advised accordingly.*
- *That on the advice of Shri Joseph he undertook assignment in the Ministry and he did not report for about 2 months since January 10, 1992, due to untraceable filed in the Ministry. On March 13, 1992 information was received at his house at Faridabad to resume the work at Ministry while he was at Gwalior for medical check up and on March 16, 1992 he reported to the Ministry.*
- *That on March 25, 1992 he met Shrit Joseph who enquired about his inability to join Guwahati Refinery as he was under the impression that the petitioner has already joined*

Guwahati Refinery after completion of work.

- *That the Report on findings was submitted by him vide letter dated March 31, 1992 and copies of the letter were also endorsed to Shri K.C. Joseph, GM(HR), IOCL, Hqrs. GM & CMNM- Guwahati Refinery.*
- *That while he as engaged in the said assignment he received various communications, telegram from Guwahati Refinery which were replied by him.*
- *That in his reply dated January 3, 1994, to the chargesheet he had asked for various documents which were not provided to him.*
- *That he was reinstated pursuant to his appeal made and he joined his duties at Guwahati refinery on December 3, 1993 and issuing a chargesheet dated December 13, 1993 amounts to dual punishment and therefore all the charges may be dropped.*
- *That he narrated his version of the various events in the case to the Jt. Secretary (R), MOP&NG and reiterated supply of documents mainly the DO letter of Jt. Secretary (M) dated December 24, 1991 and various other documents, he also requested the Jt. Secretary to favour him with a clarificatory note to safeguard his service and future and prayed to come to his rescue and defend him in case IOC goes ahead with the disciplinary proceedings against him.*

In nutshell, the petitioner through the above documents contended that he took over the assignment in the Ministry as requested by the Ministry vide letter dated December 24, 1991 and as directed by Shri K.C. Joseph, GM(HR), Hqrs. While he was busy in the Ministry's work as requested above the Management from Guwahati Refinery was asking him to join duties through various communications which were received by him from time to time. Upon finalisation of the work he resumed duty on August 27, 1992 and September 8, 1992 the General Manager, Guwahati Refinery, vide letter no. GR/PF/75142 dated August 8, 1992

intimated him that his name was struck off from the rolls of the Corporation w.e.f August 25, 1992 on false allegations that he was deserted his employment. On October 7, 1992, he personally met the Dir. (R&P), New Delhi and also submitted an explanation and thereafter vide Office Order No. P/F/1/1728 dated November 18, 1993 he was directed to report to General Manager, Guwahati Refinery. Accordingly, he reported for duties at Guwahati Refinery on December 3, 1993. Since he worked under the instructions of superiors it was the Hqrs and Guwahati unit to formalise the matter and chargesheet was uncalled for.”

23. The annexures annexed to the letter dated January 03, 1994 (Ex.D-2) have been referred to by the Inquiry Officer to be the following:-

- 1) *A copy of letter dated 27.12.93 which is the explanation to the Chargesheet and an appeal dated 05.11.92 made by the petitioner to the Chairman showing his explanation which have already been discussed earlier.*
- 2) *Petitioner’s letter dated 21.10.92 addressed to the General Manager requesting him to withdraw the letter of termination dated 8.9.92.*
- 3) *Petitioner’s letter dated 12.09.92 addressed to the General Manager after receiving the termination letter dated 08.09.92.*
- 4) *Fax/OILCOMNET message dated 12.8.92 to Shri M. Dutta, SHRM, Guwahati Refinery giving reference to his engagement with relation to the Ministry’s work requesting to allow time for reporting to Guwahati.*
- 5) *Petitioner’s letter dated 14.08.92 addressed to Shri M. Dutta, SHRM vide which he has explained the events regarding his absence due to father’s sickness, his various communications and also his engagement with Ministry.*
- 6) *Petitioner’s letter dated 17/18,08.92 addressed to the Joint Secretary (M) showing he has forwarded certain findings in*

relation to the investigation to the Joint Secretary. The copy of the letter is also shown to be marked to Shri S.C. Chakravorty, Shri K.C. Joseph, GM(HR), Hqrs., General Manager, Guwahati Refinery, Chief Maintenance Manager, Guwahati Refinery.

- 7) *Copies of ticket from New Delhi to Guwahati for 25.08.92 with a copy of telegram showing a message for Sri M. Dutta that petitioner is reaching Guwahati on 26th August, 1992.*
- 8) *Ministry's letter dated 28.04.92 addressed to CMD, MRL, New Delhi from the Section Officer, MOP&NG, informing the CMD, MRL, regarding certain information to be furnished and Shri Yogendra Singh, Maintenance Officer of IOC assisting the Ministry in the investigation of the case proposes to visit Madras during the month of April, 1992. Help and cooperation to be extended to Shi Singh to complete the task.*
- 9) *General Manager, Guwahati Refinery's letter dated 8.9.92 informing him that he is deemed to have abandoned his employment with the Corporation and accordingly lost his lien on the post in accordance with CDA Rules No. 8 w.e.f 25.8.92.*
- 10) *Copy of Office Order No. P/F-1/1728 dated 18.11.93, letter No.IOC-GR/10 dated 30.11.93 of petitioner, Office Order No. P/PF/93/3333 dated 06.12.93 and petitioner letter dated 03.12.93 are letters connected with his reporting for duties at Guwahati Refinery on 3rd December, 1993 pursuant to the order dated 18.11.93 by the Director (R&P).*
- 11) *Bio-data of Sri Yogendra Singh dated 29.10.92 prepared by him.*

24. The Inquiry Officer also referred to 73 other documents produced by the petitioner herein. The findings of the Inquiry Officer are the following:-

From the assessment put forward by the Management both oral as well as documentary and the cross-examination done by the CSE and also the assessment of the evidence

given by the CSE which are only documentary, the following are my findings:-

-The CSE applied for sick leave on 1.11.91 for availing the same on 2.11.91 and also applied for 7 days Special Compensatory off w.e.f. 4.11.91 but did not obtain the permission and sanction of leave and left his Hqrs. (Guwahati Refinery).

-The CSE applied for extension of leave upto 22.11.91 vide telegram dated 12.11.91 due to his father's sickness but did not report for duty on 23.11.91 and applied for further extension of leave vide telegram dated 1.12.91 on account of his own sickness since 25.11.91 and the same was not supported by any medical certificate.

-Shri M.S. Kelkar, DMCL was given officiating to the post of Maintenance Manager (Civil) during the period of the absence of the CSE as there was hardship in executing the work due to such absence.

-The Management at Gauwahati Refinery gave several opportunities to the CSE to resume duties through various communications dated 5.2.92, 9.4.92, 4.8.92 and 17.8.92. The CSE, however, disregard the several advice made by the above communications and did not resume duties. Instead the CSE gave reason that he was working for the Jt. Secretary, Ministry of Petroleum & Natural Gas, New Delhi. The CSE was informed that he was not permitted or authorized by the company to work for such assignment and, therefore, had no authority to work for such assignment. After the final notice given on 17.8.92 and upon failure of the CSE to resume duties as advised, the name of the CSE was struck off from the rolls of the Corporation w.e.f. 25.8.92 to which effect an order was passed on 8.9.92.

-The CSE made appeals against the above order dt. 8.9.92 terminating his services. He was directed to report to the General Manager, Guwahati Refinery on or before 4.12.93

and the CSE reported to Guwahati Refinery on 3rd December, 1993.

-Thereafter the appropriate authority issued a memo of charges on 13th December, 1993.

-His medical certificate from a doctor at Gwalior who happened to be a child specialist is not found convincing and satisfactory as his hometown was Faridabad.

-He was time and again reminded the possible outcome of his unauthorized absence, which the CSE did not pay any importance and refused to comply with the repeated direction given by the Management from time to time. The various directions were reasonable orders of the Management and he disobeyed the same on the pretext that he was working for the Jt. Secretary, MOP&NG, New Delhi for which he was made clear that he was not been permitted or authorized for such assignment. However, he continued to be absent on the same pretext. The CSE's stand that he was working with the Ministry with the approval from the IOC Hqrs. Specially from Shri K.C. Joseph, could not dislodge the above findings as much as the examination of Ex. C-1 to C-11 clearly shows that inspite of the efforts made initially by the Management to make available the services of the CSE to the Ministry he was not available with the Ministry and on occasion it was found that he was out of his home station without any certainty of his return. The Ministry was also informed not to entertain Shri Yogendra Singh as he was absenting from duties and was taking recourse to the communications made by him to the Ministry to establish his claim that he was doing duty on behalf of the Ministry. The Ministry was also not knowing the exact period for which Shri Singh has been absenting from duties. The Ministry was also informed about his continued absence and the Management's repeated reminders and communications to the CSE and lastly frustrated by the non-availability of the CSE Ministry vide its letter dated 7.8.92 informed IOC that IOC may proceed against the CSE and the services of any other alternate Engineer, if required, will be asked for. The above

documents are clinching evidence of the charges leveled against the CSE and also shows that the stand taken by the CSE has no ground.

-On earlier occasions the services of the CSE while he was posted at New Delhi and Mathura Refinery, specific approvals on the request of the Ministry was given for the CSE to assist the Ministry with certain vigilance investigation. However, on a request received by IOC from the Jt. Secretary, Ministry of Petroleum & Natural Gas vide its letter dated 24.12.91 no specific approval was accorded as because the efforts to locate him from the purpose of request of Ministry was in vain. The CSE being experienced in such assignments and also related administrative requirements, took in granted that this time also the Management will approve and he will continue to remain away from Guwahati. The CSE could not approve that he was working under the instructions from the officials of the Corporation.

25. Having noted the stand of the parties during the enquiry proceedings, the finding of the Enquiry Officer and the submissions made by the learned counsel for the parties, insofar as the plea of Mr. Agarwal, on denial of documents is concerned, there is no dispute that, some of the documents, whose copies were not given, were given in inspection. Inspecting documents meets the requirement of principles of natural justice. During submissions, it has not been pointed out, which were the documents sought for, their relevancy and the prejudice caused for non supply of the same. It is noted, the petitioner had asked for documents which he had written. Surely such documents were in the possession of the petitioner, and he could have produced the same. It is also a settled law, that only those documents which have been relied upon, by the employer need to be given. The respondents in their counter-affidavit have denied the plea of the petitioner that documents have not been given. In the absence of any prejudice being shown, the plea is

rejected. In fact, I note the petitioner has cross examined the MW's without demur. Insofar as plea of perversity is concerned, suffice to state, the primary plea of the petitioner against the charges framed against him being; (1) that he was working for the Ministry of Petroleum and Natural Gas; (2) he has been informing the progress of the investigation to Mr. Joseph, GM (HR) of the respondent. I may state here that the Inquiry Officer in his report has stated; (1) there is no proof of the petitioner meeting Mr. Joseph on January 7, 1992; (2) no proof of Mr. Joseph advising the petitioner to call on the Ministry in connection with the request received from J.S. (M) of the Ministry; (3) no proof that the petitioner having met Mr. Joseph on March 25, 1992. I may note, the plea of the petitioner that Mr. Joseph was not produced in the enquiry by the respondent, is without merit as nothing precluded the petitioner to produce Mr. Joseph as his witness. That apart, this Court is of the view, that there is no order, issued by the corporation authorizing him to work in the Ministry, as was done in the past. So it necessarily follows, the petitioner should have joined back the Guwahati Refinery, which he had not, as without any order he could not have worked for the Ministry. Further, it is not a case, where the leaves applied for by the petitioner have been sanctioned. Rather, in the telegram dated April 14, 1992, he was informed that the leaves have not been sanctioned and was asked to join back. It is not only once, on many occasions he was asked to join back. It is not a case of no evidence at all. There is sufficient evidence to prove the charges as framed against the petitioner on the concept of preponderance of probability. The Supreme Court in the case of *Bank of India and Anr. v. Degala Suryanarayana AIR 1999 SC 2407* has inter-alia held, the court while exercising jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting

in a case of malafides or perversity, i.e., where there is no evidence to support findings or where findings are such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

26. Insofar as the submission with regard to violation of Article 31(14) and 31 (15) is concerned, Rule 31 relates to Procedure for Imposing Major Penalties. Rules 31(14) and 31 (15) read as under:-

“31(14) The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross examination and re-examination according to the provisions applicable to the witnesses for the disciplinary authority. The Inquiring authority may also put such questions to the witnesses as it thinks fit.

31(15) The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him I the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.”

27. A perusal of the aforesaid Rules would reveal that in an eventuality, the Charged Officer does not examine himself then an obligation has been put on the Enquiry Officer to question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain circumstances appearing in the evidence against him. There is no dispute that the petitioner has not produced himself as a witness during the proceedings. In fact, no witness was produced by the petitioner in the enquiry. If that be so, the Enquiry Officer was required to question the

petitioner on the circumstances appearing against him in the evidence eliciting his explanation. The consequence of not seeking such an explanation has been considered by the Supreme Court in the case of *Ministry of Finance v. S.B. Ramesh* with regard to Rule 14(18) of the CCS (CCA) Rules, wherein it was held that such a Rule is mandatory. But in an earlier judgment, the Supreme Court in the case of *Sunil Kumar Banerjee v. State of West Bengal and ors 1980 (3) SCC 304* which is a judgment of three Hon'ble judges, the Supreme Court has held that non adherence to Rule 8(19) of the All India Service Rules, 1969, which is para-materia to Rule 14(18) of the CCS (CCA) fatal only if it is shown that a delinquent is prejudiced on account of such non adherence. No such plea of prejudice can be proved in the absence of evidence. The judgment of *Sunil Kumar Banerjee (supra)* was followed by a Division Bench of this Court in the case of *Union of India and Ors v. Pradeep Kumar Modwill & Anr W.P.(C) No. 2850 and 2854 of 2011 decided on August 19, 2013* by holding as under:-

“55. From the afore-noted observations, the ratio of law which is discernible from the decision in Sunil Kumar’s case (supra) is that non- adherence to Rule 8(19) of the All India Service Rules, 1969 by the Enquiry Officer is fatal only if it is shown that a delinquent was prejudiced on account of such non-adherence. A somewhat discordant note was struck by the 2-Judge Bench of the Supreme Court in the decisions reported as (2008) 3 SCC 484 Moni Shankar vs. Union of India and (1998) 3 SCC 227 Ministry of Finance vs. S.B. Ramesh which decisions have not noted the earlier 3-Judge Bench decision in Sunil Kumar Banerjee’s case (supra) and thus we are bound by ratio of law laid down by the 3-Judge Bench in Sunil Kumar’s case (supra).”

This plea of Mr. Ashok Agarwal is unsustainable.

28. Insofar as the plea of Mr. Agarwal that, the Appellate Authority has not applied its mind is concerned, the same is appealing. The petitioner in his

appeal has raised several grounds. Unfortunately, the Appellate Authority in the impugned order dated December 08, 1998 has rejected the appeal by holding as under:-

“I have gone through the appeal dt. 5.9.98 by Shri Yogendra Singh, the Charge Sheeted Officer, along with the charge sheet No. P/F-1/1728 dated 13.12.93, order of the Disciplinary Authority dated 26.6.98, report of the enquiry officer and the records of the disciplinary proceedings and all other records connected with the disciplinary case.

I find that the Charge Sheeted Officer was given full and fair opportunity to defend himself during the said enquiry proceedings. I am also satisfied that the principles of natural justice were fully observed.

I further observe that the Charge Sheeted Officer in his appeal had not brought out any ground or fact or any extenuating circumstance that may warrant review of order dated 26.6.98 passed by the Disciplinary Authority.

*I therefore agree with the orders so passed by the Disciplinary Authority.
Appeal stands disposed off accordingly.”*

29. There is nothing in the order to show that the Appellate Authority had applied its mind to the grounds raised by the petitioner in his appeal. In the case in hand, it is noted that the Appellate Authority has simply stated that the Charged Officer in his appeal has not brought out any ground or any extenuating circumstance which may warrant review of order dated June 26, 1998 passed by the Disciplinary Authority. In other words, he, in-toto agreed with the view of the Disciplinary Authority, which is impermissible in view of the judgment of the Supreme Court in the case of **Director (Marketing)**,

Indian Oil Corpn. Ltd. And Another v. Santosh Kumar (2006) 11 SCC 147,

wherein in paras 9, 10 and 11 the Supreme Court held as under:-

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

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

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

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

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

General Manager (Operations)

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

Competent Disciplinary Authority vide reference No. IR/1461/(N-113) dated 30.12.1999 as a measure of disciplinary action against Shri Santosh Kumar.

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

Director

(Marketing)"

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

30. Further, in the case of **LIC vs. A. Masilamani 2013 (6) SCC 530**, the Supreme Court has held that the order of Appellate Authority itself should

reveal application of mind and he cannot simply adopt language employed by the Disciplinary Authority and proceed to affirm its order.

31. Insofar as the plea of Mr. Aggarwal that the penalty of stoppage of increments could not be with retrospective effect, the same is also appealing as I note, one of the impugned order was passed on June 26, 1998 whereby the four increments of the petitioner have been stopped. At least to the extent of stoppage of increments dated January 1, 1997 and January 1, 1998, the punishment is retrospective. The penalty to that extent being separable with the penalty of stoppage of increments w.e.f. January 1, 1999 and January 1, 2000 and in view of the position of the law laid by the Supreme Court in the case of ***R.Jeevaratnam Vs. The State of Madras, AIR 1966 SC 951***, wherein in paras 3 and 4 it has held as under:

“3. Counsel for the appellant next contended that the order of dismissal dated October 17, 1950 having been passed with retrospective effect is illegal and inoperative. Counsel for the respondent submitted (1) the order of dismissal with retrospective effect as from the date of the suspension is valid in its entirety, and (2) in any event, the order is valid and effective as from October 17, 1950. The High Court accepted the first contention, and declined to express any opinion on the second contention. In our opinion, the second contention of the respondent is sound, and in this view of the matter, we decline to express any opinion on the first contention. Counsel for the appellant conceded that if the respondent's second contention is accepted, the appeal must fail.

4. The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts ,of this composite order are separable. The first part of the order ,operates as a dismissal of the appellant as from October 17, 1950. The invalidity of

the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service”.

32. Insofar as the plea of Mr. Agarwal that the order dated September 08, 1992 would not survive as the petitioner having been reinstated and on his reinstatement, he has been proceeded departmentally is concerned, the same is appealing. There is no dispute that vide letter dated November 18, 1993, the petitioner was asked to report back to the Guwahati Refinery and it is a fact that the petitioner did report to the Guwahati Refinery on December 04, 1993 and further on his reinstatement he was issued chargesheet. The chargesheet culminated in the punishment of withholding of four increments, which presupposes that the petitioner was on the rolls of the Corporation. That apart, he had taken voluntary retirement in the year 2006. In view of this, the order dated September 08, 1992 whereby the petitioner has been said to have deserted his employment and his name was struck off; from the rolls of the Corporation with effect from August 25, 1992, has become infructuous. Suffice to state, he was taken back on the rolls of the Corporation.

33. Insofar as the connected plea of Mr. Agarwal that the period between August 25, 1992 to December 03, 1993 could not have been treated as not on

duty for all purposes is concerned, the plea is justified as it is noted that the petitioner immediately on receipt of letter dated September 08, 1992 had submitted a representation initially to the General Manager to cancel the order of termination dated September 08, 1992 and thereafter to the Chairman on November 05, 1992 making a similar request. The request having been accepted vide letter dated November 18, 1993, without any precondition as also clear from the office order dated December 06, 1993, the period between August 25, 1992 to December 03, 1993 need to be treated as on duty for all purposes.

34. From my above discussion, the following position emerges:

- (1) That the Enquiry Officer was justified in holding the charges as proved on the concept of preponderance of probability.
- (2) That the order of penalty to the extent of stoppage of increment w.e.f. January 1, 1997 and January 1, 1998 is illegal.
- (3) The order of the Appellate Authority is without application of mind as he did not deal with the grounds raised by the petitioner in his appeal.
- (4) The period between August 25, 1992 to December 03, 1993 shall be treated as on duty for all purposes, as the order dated August 25, 1992, has become infructuous.

35. Having said that, the question which arises is what relief the petitioner is entitled to; whether the matter should be remanded back to the Appellate Authority to pass fresh order. This Court is of the view that the petitioner having taken voluntary retirement in the year 2006 and the penalty which

would survive, is only to the extent of withholding of increments w.e.f. January 1, 1999 and January 1, 2000, which is not harsh and 18 years have passed since the imposition of the punishment and moreover I have upheld the conclusion of the Enquiry Officer holding the charges as proved, it is not a fit case where the matter should be remanded back to the Appellate Authority. I uphold the penalty to the extent of withholding of increments as on January 01, 1999 and January 01, 2000. The order dated September 8, 1992 and June 26, 1998 to the extent, penalty of withholding of increments w.e.f January 1, 1997 and January 1, 1998 and the period between August 25, 1992 and till December 3, 1993, was treated not on duty for all purposes are set aside.

36. In view of the aforesaid, the consequential benefits, if any, shall be released to the petitioner as per the rules, within a period of three months from the date of receipt of the order.

37. The writ petition is disposed of in terms of the above. No costs.

V. KAMESWAR RAO, J

DECEMBER 20, 2017/ak