

\*

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

%

Judgment Reserved on: 29.05.2014

Judgment delivered on: 11.07.2014

+

**WP(C) No. 8889/2007**

**AMIT KATYAL**

**.... PETITIONER**

**VERSUS**

**GAIL INDIA LTD. & ORS.**

**.....RESPONDENTS**

**ADVOCATES WHO APPEARED IN THIS CASE:**

For the Petitioner : Mr. K.T.S. Tulsi, Sr. Adv. with Ms. Beenashaw  
N. Soni and Mr. A. Faraz Khan, Advocates

For the Respondents: Mr. Kailash Vasdev, Sr. Advocate with Mr. Ajit  
Pudussery, Ms. J. Pudussery, Mr. Shreyans  
Singhvi and Mr. M. Chandra Sekhar, Advocates

**CORAM :-**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J**

1. This is a writ petition filed to assail the order passed by respondent no.1 dated 30.05.2006 whereby, the petitioner's removal from service has been directed. The principal order, which is the order dated 30.05.2006, has been passed by the disciplinary authority. The subsequent order dated 02.01.2007, passed by the appellate authority, though not specifically referred to in the prayer clause of the appeal filed, is also challenged; albeit implicitly, as the order passed by the reviewing authority dated 13.08.2007 is under challenge. The petitioner though, has lost all throughout.

2. The challenge to the order of removal from service has been made in the background of the following broad facts :-

2.1 The petitioner, who was posted in Gandhar in Gujarat collapsed on 26.01.2004 during a Republic Day function held at the LPG Plant of respondent no.1 (hereinafter referred to as GAIL).

2.2 The petitioner was taken for treatment to Bhailal Amin General Hospital at Vadodara (in short BHAG Hospital). During his period of stay at the BHAG Hospital, investigations conducted on the petitioner had shown that the petitioner had encountered 'Popliteal Deep Vein Thrombosis' (in short DVT) in the left leg alongwith Pulmonary Embolism. The DVT, was discovered, on a venous doppler test being conducted upon the petitioner; while the echo test showed that he had encountered pulmonary embolism, as well.

2.3 Briefly, this is a condition which entails development of a blood clot in the deep vein of a persons legs. The clot forms in a valve cup, and if, it grows big in size, it could completely block the vein. In case the clot breaks and travels through the circulatory system blocking the pulmonary artery, which leads to the lungs or, one of its main branches, it results in a condition, which is known as, pulmonary embolism. DVT is usually diagnosed with the help of venous ultrasound, which is a special type of scan and, contrast venography, whereby, a dye is injected into the foot and special x-rays are taken. The treatment of DVT includes hospitalization, when required, accompanied by prescription intravenous drugs, to dissolve the clot. Long term treatment requires oral intake of anti-coagulant drugs to prevent clotting, and regular blood test, to monitor the "stickness" of the blood. Patients are also required to wear compression stockings to increase

the internal blood flow from the lower part of the body to the other part. Lifestyle changes are also required.

2.4 The petitioner upon diagnoses, as indicated above, was treated as per prescribed medical protocol. The petitioner was eventually discharged from BHAG Hospital, on 09.02.2004. Since, the petitioner's parents, were located at Delhi, for follow up, he was referred to the Apollo Hospital at Delhi. The referring doctor at BHAG Hospital in his letter dated 09.02.2004 to his counterpart sketched out the petitioner's brief medical history and the diagnostic tests which had been carried out on him, which led to the discovery of the fact that the petitioner was suffering from DVT/pulmonary embolism. The medical treatment, which was rendered, was also adverted to in the said letter.

2.5 The petitioner, evidently, got himself examined both as an in-patient and out-patient at Apollo/ Batra Hospital between February 2004 and April 2004.

2.6 In the interregnum, having regard to the petitioner's condition, he was transferred from Gandhar in Baruch to Vadodara; which is where the BHAG Hospital is located.

2.7 The petitioner, reported for duty after his illness, on 01.05.2004, at GAIL's Vadodara office. The petitioner, however, on the very next day, applied for leave till 15.05.2004. Having regard to the petitioner's condition, his leave was sanctioned till that date. The petitioner, however, did not report for duty, as required, on 16.05.2004. As a matter of fact, the petitioner sought leave, once again, from 16.05.2004 till 15.06.2004. The leave sanctioning authority vide communication dated 31.05.2004 declined leave to the petitioner, and also, grant of sanction for out station medical

treatment as, according to the said authority, the treatment required for dealing with DVT was available in Vadodara. The petitioner was advised to report for duty immediately.

2.8 The petitioner, instead of resuming duty, vide communication dated 10.06.2004, sought his transfer to Delhi as, Vadodara was not, according to him, an appropriate place of posting having regard to his qualification in Chemical Engineering. With this letter, the petitioner enclosed a medical certificate of the Batra Hospital which, inter alia, indicated that he was fit to resume duties, and could, locate himself at a place where, necessary facilities were available.

2.9 On 25.06.2004, the petitioner, was once again, advised to resume his duties with immediate effect. He was further informed that he should produce a fitness certificate, and that, the extension of leave sought by him from 16.06.2004 to 15.07.2004, had been declined. Notably, the application seeking extension of leave for this period is, apparently, not on record.

3. Having regard to the intransigence displayed by the petitioner, a memo was issued to him on the ground of unauthorised absence. The petitioner was called upon to explain as to why, his name should not be struck off, the rolls of GAIL, under clause 22 of the relevant Leave Rules, having regard to the fact that he had been on unauthorised leave for a period which was, more than ten (10) days.

3.1 The petitioner vide reply dated 16.07.2004, informed that he had not joined duty at Vadodara as, he had to undertake medical treatment at Delhi.

3.2 On 26.07.2004, the petitioner joined duty at Vadodara; at which point he submitted a medical fitness certificate issued by the BHAG Hospital. No sooner had the petitioner joined duty, on 31.07.2004, he submitted yet

another leave application, seeking leave from 02.08.2004 till 07.08.2004. The ostensible reason supplied was, that, he had to shift his luggage from Delhi. The leave sanctioning authority declined the petitioner's request for leave.

3.3 Undeterred, the petitioner, on 02.08.2004, applied for leave for the period spanning between 05.08.2004 and 14.08.2004; this time to get himself medically examined. The leave sanctioning authority, once again, declined leave and, while doing so, made a note to the effect that medical check-up and follow-up could be carried out at the BHAG Hospital at Vadodara where, good medical facilities were available. The petitioner, unconcerned with the fact that the leave had been declined, absented himself from duty w.e.f. 05.08.2004.

3.4 However, on 06.08.2004, the petitioner despatched a leave application of even date from his Delhi address seeking leave for medical check-up, as well as, to shift his luggage from Delhi.

3.5 By a letter dated 07.09.2004, the concerned authority at GAIL responded to the petitioner's letter, inter alia, noting therein that the medical certificates produced by the petitioner did not declare that he was unfit to resume duties. The petitioner, was also put to notice that despite the fact that his leave had been refused, he had left station and, had thus, absented himself from duty, which was, a gross misconduct under the relevant rules. The petitioner, was informed, by the very same communication, that the, management therefore, reserved its right to take disciplinary action against him and that, without prejudice to the above, he should immediately report for duty.

3.6 The petitioner, however, did not heed the advice rendered to him, and instead, sent another letter, on 15.09.2004 wherein, he, inter alia, stated that he would join duty at Vadodara as and when, he felt he was “medically safe” and was in a position to generate confidence in himself. The petitioner, also indicated, in the very same communication, that he had approached senior officers of GAIL qua his transfer to Delhi, and that, he required his leave to be extended till 05.11.2004 for medical treatment from a specialist of his choice.

3.7 Vide letter dated 20.09.2004, the concerned authority informed the petitioner that his request for extension of leave till 05.11.2004, had been declined, and therefore, he should resume his duties immediately. The petitioner by a return letter dated 04.10.2004, quite interestingly, informed GAIL that he had left station i.e., Vadodara for health reasons, and that, he did not want his knowledge and experience to be wasted by doing work which, did not interest him, just to please the management. He requested the management to approve his leave till he felt confident of joining duties at Vadodara.

3.8 Having left with no choice in the matter, GAIL issued a second memo to the petitioner on 10.01.2005 invoking the same provision i.e., clause 22 of the relevant Leave Rules, as was done vide memo dated 09.07.2004 - which empowered the management to strike off from the rolls, an employee, who remained on unauthorised leave, for more than ten days.

3.9 The petitioner vide his letter dated 18.05.2005, submitted his response to the said memo. In his reply, he took almost the same stand, which was, that he would join duty as and when he felt confident to do so, and that, till then, he should be permitted to remain on leave, in Delhi.

4. On 02.02.2005, the petitioner, however, reported for duty. Within three days of having reported for duty, on 05.02.2005, he applied for earned leave from 07.02.2005 till 08.03.2005 on the ostensible ground that he had to visit his doctor. The petitioner's leave was declined, once again.

4.1 Left with no alternative, a chargesheet dated 17.05.2005, was issued to the petitioner. Seven (7) charges were framed against the petitioner under various rules; which basically revolved around the prime charge of his having remained absent from duty without due sanction. The petitioner's absence resulted in various offences, according to the management; which, were articulated in the form of several charges in the chargesheet in issue.

4.2 The petitioner, filed his reply to the chargesheet, which is dated 28.05.2005. The same, having not been found satisfactory, resulted in an Inquiry Officer being appointed by the Disciplinary Authority vide order dated 08.09.2005.

4.3 The petitioner was given due notice by the Inquiry Officer of the proceedings fixed for the said purpose. Though, six (6) sittings were held between 04.10.2005 and 04.01.2006, the petitioner chose not to participate in any of these proceedings. The petitioner, however, sent his written representation, which was considered by the Inquiry Officer. The management on its part, had appointed a presenting officer who, assisted the Inquiry Officer.

4.4 In support of its charges, the management cited three (3) witnesses. This apart, documentary evidence, was also filed in support of the charges. Undisputedly, the documents relied upon by the management were supplied to the petitioner. As a matter of fact, the Inquiry Officer had fixed dates for inspection of the originals of the documents filed by the management; the

petitioner, however, did not avail of this opportunity granted by the Inquiry Officer.

4.5 Based on the evidence produced before him, both documentary and otherwise, the Inquiry Officer came to the conclusion that out of thirteen (13) months, the petitioner had attended duty at Vadodara only for 14 days, and that, he had attempted to get himself transferred out of Vadodara by making representations to higher authorities when, medical facilities were available at the empanelled hospital of GAIL, i.e., BHAG Hospital at Vadodara. Having regard to the evidence placed before him, the Inquiry Officer came to the conclusion that all seven (7) charges framed against the petitioner stood proved. A report to that effect dated 13.03.2006, was submitted, by the Inquiry Officer to the Disciplinary Authority.

4.6 The Disciplinary Authority after examining the enquiry report and hearing the petitioner in person, at a hearing held on 27.04.2006, vide order dated 30.05.2006, came to the conclusion that the charges against the petitioner were proved. Consequently, the Disciplinary Authority imposed the penalty of removal from service on the petitioner under Rule 28 of GAIL Employees (Conduct Discipline and Appeal) Rules, 1986.

4.7 Being aggrieved, the petitioner preferred an appeal which was, dismissed on 02.01.2007 after, the petitioner was granted a personal hearing by the Appellate Authority, on 12.12.2006.

4.8 The petitioner preferred a review petition with the Chairman and Managing Director (CMD) of GAIL. Though, an opportunity of personal hearing was granted to the petitioner, he did not avail of the same. The petitioner, also did not submit any further written communications, in that behalf. Accordingly, after considering the matter, the CMD of GAIL, which

was the reviewing authority, as indicated above, dismissed the review petition, vide order dated 13.08.2007.

5. Aggrieved by the orders of the said authorities, the instant writ petition has been filed. Notice in the petition was issued on 10.08.2008 whereupon, pleadings have been completed.

Submissions of Counsels

6. On behalf of the petitioner, arguments had been advanced by Ms. Beenashaw N. Soni in the opening and by Mr. K.T.S. Tulsi, learned senior advocate in the rejoinder, while on behalf of the respondents, arguments have been advanced by Mr. Kailash Vasdev, Sr. Advocate, in part, assisted by Mr. Ajit Pudussery and Mr. M. Chandra Sekhar, Advocates.

7. The contentions advanced on behalf of the petitioner were as follows :-

7.1 The petitioner is a bright engineer, who had graduated from IIT Delhi, in 1993. He had joined GAIL on 31.07.1996, after acquiring three years experience as Research / Chemical Engineer in various organizations including a family concern, by the name of Asim Engineers and Consultants. The petitioner was awarded a meritorious certificate by the head of Project, on 30.04.2001.

7.2 The petitioner was last declared fit by a medical team of GAIL on 20.11.2003.

7.3 The petitioner's collapse, on the fateful day i.e., 26.01.2004 was attributable to the work that the petitioner was assigned. Since, the necessary medical facilities, were not available in Gandhar in Baruch, he had to rush to Vadodara, which was 80 kms from the plant site where he was posted.

7.4 Since, the BHAG Hospital, at Vadodara, did not have the requisite facilities, the petitioner was referred to the Apollo Hospital at New Delhi.

7.5 The petitioner could have only been posted to a place where CTVS facilities were available given the petitioner's medical condition. For this purpose, the petitioner relied upon the opinion rendered by the Apollo Hospital, which is dated, 17.04.2006. For this purpose, the petitioner also relied upon the certificates issued by the Batra Hospital dated 02.04.2004, the certificate issued by the Cardiologist at BHAG Hospital, dated 08.02.2004 and the Ganga Ram Hospital dated 02.09.2005.

7.6 That the BHAG Hospital did not have a CT Scan / CTPA equipment in place till November 2004. It was stated that in-house CT Scan was operable in BHAG Hospital, only in, 2006.

7.7 The petitioner required constant monitoring of his blood INR which, was a diagnostic exercise required to be carried out, preferably by a particular medical testing laboratory. For this purpose, reliance was placed on the answer to queries received through the RTI route vide communication dated 16.04.2012 of the Medical Administrator of BHAG Hospital. Reference was also made to the response dated 26.03.2012 of one, Dr. Virendra Singh Chauhan, to an e-mail sent by a relative of the petitioner.

7.8 That CTVS facilities were not available at BHAG Hospital.

7.9 The petitioner's transfer to Delhi was under active consideration. For this purpose, reliance was placed on various inter-office memos and notesheets; these are dated 21.02.2004, 05.03.2004, 01.04.2004, 12.04.2004, 21.04.2004 and 14.05.2004. The contention was, that the petitioner's proposed transfer to Delhi was almost finalized, which was, scuttled for various reasons including the demand of graft by one of the senior officers.

8. The petitioner's absence from duty, which was neither intentional nor wilful, could not lead to the imposition of a penalty of removal from service. The petitioner was not issued a show cause notice prior to the issuance of the chargesheet. He was neither suspended from service nor paid subsistence allowance, as per extant rules. The principles of natural justice were thus violated. The impugned orders were passed without the authorities below addressing themselves to the issue of non-availability of medical facilities at GAIL's empaneled hospital in Vadodara.

8.1 The petitioner, was not paid his medical dues and salary which, prevented his participation in the enquiry. The request for change of venue of the enquiry due to ill-health and lack of resources, was also, illegally rejected.

8.2 The punishment imposed was disproportionate in comparison to the charges levelled against the petitioner.

8.3 In support of the submissions made hereinabove, reliance was placed on the following judgments :-

***(i). Krushnakant B. Parmar Vs. Union of India and Anr., Civil Appeal No.2106/2012, CLP (C) No.15381/2006, dated 15.02.2012; WP (C) 6892/2000, Binu Bala Vs. UOI and Ors., dated 06.09.2012; Mahesh Chand Vs. UOI & Ors., 145 (2007) DLT 588; and D.T.C. Vs. Anil Kumar (Ex-Driver), WP(C) 7634/2005 dated 11.05.2012.***

9. The learned counsel for the respondents, on the other hand, largely relied upon the record of the disciplinary proceedings to demonstrate that despite the fact that the petitioner had been fully treated in respect of the episode encountered by him on 26.01.2004, he continued to remain absent for long durations without due sanction of leave. The learned counsel for the respondents sought to demonstrate that the petitioner was transferred to

Vadodara from Gandhar, in Baruch, precisely for the reason that medical facilities were available at the BHAG Hospital, in Vadodara, where the petitioner was treated for DVT / pulmonary embolism. It was contended that the petitioners insistence on being posted to Delhi was propelled by the fact that other members of his family and their business interest were located in Delhi.

9.1 It was further contended that the petitioner during a period of eleven (11) months commencing from 01.05.2004, attended office at Vadodara for a cumulative period of only fourteen (14) days. Given these circumstances, the respondents were left with no alternative but to issue him a chargesheet, on 17.05.2005.

9.2 It was further submitted that despite the fact the petitioner was given due opportunity to participate in the enquiry conducted qua the charges levelled against him, he refused to participate in the same and therefore, having regard to the evidence brought on record, it could not be said that the charges levelled were not established.

9.3 The respondents reiterated that appropriate medical facilities, contrary to what petitioner said, were available at the BHAG Hospital, at Vadodara, where he was treated in the first instance. Specific reliance was placed on the opinion of the medical board set up by the Apollo Hospital at Delhi at the behest of GAIL. It was submitted that the petitioner was cured of his disease and for the purposes of monitoring his health, requisite facilities were available with the empaneled hospital of GAIL.

9.4 The respondents relied upon the following judgments in support of their arguments :-

***Appointing Authority, G.B.P. Spl. S.I. and Anr. Vs. R.K. Singh, (2005) 10 SCC 131; State Bank of India and Ors. Vs.***

*Narendra Kumar Pandey, AIR 2013 SCC 904; State of Rajasthan and Anr. Vs. Mohammed Ayub Naz; AIR 2006 SCC 856; Airport Authority of India and Ors. Vs. Shambhu Nath Das alias S.N. Das; Sandeep Singh Vs. State of Haryana and Anr.; (2002) 10 SCC 549.*

REASONS

10. Having heard the learned counsels for the parties and perused the record, before I proceed any further, I may record that during the course of the arguments, upon the petitioner being specifically queried as to whether, he was involved in any gainful activity, it became known that the petitioner was a Director and a 50% shareholder in a company by the name of Asim Communications Pvt. Ltd.; the other director in the company being his father, Sh. I.P. Katyal. This information came to light at the hearing held on 19.05.2014, whereupon the petitioner was directed to file balance sheets of the said company from the date of its incorporation, duly supported by an affidavit. The petitioner complied with the same; a fact which is referred in the proceedings dated 26.05.2014. Since, the counsel for the respondents also sought leave to file a short affidavit to bring on record a download from the website of the petitioner in connection with the same aspect, opportunity in that behalf was given on 28.05.2014. The said affidavit was taken on record on 29.05.2014. As to what is the effect of these documents, I will discuss the same in the later part of my judgment.

10.1 What emerges however, from the submissions and the record of the disciplinary authority is that, the petitioner, who is a Chemical Engineer, even before joining the services of GAIL, had gained experiences in one of his family concerns, by the name of Asim Engineers and Consultants between January 1996 and 26.01.2004. Though, nothing of grave medical concern was noticed in the medical check-up conducted by the empanelled

doctors of GAIL, the petitioner has filed a medical certificate dated 08.04.2006, of one, Dr. S.K. Singhal, a psychiatrist, which shows that the petitioner was under his care for “emotional disturbance since 2000” and that he was at least at that point in time, being treated with the help of “antipsychotic drugs”. The certificate goes on to state that the petitioner thus required care and support of his family members. This document, however, was apparently never filed with the Inquiry Officer. These documents seem to have been placed on record on 09.01.2008 pursuant to the leave of the court taken on 30.11.2007. I must note, however, that during the course of the arguments, counsels for the petitioner did not refer to this document at all. This may be for the reason that the petitioner in the meanwhile has got cured. As indicated above, notice in the writ petition was issued only thereafter on 10.01.2008.

10.2 The record also shows that several attempts were made to have the matter settled through the mode of mediation. At the instance of the court, vide order dated 09.11.2011, a senior mediator had been appointed by the Delhi High Court Mediation and Conciliation Centre. The mediation proceedings, however, did not yield results. I may also note that an attempt was made even during the course of argument before me, which attempt also failed. Necessarily this court has had to hear arguments on merits and therefore, examine the legal and factual tenability of the impugned orders.

10.3 The record clearly indicates that after the petitioner’s collapse in Gandhar, in Baruch, on 26.01.2004, he was given the necessary medical facilities by being moved to the BHAG Hospital at Vadodara. It was the diagnosis carried out with the assistance of laboratory /diagnostic centre tied-in with the said Hospital which, revealed that the petitioner was

suffering from DVT along with pulmonary embolism. The petitioner was treated as per medical protocol which, resulted in his discharge from BHAG Hospital, on 09.02.2004.

10.4 It appears that since the petitioner's parents were located in Delhi, and given the fact that he was not joining duty immediately, a letter of reference dated 09.02.2004, was issued by one, Dr. Jani of BHAG Hospital. By this letter, the petitioner, was referred by Dr. Jani, to Apollo Hospital, at Delhi. The course of treatment on which the petitioner was put was indicated in the said letter.

10.5 All throughout, that is, between February 2004 and September 2005 when, the petitioner took opinion from various hospitals in Delhi, such as : Batra Hospital, Apollo Hospital and Ganga Ram Hospital, the diagnosis remained the same i.e., DVT/ pulmonary embolism. (see the certificates dated 02.04.2004 issued by the Batra Hospital and 02.09.2005 issued by Ganga Ram Hospital). Both hospitals advised that the petitioner should stay in a place where he could get, if necessary, urgent medical attention. The certificate dated 08.02.2004 issued by Dr. V.S. Chauhan of BHAG Hospital also advised similarly. It is relevant to note that Dr. V.S. Chauhan's certificate was issued one day prior to the petitioner's discharge from BHAG Hospital on 09.02.2004. Dr. Chauhan's certificate, at that stage, did not indicate that the relevant facilities were not available at the BHAG Hospital. The fact that the petitioner was infact treated at BHAG Hospital would lend credence to the argument advanced on behalf of the respondents that the relevant medical facilities were available at BHAG Hospital and because the petitioner was on leave, and was travelling to Delhi, the said letter was issued. As indicated above, the reference letter of

Dr. Jani, addressed to his counter part in Apollo Hospital, also bears this fact out.

10.6 The fact that the petitioner was on leave for nearly three months, that is, till 30.04.2004, is not in dispute. The trouble really started when, after 01.05.2004, the petitioner repeatedly applied for leave which was, declined by the concerned authority in GAIL on the ground that necessary medical facilities were available at Vadodara. The findings recorded in the enquiry report, which are based on the communication sent by the petitioner, point to the direction that the petitioner took a stand that he would join duty at Vadodara as and when, he felt “*medically safe*” and was able to generate necessary confidence in that behalf. I may only quote in this connection, the extract from the letter dated 15.09.2004 :-

“...15.09.2004 from his so called camping address Janakpuri, Delhi (PD-16) mentioning that “as to when I may feel myself medically safe and generate the confidence in me, to join my duties at Baroda. But till that time, I am required to stay at Delhi...”

10.7 As a matter of fact, from the point of view of the respondents, the position of the petitioner became even more untenable when, in a letter dated 04.10.2004 he indicated that he was not interested in the work assigned to him at Vadodara as it did not measure up to his professional expertise; I would assume in the field of Chemical Engineering. The relevant extract from the letter reads as follows :-

“.. I really do not want to let go my earned knowledge and experience go waste just by indulging me in the work of my disinterest, which is out of my professional expertise, just to please the management only..”

10.8 As indicated by me above, while narrating the facts of the case, respondents had before issuance of a chargesheet on 17.05.2005 issued two

memos for unauthorised absence, which are dated 09.07.2004 and 10.01.2005. Both memos though issued to the petitioner, could not impress upon him the need for him to abide by service discipline. The records shows that the petitioner appears to be apprehensive about his medical health though, a certificate of Balaji Medical Action Institute, New Delhi, dated 20.12.2004, seems to indicate that the “*thrombi*” which was visualized in his previous CT scan of 27.01.2004, stood “*resolved*”. This aspect also emerges on perusal of the discharge summary dated 04.04.2006 which, inter alia, states that there are no signs of active DVT, and that, both chest x-ray and ECG were normal.

10.9 The Medical Board set up by the Apollo Hospital at the behest of GAIL, in its opinion dated 17.04.2006, came to the same conclusion. The board noted that after January, 2004 there was “*no further recurrence of acute Thrombopulmonary venous embolism*”. The board in its opinion had made other relevant observations, which are extracted hereinbelow :-

“..At present he is having secondary varicosity of Left lower limb with recanalised popliteal vein with no acute or chronic free thrombus. Inferior vena cava, iliac vein and femoral veins are completely normal. The cardiac function is within normal limits and echocardiogram shows neither pulmonary arterial hypertension nor right ventricular dysfunction. Chest X-Ray and ECG are normal. Blood tests showed no hyper coagulable states except for mild hyperhomocystinemia, which is almost within normal limits

We do not find anything significant on examination, which could prevent him from resuming duties at any city of India where CTVS facilities are available

He is advised following medication :

x x x x x

7. Review at any nearby hospital with CTVS facility every 6 months...”

11. Therefore, the sense one gets is that, while the thrombi which resulted in the petitioner encountering a DVT condition stood resolved, he would have to follow a particular course of treatment to prevent recurrence of plaque formation in the veins of his lower limbs. The board of the Apollo Hospital in its opinion had clearly stated that the petitioner could resume duties at any city of India where, CTVS facilities were available.

11.1 Faced with this document, the counsels for the petitioners tried to demonstrate with the help of responses received through RTI queries and to a mail sent by a relative of the petitioner on 22.03.2012, that such facilities were not available in BHAG Hospital, at the relevant point in time. As noted hereinabove, the reply to the mail and RTI query are dated 26.03.2012 and 16.04.2012. Both these documents obviously were not filed with the Inquiry Officer. The Inquiry Officer could have had, therefore, no occasion to deal with these documents.

11.2 The respondents in these proceedings, on their part, filed documents to demonstrate that CTVS facilities were available at BHAG Hospital.

11.3 In my view, this court, at this stage, merely based on the document filed, cannot come to a definitive conclusion that the CTVS facilities were not available at BHAG Hospital. The record, however, filed before the disciplinary authority would show that the petitioner was given the best medical care, which was available at BHAG Hospital, which led to his discharge from the hospital on 09.02.2004.

11.4 Furthermore, even the documents filed by the petitioner do seem to indicate that a CT scan was installed in BHAG Hospital, in November 2004,

if not earlier. Certain other equipment were perhaps not available as per the document filed, within the said hospital but procedures like IVC, filter insertion and thrombolysis were carried out at the BHAG Hospital, through in-house specialist doctors.

11.5 The counsel for the petitioner attempted to explain the installation of the CT scan equipment in November 2004 by adverting to e-mail dated 26.03.2012 of Dr. Chauhan, which stated that in-house CT scan was available in BHAG Hospital only in 2006.

11.6 As indicated above, the e-mail of 26.03.2012 to that extent is inconsistent with the response dated 16.04.2012. It is quite possible that in 2012, Dr. Chauhan was not able to fix the correct year in which, CT scan was made available in BHAG Hospital. It would ordinarily not stand to reason as to why if a hospital were to install a CT scan / CTPA equipment in November 2004, it would allow it to remain idle for more than a year. The important thing is, that both the mail of Dr. Chauhan dated 26.03.2012 and the response dated 16.04.2012 establish that specialist doctors were available in-house to carry out the necessary procedures. As a matter of fact, the e-mail of Dr. Chauhan quite clearly states that the procedures such as : IVC filter and thrombolysis were available in the BHAG Hospital, since 1994. These are aspects, according to me, which could have more clearly come to light if, the petitioner had participated in the enquiry proceedings. The petitioner could have summoned witnesses from BHAG Hospital to establish his contention, which is now been made before the court, that the necessary medical facilities were not available.

11.7 This court is not in a position to appreciate evidence at the present juncture nor, is it in law, within its remit, to do so. This is not a case where

the Inquiry Officer has come to the conclusion of unauthorised absence qua the petitioner without material on record. Having seen the record, I am not persuaded to hold otherwise based on the submission advanced on behalf of the petitioner.

11.8 The argument advanced on behalf of the petitioner that internal notes and inter-office memos were indicative of the fact that a decision was likely to be taken with regard to the petitioner's transfer to Delhi which, got stymied on account of demand of illegal gratification, is a submission, in my view, which has an element of exaggeration which, perhaps, stems from exasperation in not being given a Delhi posting.

11.9 A perusal of the inter-office memos and letters shows that the officers had put up queries for assigning petitioner temporarily to Delhi. The fact that the petitioner was in Delhi between February and April, 2004 is not in dispute. Thereafter, in a discussion between officers of GAIL, a proposal was made for assigning to the petitioner "stock lost accounting related work" with the Advisor, Stock Lost Control; which after due consideration did not go through as the opinion formed was that the petitioner's need for medical treatment could be met by transfer to Vadodara. The counsel for the petitioner placed emphasis in this behalf on the note-sheet dated 12.04.2004 which, appears to have been generated by the then Executive Director (O&M). This note culminated with the following endorsement of CMD of GAIL, on 24.04.2004 :-

“..Condition A. Can be met by shifting Shri Amit Katyal to the RPNHQ at Vadodara, where excellent medical facilities are available..”

12. Condition 'A' referred to above in the CMD's note alluded to the availability of the medical facilities having regard to the petitioner's

condition. It is perhaps in this background that the petitioner, as a matter of fact, joined duty at Vadodara on 01.05.2004. The petitioner thereafter, appears to have had second thoughts and built up a case of necessary medical facilities not being available there. As has been indicated above, this position does not appear to emerge from the record.

12.1 The learned counsel for the petitioner has laid emphasise on the point that the order of removal from service could not have been passed in view of the fact that there was no finding returned by the Inquiry Officer that the petitioner was wilfully absent from duty. In my view, whether or not the person is wilfully absent from duty is an aspect which has contextual connotation, and can only be determined by reference to the facts and circumstances obtaining in a particular case. A wilful act is described as one, which is done intentionally, knowingly and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly or inadvertently. (see Black's Law Dictionary 6<sup>th</sup> Edition, page 1599).

12.2 The Inquiry Officer in his report has returned findings which, categorically note that despite rejection of the request for leave made by the petitioner, repeatedly, after 01.05.2004, the petitioner continued to be on leave for long duration, so much so, that the petitioner categorically indicated to his superiors that he would join duty as and when, he felt he was "*medically safe*" and ready to do so. This clearly came through in the petitioner's letter dated 15.09.2004. This was despite the fact that the petitioner was issued a memo on 09.07.2004. It is when the petitioner continued with his obdurate approach of constantly applying for leave despite a second memo issued, in that behalf, on 10.01.2005, that a

chargesheet was issued on 17.05.2005 which, after an enquiry resulted in the imposition of penalty, on the petitioner, of removal from service.

12.3 The findings on record clearly point to the fact that the petitioner, intentionally, without justifiable excuse kept away from duty knowing fully well that it could result in his name being struck off GAIL's rolls.

12.4 The judgment of the Supreme Court in the case of **Krushnakant B Parmar** is distinguishable on facts as the petitioner in that case was prevented from attending duty by one Sh. P. Venkateshwarlu, who prevented him from signing the attendance register. Evidence in that behalf was placed before the Inquiry Officer, which was ignored by him. As a matter of fact, Mr. P. Venkateshwarlu, who was the complainant in the case, had refused to join enquiry despite summons. The witnesses produced did not support the case of the management. The Supreme Court, in these circumstances, veered to the view that the Inquiry Officer had wrongly concluded that the charge stood proved, as it was so held, by ignoring the aforementioned evidence and, was thus, based on surmises and conjectures.

12.5 However, in the facts of the present case, I find that there is material to demonstrate that the petitioner knowingly refused to join duty despite being aware of the consequences. There were infact, no imminent compelling circumstances except apprehensions which, kept the petitioner away, from his place of duty i.e., Vadodara.

12.6 Similarly, the facts in **Binu Bala's** case are also distinguishable. This is a case where the petitioner had failed to produce a medical certificate for extension of leave at the relevant point in time which, led to the petitioner being removed from service after an enquiry. The petitioner sought to establish that she required extension of leave as the child which was born to

her prematurely, required special care. The Inquiry Officer while recording that the reasons may be genuine, came to the conclusion that what he was required to establish whether the petitioner's absence was preceded by orders of the authority competent to sanction leave. In the present case, quite clearly, the Inquiry Officer, has returned a finding that the petitioner's absence from duty, "for a long period is not genuine". In my view, this judgment would also not help the cause of the petitioner.

12.7 Similarly, the judgment in the case of *D.T.C. Vs. Anil Kumar (Ex-Driver)*'s case is also distinguishable on facts as in that case the employer's writ petition against the award was dismissed on the ground that the facts had revealed, that the, respondent employee had taken leave though excessive, on account of sickness of his wife, and that, there was no charge framed against him vis-a-vis unauthorised absence. In this particular case, the charge framed against the petitioner was one, of unauthorised absence.

12.8 The judgment in *Mahesh Chand*'s case which was cited in support of the fact that the punishment imposed was disproportionate, is also clearly distinguishable. This was a case where the petitioner had over stayed leave by 85 days on two different occasions, on each such occasion, he had lost one of his parents. The petitioner failed to re-join duty and, thereafter, he got afflicted with typhoid. The court, while noting that much would depend on the facts and circumstances of the case, and no straight-jacket formula could be applied; based on the circumstances, which related to demise of his parents and his illness, in respect of which, prescriptions had been filed, came to the conclusion that the order of dismissal could not be sustained. In this particular case, the record does show that, for the first three months, the petitioner was sanctioned leave that is, between February and April, 2004.

Even thereafter on 02.05.2004 till 15.05.2004, the petitioner was again sanctioned leave. It is when, despite two memos dated 09.07.2004 and 10.01.2005 that the petitioner did not fall in line, the respondents had to resort to issuance of a chargesheet, on 17.05.2005. The fact that the petitioner took the stand that he would join duty only when he was ready, did not help his cause.

12.9 It is well settled that in so far as imposition of penalty is concerned, a court while exercising power under Article 226, would not ordinarily interfere with the penalty unless, it shocks the conscience of the court and amounts, in itself, conclusive evidence of bias; or is totally irrational, in the sense, it results in outrageous defiance of logic and moral standards. [see *Ranjit Thakur Vs. Union of India, (1987) 4 SCC 61111, Union of India Vs. Parmanand, (1989) 2 SCC 177, State of Karnataka Vs. H. Nagraj, (1998) 9 SCC 671*]. Such is not the case here.

13. Before I conclude, as indicated above by me, the affidavit filed by the petitioner pursuant to proceedings held on 19.05.2014, and the affidavit filed on behalf of the respondents upon leave being given to that effect on 28.05.2014, clearly bring to light the fact that the petitioner is a Director and a 50% shareholder alongwith his father in a company by the name of Asim Communication Pvt. Ltd. The petitioner, as on 31.03.2012, was holding one-third of the shareholding which, got divided thereafter, equally between himself and his father, Mr. I.P. Katyal, after his brother Sumit Katyal decided to transfer his interest in the company to his father and his brother, i.e., the petitioner. The petitioner, as on 31.03.2013, has received yearly remuneration of Rs.4,20,000/- from Asim Communication Pvt. Ltd. This company stood incorporated on 07.09.2006. As per the written submission

filed and the balance sheets on record, the Katyal family has had an interest in a concern by the name of Asim Engineers and Consultants, which is where, the petitioner worked in the initial years of his profession. Though these are not facts, which were before the Inquiry Officer, and got revealed only when, arguments qua back wages were raised before me, they do show that somehow reasons other than illness propelled the petitioner to seek a posting at Delhi.

14. Having regard to the record and the entirety of facts and circumstances of the case, I am not inclined to interfere with the impugned decisions. As is well settled, the court is required to examine the decision making process and not the decision itself while exercising jurisdiction under Article 226 of the Constitution unless it is a case of no evidence or, a failure to take into account relevant evidence or, a case where irrelevant evidence is taken into account. The other ground of interference available to the court is where there is a breach of principles of natural justice. The grounds of challenge do not fall within any of the aforementioned areas. This court cannot re-appreciate evidence, even if, based on the evidence produced, it may have come to a conclusion different from that which was arrived at by the disciplinary authority. On the touchstone of these well established legal principles, no error can be found with the impugned orders.

15. For the aforementioned reasons, the writ petition is dismissed. However, parties will bear their own costs.

**RAJIV SHAKDHER, J**

**JULY 11, 2014**

**yg**