

(2002) 10 GAU CK 0010

Gauhati High Court

Case No: Writ Petition (C) No. 3846 of 2000

Nityananda Dutta

APPELLANT

Vs

Oil and Natural Gas Corporation
Ltd. and Others

RESPONDENT

Date of Decision: Oct. 1, 2002

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: (2003) 2 GLR 161 : (2003) 1 GLT 317

Hon'ble Judges: D. Biswas, J

Bench: Single Bench

Advocate: B.P. Kataki and P. Mahanta, for the Appellant; P.C. Deka, SC and S.K. Medhi, for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, J.

The petitioner was appointed as a Rigman (Drilling) in the establishment of the respondent No. 1 and he joined the post on 27.1.1983. In due course he got promotion to the post of Topman (Drilling) and worked as such till 11.5.1994. Service conditions provides 14 days off from duty after 14 days work in the Rig. The petitioner availing off-period was supposed to resume his duties and he could not resume his duty on 25.5.1994. Petitioner's wife was suffering from pelvic inflammatory disease and he could not resume his duty on 25.5.1994. Accordingly, he requested the Drilling in-charge to allow leave for one month. His wife was in Sibsagar Civil Hospital upto 24.8.1994. During that period, the petitioner also fell sick (tuberculosis) and was under treatment of Dr. A.K. Sarma, District Tuberculosis Officer with effect from 16.8.1994 to 8.2.1996. The petitioner submitted his leave application to Shri R.K. Gupta, the Drilling in-charge for onward transmission of his leave application to the higher authorities for extraordinary leave under Regulation 15(2)(a) of the Leave Regulation, 1968. After recovery he met the Additional Director

at Jorhat on 10.2.1996 and submitted his joining report along with fitness certificate. The Additional Director advised him to resume duties at the project site. On his way to Borhala Project Site the petitioner was abducted by some unidentified gunmen belong to extremist group. His abduction was for raising demand for ransom from the employer. Ultimately, the extremist group released him after nine months of captivity at Siliguri. During captivity, the petitioner lost his state of mind. He was eventually rescued from Guwahati by the members of his family. Thereafter, he submitted an application on 23.5.1997 before the Additional Director for permission to resume duty. The Additional Director asked the petitioner to submit an application giving reasons for his long absence. Accordingly, the petitioner submitted an application and on a number of occasions visited the office for permission. But no permission was given as prayed for. The petitioner submitted an application on 27.9.1997 (Annexure-H).

The respondent authority by the letter dated 18.12.1997 informed him that he was no longer in the service due to prolonged unauthorized absence from duty and has been deemed to have resigned from service with effect from 20.8.1994. Aggrieved by the aforesaid decision of deemed resignation, the petitioner has filed this petition.

2. The respondent authority in their affidavit-in-opposition averred that the petitioner did not submit any application for leave on account of illness either for himself or for his wife. Petitioner's claim that he submitted a leave application to Shri R.K. Gupta, the then Drilling in-charge and the joining report to the Additional Director of ONGC have been denied. Their case is that the petitioner has been absenting himself from duty with effect from 23.5.1994 and all efforts were made to secure his attendance. Having failed, the respondent-authority had to initiate proceeding against the writ petitioner as per provisions of Regulation 14(5) of the ONGC Leave Regulation, 1968.

3. Mr. B. Kataki, learned counsel for the petitioner assailed the deeming provisions in Rule 14(5) on the ground that it is violative of the principles of natural justice and contrary to the provisions of Article 311 of the Constitution. According to Shri Kataki, no employee can be deprived of his service except without initiation of appropriate proceedings. Shri. P.C. Deka, learned counsel for the ONGC, however, urged that the proceeding was initiated and notices were sent to the permanent address of the writ petitioner. Having failed to obtain his presence, the authority published notices in the leading daily newspapers both in Assamese and English and eventually had to take the decision as per provisions of Regulation 14(5) of the Leave Regulation of 1968.

4. It would appear from the materials on record that an express telegram was sent to the declared permanent address of the writ petitioner on 20.2.1995 directing him to report for duty. The consequences of unauthorized absence was communicated to the petitioner vide office memorandum dated 18.4.1995, 22.3.1996, 25.3.1996

and 20.9.1996 sent by registered A.D. Besides, notices were published in "The Dainik Janambhumi" and "The Clarion" in their publication dated 21.11.1996 calling upon the petitioner to show cause as to why the aforesaid provisions of the Regulation 14(5) would not be invoked. These are all matters of record and clearly show that the ONGC authorities made all sincere efforts to secure the attendance of the writ petitioner. On the face thereof, it is not possible to discard the submission of the ONGC that no leave application or information in any manner were submitted/communicated by the writ petitioner. It is inconceivable that an establishment like the ONGC would come forward with false statement to victimize an innocent employee of the status of the writ petitioner. The copies of the letters and the joining report etc. annexed by the writ petitioners do not bear any acknowledgment of receipt thereof by any officer of the respondent-authority. These were also not posted under registered A/D. Therefore, these documents appear to have been prepared to augment the prospect of the petitioner's case. Therefore, these documents will not be of any assistance to the writ petitioner.

5. The Certificate (Annexure-D) issued by the District Tuberculosis Officer at best may suggest that the writ petitioner was suffering from Tuberculosis though it does not indicate whether the petitioner was an indoor patient or was in a serious condition which preventing him from contacting his employer. This shows utter negligence on the part of the writ petitioner. Regarding his plea of abduction, missing report was filed on 19.6.1996 and nothing more is available on record to come to any conclusion that he was abducted, as alleged. Petitioner's case is that he lost his state of mind during captivity. There is nothing on record to show that he was under treatment of any Psychiatric for his mental disease. This is suggestive of his attempt to cover his lapses on false pretext.

6. There is no doubt that the petitioner absented himself from duty for a long time. All efforts were made by the respondent-authorities to secure his attendance. Having failed, the respondent-authorities proceeded under Regulation 14(5) of the Leave Regulation of 1968 and treated him as deemed to have resigned from service. The question raised in this petition is whether the aforesaid provisions in Regulation 14(5) are violative of the provisions of Article 311 or the principles of natural justice and whether an employee can be relieved of service for unauthorized absence without initiating appropriate departmental proceedings.

7. The leave Regulation of 1968 have been framed under the provisions of the ONGC Act and the Regulations have the force of law. The provisions of Regulation 14(5) authorising the employer ONGC to release an employee from service for unauthorized absence have not been challenged in this petition. In a similar situation, a Division Bench of this Court in Oil and Natural Gas Corporation Ltd. and Ors. v. Monoranjan Debnath (1997) 1 GLR 406 held that an employee has a right to be heard before an order under Regulation 14(5) is passed. Yet in other case, learned Single Judge of this Court in Sri Purnendu Chakraborty v. Hindustan Paper

Corporation Ltd. and Ors. 1995 (1) GLT 60 relying upon the decision in [D.K. Yadav Vs. J.M.A. Industries Ltd.](#), held that an automatic termination under Certified Standing Orders on absence without or beyond the period of sanctioned leave for more than 8 days must be in tune with the principle of natural justice. The learned Single Judge held that termination under Standing Order without holding any domestic enquiry or affording any opportunity to the workman was violative of the principles of natural justice and Articles 14 and 21 of the Constitution.

8. Mr. Kataki, learned senior counsel for the petitioner relied upon a decision of the Supreme Court in [Union of India and others Vs. Giriraj Sharma](#), in order to show that the penalty of removal from service is not warranted in the instant case.

9. There is no doubt that the provisions of Regulation 14(5) could be invoked by a employer only after compliance of the principles of natural justice. An employee cannot be released from service unless he is heard. This is necessary as a safeguard against arbitrary and mala fide action. Therefore, in each and every case, it has to be seen whether reasonable opportunity of hearing was given to the employee before he was relieved of his services under the provisions of Regulation 14(5).

10. In the instant case it has already been noticed that the respondent-authorities tried their best to secure the attendance of the writ petitioner, initially directing him to report for duty and, thereafter, for showing cause as to why his case will not be dealt with under the provisions of Regulation 14(5). Notices were published in the leading newspaper on 21.11.1996. Neither the writ petitioner nor any member of his family filed any application or information before the authority concerned showing reasons of his absence. It is not a case of over-staying of leave for 8/12 days as have been in the cases referred to above. Petitioner was absent from duty from 25.5.1994 and he was relieved of his service by the office order dated 20.12.1996. The unauthorised absence is for a long period with negligence apparent on the face of it. The petitioner did not make any effort to inform the respondent-authority about his absence. The employer's right of taking appropriate action under the provisions of Regulation 14(5) cannot be withered away in a case where an employee is found to be grossly negligent in his conduct. Here is a case where the petitioner has displayed utter negligence and the respondent authority, having failed to procure his attendance, invoked the provisions of Regulation 14(5). On facts, the case at hand is distinguishable from the decision relied upon by Shri Kataki, learned counsel for the petitioner.

11. Mr. P.C. Deka, learned senior counsel for the respondent relied upon a decision of the Supreme Court in Punjab and Sind Bank and Ors. v. Sakattar Singh (2001) 1 SCC 214. In paragraphs 4 and 5 of the aforesaid Judgment, the Hon'ble Supreme Court held as follows :

"4Under this rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the management that he

has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job anymore and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This rule has been incorporated in an agreement where representatives of employees' unions were party. They also realized the futility of continuing with a situation when an employee without appropriate intimation to the management is playing truant.

5.In reply thereto, the stand taken by the appellants is that the record of the respondent does not disclose that he had proceeded on leave on medical advice for an eye ailment at any time. Even in the present leave application submitted by him he had stated that he was proceeding on leave to attend some urgent work at Chandigarh while the medical certificate produced before the court shows that the same had been issued by a doctor at Amritsar. There is dispute as to when made available this material. The stand of the appellants is that this material was also produced only after the order of termination had been made and is seeking a review of the said order. The respondent claimed that he had sent several communications regarding his illness or to extend his leave or to rejoin duty but there does not appear to be any record with the Bank nor is the respondent in a position to produce any proof of his having sent such letters. We do not also find any material on record to show that he had reported for duty within the period indicated in the notice issued in terms of Clause 16 of UV bipartite settlement in the circumstances, we find the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice have been borne in mind, particularly when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof."

12. The aforesaid decision clearly shows that the provisions as in Regulation 14(5) have not been deprecated and condemned by the Hon"ble Supreme Court as violative of the constitutional provisions and the principles of natural justice. Right of pre-decisional hearing has to be read in the provisions of Regulation 14(5) as a precaution to safeguard the interest of the employee, it is, therefore, clear that in a case where the employer has made all efforts to provide an opportunity to the delinquent employee to show cause and defend his case and the employee in turn showed utter negligence in reacting to the notices, it would be appropriate on the part of the employer in such a situation to invoke the provisions of deemed resignation as in Regulation 14(5). An employee playing truant for a longer period and manoeuvring to, delay and defeat hearing to avoid just retribution is not entitled to raise the plea of violation of natural justice. Retribution in appropriate cases are indispensable for enforcement of discipline in industrial sector. Constitutional safeguard does not mean licence to indulge in the act of indiscipline.

The writ petitioner is, therefore, not entitled to any relief.

13. In the facts and circumstances of the case, the writ petition is dismissed.

No order as to costs.