GAHC010173362016

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5329/2016

ARUN KALITA
CHIEF MANAGER F and A -PP, OIL, S/O LT. SATISH KALITA R/O KHATBASTI, P.O. CHANDRAPUR DIST. KAMRUP, ASSAM, PIN - 781150.

VERSUS

THE OIL INDIA LIMITED and 3 ORS.
THROUGH THE CHAIRMAN AND MANAGING DIRECTOR, OIL DULIAJAN, ASSAM, PIN - 786602.

2:THE RESIDENT CHIEF EXECUTIVE

OIL DULIAJAN
DIST. DIBRUGARH
ASSAM
PIN - 786602.

3:THE GROUP GENERAL MANAGER-
PRODUCTION PROJECT
PRESENTLY EXECUTIVE DIRECTOR PP
OIL
DULIAJAN
DIST. DIBRUGARH
ASSAM
PIN - 786602.

4:SRI S.C. MISHRA
G.M. C and P
OIL
DULIAJAN DIST. DIBRUGARH
ASSAM
PIN-786602

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. Chakraborty.

Advocates for the respondents : Shri A. Sarma, SC, OIL (R-1,2,3)

Date on which judgment is reserved : 18.06.2026

Date of pronouncement of judgment : 24.06.2026

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The instant application under Article 226 of the Constitution of India has been filed with the following prayers:

"*In the premises aforesaid, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:*

i) Issue a writ of Certiorari quashing and setting aside the Inquiry Report dated 12.8.2015, the order under Ref. No. GGMPP:VIG/06/2015 dated 19.11.2015 passed by the Group General Manager - Production Project Department/Respondent no. 3, [Disciplinary Authority] and the order under Ref. No.RCE:22-71 dated 21.4.2016 passed by the Resident Chief Executive / respondent no. 2 [Appellate Authority]

ii) Issue a writ of Mandamus directing the respondents to reinstate/

restore the petitioner to his former stage and time scale (higher) with all consequential benefits and treating his period of service from the date of downgradation/ reduction till date, as spent on duty in the said stage and (higher) Time Scale with full back salary/monetary compensation.

iii) Issue a writ of Mandamus directing the respondents to effect Promotion to the petitioner to Grade 'G' as Deputy General Manager Oil India Limited with effect from 01.07.2014.

iv) Pass such other order(s), as your Lordships may deem fit and proper in the facts and circumstances of the case.

And for this act of kindness, the petitioner as in duty bound shall ever pray."

2. As per the facts projected, the petitioner at the relevant time was posted as the Chief Manager, Finance and Accounts under the Oil India Limited and was posted at Gabon, Africa. While he was discharging his duties he was served with an Explanation Letter dated 25.07.2012 on the subject of *Imprest Cash*. It appears that the petitioner had candidly accepted his fault and accordingly on 29.08.2012, an official warning was given to the petitioner. It is projected that because of this warning, the petitioner was not given promotion till the year, 2014 as it is a practice that an Officer who has been imposed with penalty would not be considered for such promotion for a period of 3 (three) years. On 27.11.2014, a Memorandum of Charge was served on the petitioner containing 5 (five) numbers of charges. The petitioner had submitted his written statement whereafter an inquiry was held. The Enquiry Officer, in his report had held that out of the 5 (five) numbers of charges, the 5th charge was not proved. However,

the other 4 (four) charges were held to be proved and the matter was accordingly placed before the Disciplinary Authority. The Disciplinary Authority, after consideration of the matter had issued the impugned order dated 19.11.2015 imposing the penalty of reduction to a lower stage in the time scale of pay. Against the aforesaid order, the petitioner had preferred an appeal under the existing rules. The Appellate Authority had however held that the 3rd charge was also not proved. However, there was no alteration with the penalty imposed upon the petitioner. It is the legality and validity of the disciplinary proceeding culminating into the penalty order dated 19.11.2015 which is the subject matter of challenge in the present writ petition.

3. I have heard Shri A. Chakraborty, learned counsel for the petitioner. I have also heard Shri A. Sarma, learned Standing Counsel, OIL for the respondent nos. 1, 2 and 3.

4. Shri Chakraborty, the learned counsel for the petitioner has submitted that the impugned action is unreasonable arbitrary and not sustainable in law. He has submitted that out of the 5 (five) charges which were levelled vide the Memorandum of Charges dated 27.11.2014, the 1stcharge is identical to the charge which was levelled against the petitioner vide the letter dated 25.07.2012. He has submitted that action of issuing an official warning was already taken upon the petitioner vide order dated 29.08.2012 and the said action was also incorporated in the service record. To fortify the aforesaid submission, the learned counsel for the petitioner has submitted that though the petitioner was eligible for promotion in the year 2014, he was not given such promotion. The learned counsel has clarified that a norm practiced in the Respondent - Corporation that if an incumbent is imposed any penalty, he is not

considered for promotion for the next 3 (three) years. He has submitted that since action was taken so far as the 1st charge was concerned, a second action could not have been taken as that would amount to double jeopardy.

5. As regards the second charge, the learned counsel for the petitioner has submitted that the same would clearly appear to be an incorrect understanding of the entitlement. He has submitted that the materials would clearly show that the officers were entitled to daily allowances at a particular rate which however was released on a higher rate both for the petitioner and another Officer, Shri V.K. Kulsrestha, who was the General Manager. It is however submitted that upon clarification received by the petitioner, the recoveries were made and in such recovery there was a short recovery of 91 USD so far as the petitioner is concerned. He has submitted that even this short recovery has been subsequently recovered from the petitioner.

6. As regards the 3rd charge, the Enquiry Officer though had held the same to be proved, the Appellate Authority had held that the 3rd charge was not proved.

7. Coming to the 4th charge, the learned counsel for the petitioner has submitted that there was use of a SIM card pertaining to the Gabon in India leading to raising of roaming charge. The learned counsel has submitted that such use was by inadvertence and in any case, the amount involved was recovered from the salaries of the petitioner and the same cannot be construed as a charge *per se*. As regards the 5th charge, the learned counsel has submitted that in the inquiry the same is held to be not proved.

8. The learned counsel for the petitioner has submitted that no proceeding as such has been taken against the other Officer concerned. He has submitted that

irrespective of the said fact, ultimately it is the Charge Nos.2 and 4 which would arise for discussion for adjudication of the present issue. He has submitted that in neither of the aforesaid charges, there is any intention made out on part of the petitioner. He has submitted that in fact the charge against Sl. No. 2 has been taken care of by the discussion made by the Appellate Authority while dealing with the 3rd charge. He has reiterated that the Charge No.4 cannot be treated as a charge at all as it was relating to mere use of a SIM card pertaining to Gabon in India which invited roaming charges and the same was deducted from the salaries of the petitioner.

9. The learned counsel for the petitioner has also submitted that while the penalty order was imposed on 19.11.2015 and the period of 3 (three) years was over on 18.11.2018 the petitioner was denied promotion and it was only in January, 2020 that he was given promotion. The learned counsel accordingly submits that, even otherwise, the promotion which was given to him in January 2020 should be given effect from 18.11.2018. He has clarified that as per the promotion policy, 3 (three) years is the qualifying period to be considered for promotion to the next higher post.

10. The learned counsel accordingly submits that the impugned action is liable to be interfered with and the writ petition be allowed.

11. *Per contra*, Shri Sarma, the learned Standing Counsel, OIL has, at the outset submitted that so far as the second leg of argument claiming that promotion given in the year January 2020 should be given effect from 2018 is concerned, the same is not even the relief claimed in the present writ petition and is therefore not liable for adjudication. He has clarified that the same would be a fresh cause of action, if any and cannot be taken up during the final

hearing of the present writ petition.

12. With regard to the arguments made on behalf of the petitioner questioning the penalty, the learned counsel for the respondent has submitted that so far as the 1st charge is concerned though the same is similar to the subject matter involved in the Explanation Letter dated 25.07.2012, the action taken *qua* the said Explanation Letter dated 25.07.2012 was only an warning which was issued on 29.08.2012. He has submitted that such warning cannot be treated as a penalty which is not even a prescribed penalty under the Rules holding the field. He has submitted that such warning would not preclude the respondents from proceeding against the petitioner on that charge. He has also submitted that there is an admission made by the petitioner and the same would also amount to temporary misappropriation.

13. With regard to the Charge No. 2, the learned counsel for the respondent has submitted that there was an abuse of the powers by the petitioner who had released a higher amount for daily allowance and only on the same being detected in the audit that the recovery was made. He has submitted that even while making such recovery, while the recovery so far as the other Officer was fully made, so far as the petitioner is concerned there was a short recovery of about 91 USD. To support the second charge, he has submitted that under Clause 2.11.13 of the Pay and Allowance Policy dated 27.12.2010, the entitlement is USD 20 per day whereas the claim was for USD 350 per day. This fact has been mentioned in paragraph 5.2.1 of the report of the Enquiry Officer.

14. Similarly, he has submitted that for the 3rd charge, there appears to be an abuse of the powers by the petitioner. He has submitted that use of a SIM card pertaining to Gabon in India was an abuse of the powers as the same had

invited roaming charge to be applied to the use of such SIM. He has submitted that delay in taking steps for deduction from the salary of the petitioner would itself show the negligence of the petitioner. He has submitted that so far as the Charge No. 5 is concerned, the same was held to be not proved and therefore, he would not join any issues.

15. The learned Standing counsel has also submitted that the petitioner was holding a post of utmost trust as the post which he was holding was that of Chief Manager, Finance and Accounts. It is submitted that no case of any violation of the principles of natural justice has been made out and therefore, this Court would not interfere with the writ petition.

16. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

17. The scope of interference by a Writ Court in matters relating to Disciplinary is limited. The scrutiny is more with regard to the decision making process than the merits of the decision. However, there is no straitjacket formula and everything will depend on the facts and circumstances of the case.

18. In the instant case, it is noticed that there were 5 number of charges out of which the Enquiry Officer had held the 5th charge not to be proved. We have also noticed that in the appeal, the Appellate Authority had held the 3rd charge not to be proved. Therefore, this Court is required to examine the remaining Charge Nos. 1, 2 and 4 and the findings thereon by the Disciplinary Authority leading to the impugned penalty.

19. As regards the 1st charge, this Court has noticed that the same is identical to the subject matter of the Explanation Letter dated 25.07.2012. It is also seen that the petitioner had made candid admission regarding the procedural lapse

which culminated in issuance of an official Warning dated 29.08.2012. This Court finds force in the contention advanced on behalf of the petitioner that no Warning *per se* is not a prescribed penalty, the same was treated to be a penalty inasmuch as the petitioner was not given promotion in 2014 though his promotion was due. This Court has already observed that as per the norms, the promotions are due after completion of 3 years in the feeder post. In the meantime, the Memorandum of Charge was issued on 27.11.2014. Though the 1st charge has been held to be proved, this Court is of the opinion that the petitioner could not have been penalized for the same charge more than once. This Court has also noticed that no motive as such appears to have been involved to cause any wrongful loss to the respondents or to make wrongful gain to himself.

20. So far as the Charge No. 2 is concerned, this Court has noticed that whereas there was an entitlement for 20 USD per day on overseas movement, there was a claim of USD 350 per day by the petitioner and another Officer. The same was however detected in the audit and recovery was made and while such recovery was made there was a short recovery of 91 USD from the petitioner. However there was no such allegation so far as the other Officer is concerned. The aforesaid short recovery was also recovered from the petitioner and there is no outstanding. Though the learned counsel for the respondents has submitted that the same would amount to temporary misappropriation, it clearly appears that such claim was made upon wrong understanding the entitlement. There is also nothing on record to show that the petitioner had tried to cover up the said claim. This Court is of the view that from the materials available on records, the motive of the petitioner to engage in illegality cannot be inferred. This brings this Court to the Charge No. 4 which pertains to use of a SIM pertaining to the

Gabon in India which invited roaming charges. The explanation given by the petitioner was that the mobile phone was utilized without realizing the said aspect and in any case the roaming charges were recovered from the petitioner. This Court is of the opinion that the same could not have been the basis to proceed departmentally against the petitioner as the action appears to be innocuous and trivial.

21. The penalty imposed on the petitioner vide the impugned order dated 19.11.2015 is reduction to a lower stage in the time scale of pay. Such penalty is a major penalty which has serious consequence on the career of an incumbent. This Court has also noticed that the petitioner has retired in the meantime in May, 2022 during the pendency of the writ petition. This Court is of the opinion that on the aspect of the proportionality of the penalty, the matter would require interference, more so, when none of the charges of the Memorandum dated 27.11.2014 establishes any *mala fide*, negligence or wilful default on the part of the petitioner.

22. So far as the oral submission made by the learned counsel for the petitioner that in spite of he being eligible for promotion on 18.11.2018 that is after expiry of a period of 3 (three) years from the date of the penalty, he was not given any promotion and such promotion was given only in January, 2020 and the consequential prayer was to give the promotion with effect from 18.11.2018, this Court is however of the opinion that the said aspect is not the present cause of action and would rather be a fresh cause of action. In any case, completion of 3 (three) years is only an eligibility and would not be the sole criteria for promotion.

23. In view of the aforesaid discussion while this Court is not inclined to pass any orders for giving retrospective effect to the promotion given to the

petitioner in January 2020, the impugned order of penalty dated 19.11.2015 of reduction to a lower stage in the time scale is interfered with. However, the matter is remanded back to the respondent authorities to reconsider and impose a penalty which would not cause prejudice to the petitioner so far as his post retirement benefits are concerned. It is made clear that the post retirement benefits are to be re-calculated and the balance amount be released to the petitioner. Let the entire exercise be undertaken and completed within a period of 3 (three) months from the date of receipt of a certified copy of this order and the outcome be informed to the petitioner in writing.

24. Writ petition accordingly stands allowed in the manner indicated above.

25. No order as to cost.

JUDGE

Comparing Assistant