

JYOTI
RAJESH
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6938 OF 2007

Rajinder Paul Bharadwaj, Age 57 years,
presently working as Manager (MM)
In the Oil and Natural Gas Corporation Ltd.
At Vasundhara Bhavan, Bandra (E),
Mumbai 400051, and
residing at B-1302, Hill View Park,
Thakur Village, Kandivali (E),
Mumbai – 400101.

...Petitioner

Versus

1. The Oil & Natural Gas Corporation Ltd., “Jivan Bharti, Tower-II, 124, Connaught Place, New Delhi – 110001.
2. The Chairman and the Managing Director of Oil & Natural Gas Corporation Ltd. “Jivan Bharti”, Tower – II, 124, Connaught Place, New Delhi – 110 001.
3. The Director (H.R.), The Oil & Natural Gas Corporation Ltd., Jivan Bharti, Tower – II, 124, Connaught Place, New Delhi – 110001. ...Respondents

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy a/w.
Mr. Aalim N. Pinjari, for the Petitioner.

Mr. Oduvil Mohandas a/w. Mr. J.P.Kapadia i/b. Little & CO.,for
Respondent Nos. 1 to 3.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON: 09 March 2026
PRONOUNCED ON: 04 May 2026

JUDGMENT (PER: AARTI SATHE, J) :

1. This petition under Article 226 of the Constitution of India assails the departmental proceedings resulting in a punishment of reduction in rank imposed on the petitioner by the Appellate Authority's order dated 13 April 2006. The short issue which arises for consideration is whether it was legal and valid for the respondents to hold a departmental inquiry against the petitioner in the year 2001 in regard to the alleged misconduct of the year 1991, and proceed to impose such punishment. This apart, also whether the materials on record of the inquiry proceedings justified such punishment considering the principles of a delayed inquiry and the rule of fairness in inquiry proceedings, are the other issues. The prayers as made in the petition are required to be noted which read thus:

- a) That this Hon. Court be pleased to issue a writ of Certiorari or any other appropriate writ or direction, calling for the record and proceedings, leading to the passing of the impugned orders dated 10th August 2004 (Exhibit I) passed by the Disciplinary Authority and the order dated 13-4-2006 (Exhibit L) passed by Appellate Authority. and after examining the legality -and propriety of the same, this Hon. Court be pleased to quash and set aside the said two orders.
- b) That this Hon. Court be pleased to issue a writ of Mandamus or any other writ, order or direction to the respondents that in pursuance of the prayer Clause (a) above, the petitioner be granted all his service benefits including continuity of service, due promotions, seniority, full back-wages, pay fixation and all admissible service benefits in the said matter.
- c) That pending the hearing and * final disposal of this Writ Petition, this Hon. Court be pleased to stay the operation of the order dated 10-8-2004 (Exhibit I) and the order dated 13-4-2006 (Exhibit L) passed by the respondents.
- d) That pending the hearing and final disposal of this Writ Petition, this Hon. Court be pleased to direct the respondents to promote the petitioner to the higher rank of Chief Manager and above on par with his juniors and pay him his service benefits on the said post

2. Briefly the facts are as follows:-
- i. The Petitioner at the relevant time was working at the post of Manager (Materials Management) in the Respondent-Corporation. The Respondent-Corporation is *inter alia* engaged in the production of crude oil and natural gas in India and is a Public Sector Undertaking (PSU). On 4th August 2001, the Petitioner received a chargesheet memorandum of even date, alleging certain irregularities in the purchase of certain items in the year 1991, while the Petitioner was working as a Superintendent Engineer (Mechanical). The aforesaid chargesheet was issued to the Petitioner after more than 10 years from the date of the alleged irregularity committed by the Petitioner, and the primary allegation in chargesheet was that when the Petitioner was posted as a Superintendent Engineer (Mechanical) in the Tripura project in Agartala, he had allegedly initiated a proposal for purchase of spare parts of Caterpillar Engine, without there being any real urgency, ignoring the instructions in the matter of such purchase, and as a consequence thereof he had proposed purchase of spares in excess than the actual requirement. It is the Petitioner's contention that prior to the aforesaid purchase, the Petitioner had properly put up a proposal for the purchase of the spare parts of Caterpillar Engines to the Head of the Technical Business Group (TBG) at Agartala on 23rd August 1991, and the head of the TBG had endorsed in his own handwriting that the subject spares were required urgently, and the earlier exercise done to identify the suppliers could be done again. The aforesaid proposal was also approved by the General Manager (Project) on 2nd September 1991 as a special case, and due to the urgency the same was expedited, since the spares were required for drilling

purposes. It is the Petitioner's contention that all the requisite permissions and approvals were in place before the purchase of the aforesaid spare parts of Caterpillar Engine was made.

ii. The Petitioner by a reply dated 13th September 2001 denied all the allegations made in the chargesheet, and the said reply was titled as the defense statement of the Petitioner. In the aforesaid defense statement, the Petitioner had extensively, with reference to the record and documents, pointed out that there was no irregularity in the said purchase contract as alleged in the chargesheet, and in fact everything was done as per procedure in the given circumstances with the necessary approvals of the necessary authorities. The Petitioner therefore submitted that no misconduct had been committed by him, and he should not be held guilty of the charges levelled against him. The Petitioner in continuation of the said defense statement wrote another letter dated 28th September 2001, wherein the Petitioner enclosed copies of 10 documents relating to the said purchase which would go to prove that the Petitioner was not liable for any of the charges as made out in the chargesheet. It is the Petitioner's contention that though the aforesaid documents were on record, the chargesheet proceedings continued, and the same proceedings were vitiated on account of the non-consideration of documents submitted by the Petitioner.

iii. On 14th November 2003, the Petitioner filed his defense brief in the disciplinary inquiry conducted against him. It is the Petitioner's contention that there was an inordinate delay in the commencement of the hearing. Further, the listed documents were not supplied to him by the Presenting Officer. The

Petitioner also submitted that several defense documents, which he had specifically requested by his letter dated 9th April 2002, were not furnished. Consequently, his ability to effectively defend himself was seriously hampered, and grave prejudice was caused to him due to the non-supply of these vital documents.

iv. It is further the Petitioner's contention that in the course of the inquiry, only 5 out of 8 prosecution witnesses were examined. According to the Petitioner, no substantive evidence was brought on record by the Respondent-Corporation to establish that any of the charges levelled against him were proved. The Petitioner asserts that none of the witnesses examined on behalf of the Respondent-Corporation supported the allegations, and on the contrary, the evidence on record indicated that the Petitioner was not guilty of the charges as set out in the chargesheet.

v. Upon conclusion of the inquiry, the Petitioner submitted his defence brief dated 14 November 2003, reiterating, *inter alia*, the issue of an inordinate delay of approximately 10 years in the issuance of the chargesheet, as well as the failure to supply vital documents necessary for him to effectively present his defence.

vi. On 27th November 2003, the Inquiry Officer submitted his report to the then Chairman and Managing Director (CMD) of the Respondent-Corporation. In the said report, the Inquiry Officer held that the charges against the Petitioner were partly proved, primarily on the ground that the spares had been purchased in excess quantity. The Petitioner contends that this finding is erroneous, as it overlooks the fact that the original proposal for purchase of spares for four Caterpillar Engines had been reduced by the competent authority at the relevant time, namely the

Head of TBG Agartala, to the purchase of spares for only two Caterpillar Engines. The spares were, in fact, procured to meet emergent requirements and to ensure the uninterrupted functioning of the Respondent-Corporation.

vii. Post the inquiry report dated 27th November 2003, the then CMD of the Respondent-Corporation issued a memorandum dated 16th March 2004 to the Petitioner, informing him that he disagreed with the findings of the Inquiry Officer, and called upon the Petitioner to show cause as to why all the charges should not be held as fully proved against him. The Petitioner submits that the inquiry report and the memorandum of disagreement dated 16th March 2004 were furnished to him simultaneously. It is the Petitioner's contention that the said memorandum of disagreement was issued by the then CMD of the Respondent-Corporation without due reference to the allegations in the chargesheet, the evidence on record, or the reasoning of the Inquiry Officer.

viii. In response to the aforesaid memorandum of disagreement, the Petitioner submitted his reply dated 6th April 2004, contending that the disagreement expressed by the then CMD of the Respondent-Corporation was neither proper, nor sustainable, and ought to be withdrawn. The Petitioner further pointed out that certain evidence sought to be relied upon against him had either been removed or destroyed, and that important file notings pertaining to the earlier proposal dated 31st December 1990 were missing at the time of the inquiry proceedings. The Petitioner specifically stated that these file notings had been referred to by Defence Witness No. 5, Mr. P.K. Das, who was the Vigilance Officer at the relevant time. The Petitioner thus contended that the entire proceedings were

vitiated by bias, and that relevant documents had been deliberately withheld from him with the intent to prejudice his defence and to hold him guilty.

ix. Thereafter, upon receipt of the Petitioner's reply, the Disciplinary Authority (the then CMD of the Respondent-Corporation) proceeded to pass an order dated 10th August 2004 (impugned order), imposing the penalty of compulsory retirement upon the Petitioner. It is the Petitioner's contention that the impugned order is wholly without any valid reasons. The order merely reproduces the allegations set out in the chargesheet and does not disclose any reasoning whatsoever for the conclusions arrived at. The Petitioner submits that the impugned order is a non-speaking order, as it neither records findings as to which charges have been proved, nor sets out any basis for holding the Petitioner guilty of any specific lapse, illegality, or misconduct, so as to justify the imposition of the said penalty.

x. Aggrieved by the impugned order dated 10th August 2004, the Petitioner preferred an appeal before the Appellate Authority, i.e., the Board of Directors of the Respondent-Corporation, by way of an Appeal Memo dated 25th September 2004. In the said appeal, the Petitioner challenged the impugned order on the ground that it was arbitrary and passed in violation of the principles of natural justice and established procedure. The Petitioner also assailed the findings of both the Inquiry Officer and the Disciplinary Authority and prayed that he be exonerated of all charges and reinstated in service with all consequential benefits.

xi. After the filing of the aforesaid appeal, the Appellate Authority, i.e., the Board of Directors of the Respondent-Corporation, by its order dated 13th April

2006 (Appellate Order), modified the penalty of compulsory retirement imposed by the Disciplinary Authority. In substitution thereof, the Appellate Authority imposed the penalty of “reduction to a lower grade/post, with a bar on promotion to the grade/post from which he has been reduced.” By the said order, the Appellate Authority further directed that the period from 10th August 2004, being the date of the impugned order of compulsory retirement, till the date of reinstatement of the Petitioner, shall be treated as “dies non” for all purposes.

3. It is in the backdrop of the aforesaid facts that the Petitioner has filed the present Petition, *inter alia*, challenging the impugned order dated 10th August 2004 passed by the Disciplinary Authority and the Appellate Order dated 13th April 2006. The Petitioner has further prayed for grant of all consequential service benefits, including continuity of service, restoration of seniority, due promotions, full back wages, proper pay fixation, and all other admissible benefits. The Writ Petition was admitted by an order of this Court dated 21st November 2007.

4. Learned counsel Mr. Ramesh Ramamurthy, along with Mr. Saikumar Ramamurthy and Mr. Aalim N. Pinjari, appeared on behalf of the Petitioner. Mr. Oduvil Mohandas, along with Mr. J.P. Kapadia, appeared on behalf of Respondent Nos. 1 to 3.

5. We have perused the papers and proceedings with the assistance of the learned counsel for the parties and proceed to decide the present Petition.

6. Mr. Ramamurthy, has primarily contended that the entire proceedings culminating in the finding of guilt against the Petitioner are arbitrary and vitiated,

as they were initiated and conducted in breach of the established procedure of law.

His submissions may be summarized as follows:

(i) It was submitted that the chargesheet dated 4th August 2001, issued in respect of an alleged incident of September 1991, is *ex facie* unsustainable in law on account of an unexplained delay of nearly 10 years in its issuance, despite the fact that the alleged incident was within the knowledge of the Respondent-Corporation's management. It is submitted that this issue of inordinate delay, although specifically raised by the Petitioner during the inquiry proceedings, was not considered or dealt with by the Inquiry Officer, the Disciplinary Authority, or the Appellate Authority. Such unexplained delay, it was urged, vitiates the entire inquiry proceedings and the consequential orders, which are therefore liable to be quashed and set aside on this ground alone.

(ii) It is next submitted that the memorandum of disagreement dated 16th March 2004 is wholly unsustainable, as it does not disclose any independent reasoning or application of mind. According to the Petitioner, the said memorandum fails to refer to the specific allegations in the chargesheet, the evidence on record, or the findings and reasoning of the Inquiry Officer. It was contended that the Petitioner's reply to the said memorandum, as well as the defence raised in his defence brief, were not duly considered.

(iii) Learned counsel for the Petitioner submitted that the disagreement appears to have been recorded arbitrarily, and without any rationale, reflecting a predetermined intent on the part of the Disciplinary Authority to hold the Petitioner guilty. It was urged that the memorandum of disagreement merely

reproduces the charges, without furnishing any cogent reasons for disagreeing with the Inquiry Officer or for proposing to hold all charges as fully proven. This, according to the Petitioner, demonstrates that the matter was prejudged, thereby causing serious prejudice to the Petitioner and adversely affecting his career.

(iv) It is further submitted that the representation submitted by the Petitioner in response to the Inquiry Officer's report, along with the reasoning set out therein, was completely ignored by the Disciplinary Authority while imposing the penalty of compulsory retirement by the impugned order dated 10th August 2004. It was contended that neither the Inquiry Officer, nor the Disciplinary Authority, had duly considered the evidence as specifically pointed out by the Petitioner. On the contrary, it was alleged that the relevant material was deliberately excluded from consideration, to the prejudice of the Petitioner, thereby adversely affecting the fairness of the inquiry proceedings.

(v) Learned Counsel for the Petitioner submitted that the entire process is vitiated by mala fides on the part of the Disciplinary Authority. It was urged that the findings in the Inquiry Report, as well as the basis of the memorandum of disagreement, rest on mere conjectures and surmises, without any substantive evidence on record to support the charges.

(vi) It was finally submitted that the Disciplinary Authority, in the impugned order dated 10th August 2004, has not recorded any categorical finding as to whether the charges against the Petitioner were partly or fully proved. The impugned order merely narrates the background of the disciplinary proceedings and reproduces the charges levelled against the Petitioner, without setting out any

reasons or conclusions justifying the imposition of the penalty of compulsory retirement. The order, therefore, is a non-speaking order and unsustainable in law.

(vii) Learned counsel for the Petitioner accordingly submitted that the impugned order dated 10th August 2004, as well as the memorandum of disagreement dated 16th March 2004, and further the Appellate Order dated 13th April 2006 are liable to be quashed and set aside, and that the Petitioner ought to be reinstated in service with full consequential benefits. It was also submitted that the Appellate Order has also been passed without appreciating the facts of the case and does not take into consideration the evidence placed on record. Learned Counsel for the Petitioner also sought to place reliance on case-laws in support of the above submissions, which we shall deal with/discuss later.

7. *Per contra*, learned counsel Mr. Mohandas, appearing on behalf of the Respondents, submitted that the impugned order dated 10th August 2004, the memorandum of disagreement dated 16th March 2004, as well as the Appellate Order dated 13th April 2006, are well-reasoned and have been passed strictly in accordance with the ONGC Conduct, Discipline and Appeal Rules, 1994 (hereinafter referred to as the CDA Rules).

8. Learned counsel further submitted that insofar as the delay in issuance of the chargesheet is concerned, the same has been duly explained. It was contended that it was only on 27th February 1997 that the then CMD of the Respondent-Corporation received a “Secret – Most Immediate” communication from the Ministry of Petroleum and Natural Gas (MoPNG), enclosing a self-contained note pertaining to the procurement of spare parts for Caterpillar Engines in the year

1991, and seeking urgent para-wise comments on the said note.

9. Learned Counsel for the Respondents further submitted that thereafter, by a letter dated 2nd April 1997, the then CMD of the Respondent-Corporation informed the MoPNG that the matter had been referred to the Vigilance Department for investigation, and that its report, along with para-wise comments, was awaited. It is submitted that subsequently, on 20th December 2000, the Central Vigilance Commission, Government of India, issued an Office Memorandum to the Chief Vigilance Officer of the Respondent-Corporation, recommending initiation of a suitable inquiry against the Petitioner for the alleged lapses on his part. Pursuant thereto, the chargesheet came to be issued to the Petitioner in the year 2001.

10. Learned counsel for the Respondents further submitted that the order passed by the Appellate Authority dated 13th April 2006 is in consonance with Rules 45, 46, and 51 of the CDA Rules. It was also contended that the penalty of reduction to a lower grade/post, with a bar on promotion to the higher grade/post from which the Petitioner was reduced, falls squarely within the ambit of Rule 34(vi) of the CDA Rules, which prescribes major penalties.

11. Learned counsel for the Respondents has placed reliance on the affidavit in reply dated 20th June 2009 filed by Mr. Dayanand Kalundia, Deputy Manager (HR) of the Respondent-Corporation, in support of the aforesaid contentions. In the aforesaid affidavit, it was submitted that it was not correct on part of the Petitioner to cast aspersion on the then CMD of the Respondent-Corporation that he was in practice of issuing chargesheets on untenable or frivolous grounds to

honest officers and that the Petitioner was being victimised. It was further submitted that there was no urgent need to purchase spare parts of caterpillar engines as suggested by the Petitioner for the Agartala Project. It was also submitted that the Petitioner did not properly place orders from the authorised dealer, M/s TIL Calcutta, for the procurement of the spare parts, in spite of specific instructions in HQRS's Circular No. MAT/PMC/13(34)/1.90 dated 4th January 1990, which specified that Caterpillar Engine spare parts were to be procured from Overseas Suppliers, i.e., Caterpillar (Far East) Singapore, for which M/s. TIL Ltd. was the Authorised Dealer. It was therefore submitted that the purchases from M/s Diesel Spare Supplies by the Petitioner were not authorised, and further there was no requirement and use of the spare parts of Caterpillar Engines at the relevant site in Agartala.

Analysis & Conclusions :

12. Having heard the learned counsel for the parties, and upon perusal of the record, at the outset we may observe that the present case is one of a nature, in which there has been a gross and unexplained delay in initiating disciplinary proceedings against the Petitioner. The chargesheet came to be issued in the year 2001 in respect of an alleged misconduct of the year 1991. Such inordinate delay in our view, vitiates the entire proceedings, particularly in the absence of any cogent or plausible explanation from the Respondents justifying the delay in initiating the action.

13. Further, the charges as set out in the chargesheet are ambiguous, uncertain and vague in regard to the alleged misconduct attributable to the Petitioner after

such long lapse of time, in relation to the procurement of spare parts for Caterpillar Engines. The fact that the chargesheet pertains to a transaction/order placed as far back as in the year 1991 reinforces the conclusion that the very foundation of the inquiry is shaky and/or uncertain. For ease of reference, the contents of the chargesheet are reproduced below:-

CONFIDENTIAL

**OIL & NATURAL GAS CORPORATION LIMITED
TEL BHAVAN: DEHRADUN**

No. 8/1/2001-Vig. 1994

Dated: 4.8.2001

MEMORANDUM

.....
.....
.....

**ARTICLE OF CHARGES FRAMED AGAINST SHRI
R.P. BHARDWAJ, CHIEF MANAGER(MM), ONGC, BARODA**

Shri R P Bhardwaj, while posted & functioning as SE(Mech), ONGC, Tripura Project, Agartala, during the year 1991 committed misconduct in as much as under:

1. That, Sh. R P Bhardwaj the then SE(Mech) with ulterior motive manipulated the purchase of a large number of spare parts of Cater Pillar Engines which was much higher than the real necessity for urgent use and thus caused pecuniary loss to the company.
2. That, Sh. R P Bhardwaj, the then SE(Mech) knowingly with ulterior motive showed acute urgency in his proposal to purchase the spare parts of Cater Pillar Engines in order to procure the same through board purchase ignoring the normal purchase procedure.
3. That, Sh. R P Bhardwaj, the then SE(Mech) while initiating the proposal for the purchase of spare parts of Cater Pillar Engines and being one of the board members has knowingly ignored and violated the circular/instructions dated 4.1.90 issued by HQRS., by not purchasing the above mentioned spare parts from authorised dealer though as per the said circular user of Cater Pillar engines has to purchase spares only from

authorised dealers mentioned in the circular.

He, therefore, has committed misconduct. He failed to maintain absolute integrity and devotion to duty. He has acted in a manner which was not becoming of an employee of the company. He committed dishonesty in connection with the business or property of the Company. He has shown negligence with ulterior motive in performance of his duty. He has willfully ignored and violated the provisions of the normal purchase procedure and circular/instructions of the Company. His above acts are prejudicial to the interest of the Company.

He, thereby, has contravened the provisions of rule 4(1)(a, b & c) read with Sl.No.3,5,30 & 32 of of schedule II of ONGC CDA Rules, 1994.

Disciplinary Authority
Chairman & Managing Director
(emphasis supplied)

14. On a bare perusal of the contents of the charge-sheet, it is our view that the aforesaid situation is one of '*Res ipsa loquitor*', in as much as the document itself goes to show that the charges against the Petitioner are vague and unsubstantiated. They are of the nature which do not set out any role of the Petitioner and only alleged that the Petitioner had an ulterior motive and manipulated the purchases of a large number of Caterpillar Engines which was much higher than the real necessity to do so. Therefore, the said charges against the Petitioner could not be sustained.

15. We also find merit in the next contention made on behalf of the Petitioner that in response to the chargesheet, the Petitioner had furnished a list of documents in support of his defence to demonstrate that the charges were baseless. However, it appears that these documents were neither duly considered, nor appreciated in their proper perspective by the Inquiry Officer.

16. A perusal of the inquiry report indicates that the Inquiry Officer himself did not hold the charges to be fully proved and, in fact, failed to record any clear and definitive finding as to how even partial culpability could be attributed to the Petitioner. In respect of charge No. 2, the Inquiry Officer observed that, on appreciation of the evidence, only a minor part of the charge could be said to be established. The Inquiry Officer further noted that the role attributed to the Petitioner in the procurement process was not of such a nature as to singularly fasten liability upon him, and that other officials were also involved in processing and approving the transaction. Consequently, the charge, in its entirety, stood diluted in light of the surrounding circumstances as recorded in the inquiry report. We cannot re-appreciate the evidence to come to a different conclusion as held by the Inquiry Officer, therefore the Inquiry Officer's report which holds that the charges are partly proved cannot be a case of, whether on such charge it is a case of 'no evidence'. Even otherwise on the test of 'preponderance of probabilities' it cannot be said that the charges were proved against the Petitioner. Further, for ease of reference, the relevant charges and the final finding on each of the charges in the inquiry report are reproduced below:-

ASSESSMENT OF EVIDENCE:

There are three part of the charge against Shri R.P. Bhardwaj:

- i. That he manipulated the purchase of large number of spare parts of Cater Pillar Engines which was much higher than the real need for immediate use and thereby caused financial loss to the ONGC;

Finding-

Even if margin is given to his argument the spares were urgently required, it is possible that only some of them might have been used on their receipt but in the face of two statements which were being prepared in 1995 as per the evidence of Shri Tarali it cannot be said that all the spares had been utilized within the time frame given by

the charged officer. As regards the material at site account statement for the year 1992-93 & 1993-94 which the charged officer has asked for but the same were not made available to him though permitted, their relevance loses weight in the face of the statements of Exh. P-1. On the basis of what has been analyzed above, this part of the charge seems to have some force

- ii. That he with ulterior motives and knowingly showed acute urgency in his proposal to purchase the spare parts of Cater Pillar Engines in order to procure the same through the Board purchase instead of following the normal purchase procedure; and

Finding-

In totality, the defence put up by the charged officer can only be taken as partly correct as it is not wholly corroborated by reliable evidence. It cannot therefore be held tenable completely. This part of the charge is therefore correct to a minor extent

- iii. That he as one of the members of the Board knowingly ignored and violated the instructions contained in the circular dated 4.1.1990 of the Headquarter office by not purchasing the spare parts of the Cater Pillar Engines from the authorised dealers whereas circular dated 4.1.1990 enjoined that such spare parts should be procured from the authorised dealer.

Finding-

The third part of the charge against Shri Bhardwaj is that he knowingly ignored and violated the circular/instructions dated 4.1.90 from Hqr. Office by not purchasing the above mentioned spare parts from authorised dealer which was obligatory on the part of the users of cater pillar engines. Thus the part played by Shri Bhardwaj in the deal as a whole was no doubt not very enviable but others also fell in line to put through the deal. Therefore the charge, in totality, against him stands toned down to some extent because of the circumstances narrated above

17. We are further of the view that the memorandum of disagreement dated 16th March 2004 has been issued without due reference to the evidence on record or the findings recorded in the inquiry report. While disagreeing with the conclusion of the Inquiry Officer that the charges were not fully proved against the Petitioner, the Disciplinary Authority has failed to record any independent findings or reasons to justify holding the charges as fully proved. The disagreement note, in our view,

appears to have been issued in a mechanical manner, merely to conclude that the charges stood fully established, without any proper application of mind.

18. Barring reproducing evidences on which the Inquiry Officer had placed reliance on to come to the conclusion that the charges were not fully proved, the memorandum of disagreement only appears to have taken another view on the same evidence. The disagreement memo nowhere records that the Inquiry Officer has not taken into consideration the evidence on the basis of which he came to the conclusion that the charges were partly proved. It was not a case of nonappreciation of evidence on the part of the Inquiry Officer which the disagreement memo seeks to disagree with or hold. In fact, the Inquiry Officer has categorically held that the charges stand partly proved inasmuch as the Petitioner was not the only person who was involved in the purchase of the aforesaid spare parts of Caterpillar Engines, but others in the Respondent-Corporation also actively contributed in the decision-making process. We are therefore of the view that the memorandum of disagreement has been passed/issued without any independent application of mind.

19. We are also in agreement with the submission advanced on behalf of the Petitioner that the impugned order dated 10th August 2004, passed by the Disciplinary Authority, does not disclose any reasons as to why the penalty of compulsory retirement was imposed upon the Petitioner. The said order does not record any findings of guilt, nor does it indicate the basis for invoking Rule 34(vii) of the CDA Rules. There is a complete absence of reasoning to support the imposition of such a major penalty, rendering the order unsustainable in law. The

relevant contents of the order of the Disciplinary Authority are reproduced below:-

OIL & NATURAL GAS CORPORATION LTD.
TEL BHAVAN : DEHRADUN

No. 8/01/2001-Vig

Dated:10.08.2004

ORDER

WHEREAS, charge Shri R.P. Bhardwaj. Chief Manager (MM), ID No-26190, ONGG Mumbai 36 of ONGC, sheeted CDA vide Memorandum No. 8/1/2001-Vig dated 04.08.01 under Rule Rules, 1994.

Whereas, Shri R.P. Bhardwaj submitted his written statement of defence dated 13.09.2001 & 28.09.2001 against the said memorandum dated 04.08.01.

Whereas, Shri Lachhman Singh was appointed as the Inquiry Officer vide order No. 8/01/2001-Vig dated 03.11.2001 to enquire into the charges leveled vide memorandum No. 8/1/2001-Vig doted 04.08.01 under ONGC, CDA Rules, 1994.

Whereas, the Inquiry Officer submitted his report dated 27.11.2003.

Whereas, the note of disagreement of CDA with the findings of Inquiry Officer and the report of enquiry was provided to Shri R.P.Bhardwaj vide memorandum no. 3/01/2001-Vig dated 16.03.04 under Rule 37(3) of ONGC (CDA) Rules 1994.

Whereas, Shri R.P. Bhardwaj submitted his representation dated 12.04.04 to the said memorandum dated 16.03.04.

Whereas, the undersigned, being his Disciplinary Authority, has carefully examined his representation dated 12.04.04 and has also gone through the records, facts and circumstances of the case and find that Shri R.P.Bhardwaj, with ulterior motive. manipulated the purchase of large number of spare parts of Cater Pillar Engines which was much higher than the real necessity for urgent use thereby causing pecuniary loss to the Company. He, also knowingly with ulterior motive, showed acute urgency in his proposal to procure the subject spares through Board Purchase ignoring the normal purchase procedure. Further, he violated the circular/instructions dated 94.01.90 issued by Head Quarters by not purchasing the spores from authorized dealer

Thus, the undersigned has come to the conclusion that Shri R.P Bhardwaj is not a fit person to be retained in the service of the Company.

Now Therefore, the undersigned being the Competent disciplinary Authority hereby imposes the major penalty of "Compulsory Retirement specified under Rule 34(vii) of ONGC, Conduct Discipline and Appeal Rules 1994, on Shri R P Bhardwaj, with immediate effect.

CHAIRMAN & MANAGING DIRECTOR

Shri RP Bhardwaj Chief
Manager (MM),ID No. 26190
ONGC, Maker Towers,
Mumbai

Through
The Chief-Engineering services

(emphasis supplied)

20. Further, the Appellate Order dated 13th April 2006, passed by the Appellate Authority of the Respondent Corporation, whereby the penalty of compulsory retirement was modified to that of “reduction to a lower grade/post with a bar to promotion to the grade/post from which the Petitioner was reduced,” also suffers from the same infirmity. The Appellate Authority has failed to consider the material on record, including the documents and evidence relied upon by the Petitioner, and has not recorded any independent findings while modifying the penalty. The said order, therefore, cannot be sustained. For ease of reference, the relevant contents of the Appellate Order are reproduced below:-

**OIL & NATURAL GAS CORPORATION LTD.
TEL BHAVAN : DEHRADUN**

NO.16(168)/76 - E.I

Dated:10.08.2004

ORDER

Whereas, Shri R.P. Bhardwaj, Ex-Chief Manager(MM), ID No. 26190, while posted at ONGC Mumbai was charge Sheeted vide Memorandum No.8/1/2001 dates 04/08/2001, under Rule 36 of ONGC CDA Rules - 1994.

Whereas Shri R.P. Bhardwaj submitted his written statement of defence dated 13/09/2001 & 28/09/2001 against the said memorandum dated 04/08/2001.

Whereas Shri Lachman Singh was appointed as the Inquiry Officer, vide order No.8/01/200f - Vig. Dated 03/11/2001 to inquire into the charges leveled, vide Memo No.8/1/2001 dated 04/08/2001, under ONGC-CDA

Rules-1994.

Whereas, the Inquiry Officer submitted his report dated 27/11/2003.

Whereas, the note of disagreement of CDA with the findings of Inquiry Officer and the report of Inquiry was provided to Shri R.P. Bhardwaj, vide memorandum No.8/01/2001-Vig. Dated 16/03/2004, under Rule 37(3) of ONGC CDA Rules - 1994.

Whereas, Shri R.P. Bhardwaj submitted his representation dated 12/04/2004 the said memorandum dated 16/03/2004.

Whereas, the Disciplinary authority carefully examined his said representation dated 12/04/2004 and going through the records, facts and circumstances of the case and imposed the major penalty of "Compulsory retirement" from service, as specified under Rule 34(vii) of ONGC-CDA Rules-1994, with immediate effect, vide order No.8/01/2001 dated 10/08/2004.

Whereas, Shri R.P. Bhardwaj, submitted an Appeal dated 25/09/2004 addressed to Appellate authority, the Board of Directors of ONGC Limited.

Whereas, the Board having gone through the records, inter-alia Inquiry report and documents referred therein, as well as the Appeal dated 25/09/2004 of Shri R.P. Bhardwaj, has considered the said Appeal of Shri R.P. Bhardwaj, in its meeting held on 23/12/2005 and has decided to withdraw the penalty of "Compulsory Retirement" and instead decided to impose the penalty of "Reduction to a lower grade/post with a bar to promotion to the grade/post from which he has been reduced"

Now therefore, instead of the Penalty of Compulsory Retirement, the Board of Directors of ONGC has decided to impose the Penalty of "Reduction to a lower grade/post with a bar to promotion to the grade/post from which he has been reduced". The period of his absence of duty from 10/08/2004 to the date he joins the service of ONGC will be treated as dies-non, for all purposes.

The Board of Directors of ONGC hereby directs accordingly. The decision of the board is hereby conveyed to Shri R.P. Bhardwaj.

Shri R.P. Bhardwaj,
B-201, Techno Park-II
Thakur Village Kandivali (East)
MUMBAI-400 101

CHIEF-EMPLOYEE RELATIONS

21. We are also of the view that in the inquiry report, the disagreement note, the impugned order dated 10th August 2004, and the Appellate Order dated 13th April 2006 no ingredient of misconduct as enumerated in Schedule II of the CDA Rules

has been specified. It has also not been clarified in any of the aforesaid orders as to which act falling under the “acts and omissions constituting misconduct”, as enumerated in Schedule II as per rules 3(j) of the CDA Rules covers the alleged misconduct by the Petitioner. For reference Rule 3(j) of the CDA Rules and Schedule II annexed to the CDA Rules are reproduced below :-

3. DEFINITIONS:

In these Rules, unless the context otherwise requires:

(j) “Misconduct” without prejudice to the generality of the term 'Misconduct' and the specific provisions made in these Rules, includes acts and omissions specified in the Schedule II annexed to these Rules.

SCHEDULE II

ACTS AND OMISSIONS CONSTITUTING MISCONDUCT

(See Rule 3(j))

1. Insubordination or disobedience, either alone or in combination with others of any lawful order of a superior.
2. Use of insolent or impertinent or unparliamentary language in any official correspondence or in any representation including appeal.
3. Bribery, illegal gratification, sabotage, damage, theft, fraud or dishonesty in connection with the business or property of the Company.
4. Furnishing false information regarding name, age, father's name, qualification, ability or previous service or any other matter germane to the employment, at the time of employment or during the course of employment.
5. Habitual late attendance or irregular attendance, neglect of duty, sleeping while on duty under any pretext whatsoever, malingering, wilful or habitual absence from duty, absence without leave, overstaying the sanctioned leave without sufficient cause, or absence from the appointed place of work without permission or sufficient cause.
6. Approaching higher authorities for promotion or any other personal favour or gain through other people.
7. Spreading false rumours or giving false information which tends to bring into disrepute the Company or its employees or spreading panic among them.
8. Gambling within the premises of the establishment.
9. I. Sexual harassment of woman at workplace.
II. Commission of any act subversive of discipline or of good behaviour.
10. Disclosing to any unauthorised person or persons any information in regard to the working or process of the Company which comes into the possession of the employee during the course of his work.
11. Carrying on money lending, canvassing in support of the business or insurance agency, commission agency etc. owned or managed by his spouse or any other member of his family or engaging in any trade or business without taking permission of the Competent Authority.
12. Habitual indebtedness or insolvency.
13. Writing of anonymous or pseudonymous letters or associating oneself in writing such letters.
14. Striking work alone or in combination with other employees, or inciting them to strike work in contravention of the provisions of any law or rules having the force of

law.

15. Shouting of defamatory or disrespectful slogans or issuing or distributing pamphlets and hand bills or levelling malicious or false allegations.
16. Threatening, intimidating, abusing, or assaulting any employee of the Company.
17. Drunkenness, riotous or disorderly or indecent behaviour in the premises of the Company or outside such premises, where such behaviour is related to or connected with the employment.
18. Commission of any act which amounts to criminal offence involving moral turpitude.
19. Causing wilful damage to the work in progress/process or any property or asset of the Company or of property of another person within the premises of the Company either wilfully or through negligence.
20. Refusal to accept, warning/ notice/ charge sheet/memo or any other communication issued by the Management.
21. Breach or violation of any "Terms and Conditions" relating to occupation of residential accommodation provided by the Company or taking possession/refusal to vacate any of its premises owned/hired when required by the Company to do so.
22. I. Interference or tampering with any safety device installed in the premises. II. Any deliberate violation/bypassing of laid down safety practices/equipment.
23. Smoking within the premises of the establishment, or using naked lights, where it is prohibited.
24. Possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person, which the employee cannot satisfactorily account for.
25. Misuse of any advance or non-compliance with the provisions or the rules for grant of any advance.
26. Collection without the permission of the competent authority of any money within the premises of the Company except as sanctioned by any law of the land for the time being in force or rules of the Company.
27. Publication of any article, journal, paper or book on any subject prejudicial to the Company or connected with any work of the Company without the prior permission of the competent authority.
28. Possession of any lethal weapon in the Company premises or within its precincts without the prior permission of the competent authority.
29. Conviction in any court of law for any criminal offence.
30. Acting in a manner prejudicial to the interest of the Company.
31. Any act or omission punishable under the Law.
32. Breach of any Rules applicable to the Company.
33. Abetment of or attempt at abetment of any act which amounts to misconduct.
34. Any violation of the code of internal procedures and Conduct for prevention of insider trading in dealing with the securities of Oil and Natural Gas Corporation by the designated employees.
35. Misconduct committed by an employee in the previous or earlier employment if such misconduct was of such nature as has a rational nexus with his present employment and renders him unfit and unsuitable for continuance in service.
36. Using official E-Mail, Internet or other Electronic Equipment or facilities provided by the Company including OR.NET etc. in violation of the "Netiquette" guidelines of the Company.
37. Desertion from duty against the Service Rules, unauthorized absence from duty in any manner or not performing duties.
38. Any violation of the code of internal procedures of insider trading provisions and SEBI (Prohibition of Insider Trading) Regulations, 1992 by any designated employee.

Note 1: The above are only illustrative and not exhaustive acts/omissions.

Note 2: Executive instructions vide Schedule III may also be referred to.

22. We are therefore of the considered view that the Respondent-Corporation has failed to make out any case warranting the imposition of the penalty of compulsory retirement upon the Petitioner, and the subsequent penalty affecting his promotion prospects. We are not inclined to accept the submissions advanced on behalf of the Respondent-Corporation that the penalties imposed are in consonance with the CDA Rules. We are also of the firm view that the inordinate delay in initiating disciplinary proceedings in the year 2001 against the Petitioner for an alleged violation in the year 1991, goes to the very root of the matter and that by itself vitiates the subsequent orders and actions taken against the Petitioner. We also find the explanation offered by the Respondents for the inordinate delay in issuing the chargesheet namely, in the year 2001 for an alleged act of the year 1991 to be wholly unsatisfactory and devoid of merit. The reasons as submitted for the delay in initiating disciplinary proceedings against the Petitioner do not inspire any confidence and only go to show that a rather bureaucratic approach was adopted on the part of the Respondent – Corporation. Further the alleged misconduct on the part of the Petitioner was also taken note of by the Respondent-Corporation after a lapse of 6 years and action thereon was taken after a further period of 4 years, thereby showing that the delay was gross.

23. We are further of the view that the decisions relied upon by learned counsel on behalf of the Petitioner are apposite to the facts of the present case, inasmuch as there has been an inordinate delay in initiating the disciplinary proceedings against

the Petitioner, which itself demonstrates the arbitrary and high-handed approach on part of the Respondent-Corporation to take disciplinary action against the Petitioner, and thereafter imposition of the penalty by way of the impugned orders. The following decisions cited by the Petitioner, which are relevant to the facts of the present case are discussed below:

a) The Supreme Court in State of *M.P. v. Bani Singh*¹ had upheld the orders passed by the CAT, Jabalpur Bench, wherein the charge memo and departmental inquiry initiated against the Respondent- Employee had been quashed on the ground of delay of over 12 years in the initiation of the departmental inquiry, and the Respondent-Employee had been granted retrospective promotion. The Court had ruled that the irregularities which were the subject matter of the inquiry had taken place between the years 1975-77. The Court observed that it was not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987, and it was unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. The Court held that there was no satisfactory explanation for the inordinate delay in issuing the charge memo, and that it would be unfair to permit the departmental inquiry to be proceeded with at that stage. Pursuant to the aforesaid rationale, the Supreme Court had dismissed the appeals filed by the Appellant-State and upheld the orders of the CAT, Jabalpur Bench. The judgment rendered by the Supreme Court in the aforementioned case is applicable to the facts of the present case, inasmuch as in the present case also the chargesheet was

¹ 1990 Supp SCC 738

issued to the Petitioner on 4th August 2001, after a delay of nearly 10 years of the alleged misconduct that had been committed by the Petitioner.

b) In *UCO Bank v. Rajendra Shankar Shukla*², the Supreme Court while dealing with a similar issue of an enormous delay in the issuance of the chargesheet against the Respondent-Employee, had dismissed the Appeal filed by the Appellant-Bank and upheld the order of a Division Bench of the Chhattisgarh High Court. The Court, while observing that there was a delay of 7 years in issuing the chargesheet against the Respondent-employee, and that some internal discussions were going on within the Appellant-Bank, held that the fact that it took the Appellant-Bank 7 years to make up its mind is totally unreasonable and unacceptable. The Court ruled that on this ground itself, the chargesheet against the Respondent-employee was liable to be set aside, due to the inordinate and unexplained delay in its issuance. The Court also held that what compounded the default on the part of the Appellant-Bank was that the Respondent-Employee was placed in a higher category as a Manager while all these discussions were going on in the Appellant-Bank. He was also allowed to cross the efficiency bar again while the discussions were going on. The Court held that if the Appellant-Bank was serious about proceeding against the Respondent-employee for misconduct, they would not only have taken prompt action in issuing a chargesheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar. Upon perusal, the facts of the aforesaid judgement are apposite to the facts of the present

2 (2018) 14 SCC 92

case, as in both instances the chargesheet has been issued to the employees after an inordinate and inexplicable delay.

c) The Supreme Court in *R.P. Bhatt v. Union of India*³ dealt with the removal from service of the Appellant-employee on the ground that the Appellant-employee had absconded from service to evade the service of an earlier order of termination. The Appellant-employee, after being dismissed from service had preferred an appeal before the Appellate Authority, which had also been dismissed. The Appellant-employee had thereafter challenged the order of the Appellate Authority before the Supreme Court. The Supreme Court considers the judgment rendered by it in the case of *State of Madras v. A.R. Srinivasan*⁴ held that although it seems somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal, it is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons as to why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. The Supreme Court had thereafter allowed the appeal against the order of the Appellate Authority and remanded the matter back to it for consideration with due application of mind. The Inquiry Officer in the present case had framed 3 issues in the inquiry proceedings, which were all partly decided against the Petitioner through the inquiry report dated 27th November 2003. However, the Disciplinary Authority, while disagreeing with the inquiry report

3 (1986) 2 SCC 651

4 AIR 1966 SC 1827

dated 27th November 2003 and deciding the three charges against the Petitioner in totality had failed to record reasons thereto.

24. In the recent case of *Amresh Shrivastava v. State of M.P.*⁵, the Supreme Court while dealing with the issue of inordinate delay in the issuance of a chargesheet in case of departmental inquiry proceedings had held that if the alleged misconduct was within the knowledge of the Department, and yet inquiry proceedings were initiated after an inordinate delay, the proceedings would thereafter stand vitiated. The relevant paragraph of the aforesaid decision of the Supreme Court is reproduced below-

“17. As to the second question, regarding whether delay is a ground for stopping the departmental proceedings at the stage of the chargesheet itself, suffice it to say that this varies from case to case. However, in the instant case where there is unexplained inordinate delay in initiating departmental proceedings despite the alleged misconduct being within the knowledge of the department, but still no departmental proceedings are initiated, the answer must go in favour of the employee. However, there may be cases where the department was not even aware of such irregularities or the misconduct, which is of such a nature that it is indicative, based on material considerations of factors other than merit, such as extraneous influences and gratifications. In such cases, such a delay, by itself would not be a valid ground to scuttle the initiation of the process of departmental proceedings.”

25. We have also carefully perused the decisions relied upon by the learned counsel for the Respondent-Corporation in support of their contention that the penalty imposed on the Petitioner was justified. However, in our view, the said decisions are clearly distinguishable on facts and do not advance the case of the Respondents in the present matter.

5 2025 SCC OnLine SC 693

25. The following judgments were cited on behalf of the Respondents, which, in our opinion, are not applicable to the facts of the present case:

a) In *State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha and another*⁶ the issue before the Supreme Court arose in the context of the dismissal of a Private Secretary to a State Minister, against whom serious charges of misappropriation of funds had been established. The allegations were that the said Private Secretary had taken undue advantage of the ignorance and disability of the Minister and had acted in clear breach of his duties, thereby perpetrating fraud and deceit for unlawful personal gain. These findings were arrived at upon a full-fledged inquiry, wherein cogent evidence was led, and specific conclusions were recorded against the delinquent officer. In the backdrop of such established misconduct, the Supreme Court held that the High Court, in exercise of its writ jurisdiction, could not re-appreciate or re-evaluate the evidence led before the Inquiry Officer as if it were an appellate authority. It was observed that the scope of judicial review is limited to examining the decision-making process and not the merits of the decision itself. The Court reiterated that it is not open to the High Court to sit in appeal over the findings of fact recorded in disciplinary proceedings. On these principles, the Supreme Court held that the High Court had committed a grave error in reappreciating the evidence and substituting its own conclusions, as if exercising appellate jurisdiction. Consequently, the judgment of the High Court was set aside, and the matter was remanded for fresh consideration in accordance with law. In our view however the aforesaid decision is not apposite to the facts of

⁶ (2009)8 Supreme Court Cases 310

the case inasmuch as in the present case the entire decision making process itself has been arbitrary and vitiated primarily on the ground that the chargesheet itself was issued after a delay of 10 years.

b) In the case of *E.A. Singh Vs. State of Gujrat*⁷, the issue was regarding proportionality of punishment in respect of the charges made out against the Petitioner, who was a Sub-Inspector in Gujrat Police, and the charges against the Petitioner were such that the order of compulsory retirement was contended to be harsh. It is in the context of these facts that it was held that the High Court, while exercising powers of judicial review cannot normally substitute its own conclusion of penalty and impose some other penalty, and further held that the punishment imposed by the Respondents did not seem to be disproportionate to the proven charges, as the Disciplinary Authority followed all the procedural requirements, and hence rejected the arguments of the principles of proportionality. In view of the aforesaid the Gujarat High Court came to the view that this was not a fit case where interference of this Court was required under Article 226 of the Constitution of India and hence the Petition was dismissed.

c) In the case of *Union of India and Others Vs. P. Gunasekaran*⁸, the issue before the Supreme Court pertained to the integrity of the delinquent officer, who was working as a Deputy Office Superintendent in a sensitive department of the Central Excise. Upon appreciation of the material on record, both the Central Administrative Tribunal (CAT) and the Disciplinary Authority had concluded that the charges against the delinquent officer had stood proven. While the Disciplinary

⁷ 2014 SCC OnLine Guj 14772

⁸ (2015) 2 Supreme Court Cases 610

Authority had initially imposed the penalty of dismissal, the same was modified by the CAT to that of compulsory retirement. In this factual backdrop, the Supreme Court held that it was not open to the High Court, in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India, to interfere with the quantum of punishment on the ground of proportionality, so long as the punishment did not shock the conscience of the Court. The Supreme Court further held that the High Court could not reappreciate the evidence or interfere with the findings of fact recorded in disciplinary proceedings, provided that the inquiry had been conducted in accordance with law. It was observed that the scope of judicial review is limited to examining whether the inquiry was conducted by a competent authority in accordance with the prescribed procedure, whether the principles of natural justice were followed, and whether the decision was vitiated by consideration of irrelevant or extraneous material, or by exclusion of relevant evidence, or by reliance on inadmissible evidence. In view of the aforesaid principles, the Supreme Court set aside the judgment of the High Court, and upheld the order passed by the CAT, thereby allowing the appeal preferred by the Union of India. In the facts of the present case, as stated above, the entire proceedings culminating into the penalty imposed on the Petitioner are vitiated inasmuch as the same have not been carried out in accordance with law, and therefore aforesaid judgment would not apply to the facts of the present case.

d) Lastly, in the case of *B.C. Chaturvedi Vs. Union of India and others*⁹, the Supreme Court was concerned with allegations of misconduct involving possession

9. (1995) 6 Supreme Court Cases 749

of assets disproportionate to the known sources of income by the delinquent officer, who was serving as an Income Tax Officer (ITO). In that context, the Supreme Court reiterated the settled position of law that, while exercising jurisdiction under Article 226 of the Constitution of India, the High Court would not ordinarily interfere with the punishment imposed by the Disciplinary or Appellate Authority, except in cases where such punishment shocks the judicial conscience. The Court further observed that, in such exceptional circumstances, the High Court may either direct the competent authority to reconsider the quantum of punishment or, in rare cases, itself mould the relief by imposing an appropriate penalty, for cogent and recorded reasons. However, having regard to the gravity of the misconduct in that case, the Supreme Court held that no interference with the punishment was warranted. Accordingly, the appeal preferred by the delinquent officer was dismissed, the appeal of the Union of India was allowed, and the order of the Tribunal modifying the punishment was set aside, restoring the penalty imposed by the Disciplinary Authority. We are of the considered view that the aforesaid decision is clearly distinguishable on facts, and does not assist the Respondents in canvassing their submissions in the present case.

e) Lastly, in the case of *Pradeep Hiranman Kale vs The State of Maharashtra*¹⁰ the issue before a Co-ordinate bench of this Court was in the context of the dismissal/removal of the Petitioner who was a judicial officer from the government service in exercise of the powers conferred by Rule 5(1)(viii) of the Maharashtra Civil Service (Conduct) Rules, 1979. The allegations were that the Petitioner had accepted a

10 2024 SCC OnLine Bom 1214

bribe through his peon in connection with acquittal of an Accused for an offence punishable under the Protection of Children from Sexual Offences Act, 2012 (POCSO) and on the appreciation of evidence and considering that the Petitioner was a part of the judiciary, this Court was of the view that the findings of the Disciplinary Authority could not be perverse or without material on record. On the test of preponderance of probabilities, this Court agreed with the view taken by the Disciplinary Authority and found the Petitioner guilty of the misconduct as alleged and hence did not find it a fit case to exercise discretion under Article 226 of the Constitution of India. However, in the facts of the present case, as noted by us above, there has been an inordinate delay in initiating the proceedings against the Petitioner. Further, the Inquiry Report has also held that charges against the Petitioner have been partly proved, the disagreement note has been issued in a mechanical manner, and also the order passed by the Appellate Authority dated 13th April 2006 has reduced the penalty of the Petitioner from compulsory retirement to “reduction to a lower grade/post, with a bar on promotion to the grade/post from which he has been reduced.” Further on a preponderance of probabilities, the charges against the Petitioner could not be proved, and therefore the facts of the aforesaid case are distinguishable and cannot be applied in the present case.

26. In view of the aforesaid discussion, considering that the impugned order dated 10th August 2004, the memorandum of disagreement dated 16th March 2004, and the Appellate Order dated 13th April 2006 have been passed on a non-consideration of the facts of the case and the documents submitted by the

Petitioner, and for the reasons recorded hereinabove, the present Petition deserves to be allowed. We are also of the view that the Appellate order dated 13th April, 2006 in fact has reduced the penalty of compulsory retirement as held in the impugned order dated 10th August, 2004 to reduction to a lower grade/part with a bar on promotion to the grade/post from which the Petitioner was reduced, goes to further substantiate our view that the charges against the Petitioner did not stand proved on the test of 'preponderance of probabilities'. Therefore, in the merits of the case too the charges against the Petitioner could not be proved. The fact that the Caterpillar Engines were required has not been disputed, however only the method of procurement from the relevant supplier and the urgency to get the same have been called in question. These charges also have not been proved in as much as the inquiry report categorically states that the charges are partly proved and further the memorandum of disagreement also does not proceed on the basis that there was non-consideration of the evidence by the Inquiry Officer. Accordingly, the following order is passed:

ORDER

- (i) The impugned order dated 10th August 2004 passed by the Disciplinary Authority and the Appellate Order dated 13th April 2006 passed by the Appellate Authority are hereby quashed and set aside.
- (ii) The Petitioner shall be entitled to all consequential service benefits. The Petitioner is above 80 years of age, the benefits be granted to the Petitioner within a period of six weeks from today.
- (iii) Rule is made absolute in the aforesaid terms. No costs.

(iv) At this stage learned counsel for the Respondent seeks stay of this order. In the light of the above discussion, prayer for stay is rejected.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)