



IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 12TH DAY OF NOVEMBER 2014

PRESENT

THE HON'BLE MR.D.H.WAGHELA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE BUDIHAL R.B.

WRIT APPEAL No. [] /2014

C/W.

WRIT APPEAL No. [] /2014(S-DIS)

IN WRIT APPEAL NO. [] /2014

BETWEEN :

1. Chairman,
Hindustan Aeronautics Limited,
15/1, Cubbon Road,
Bangalore-560 001.
2. Mr. P. Soundara Rajan,
Aged about 61 years,
Retired Managing Director &
Disciplinary Authority,
Helicopter Complex,
Hindustan Aeronautics Limited,
Vimanapura Post,
Bangalore-560 017.

... APPELLANTS

(By Sri S.S. Ramdas, Senior Counsel
along with Sri. Abhilash Raju, Adv and
Sri. Kamalacharan S.R. Adv. for
M/s. Sundaraswamy & Ramdas, Advs.)

AND :

1. 
Bangalore-560 075.

2. Union of India,
Rep. by its Secretary,
Ministry of Defence,
DHQ P.O.
South Block,
New Delhi-110 011.

...RESPONDENTS

(By Sri , Party in person for R1,
Sri Naveen Chandrashekar, CGC for R2)

IN WRIT APPEAL NO.  /2014

BETWEEN :

1. Chairman,
Hindustan Aeronautics Limited,
15/1, Cubbon Road,
Bangalore-560 001.
2. Executive Director,
HAL Management Academy,
Suranjan Das Road,
Vimanapura Post,
Bangalore-560 017.

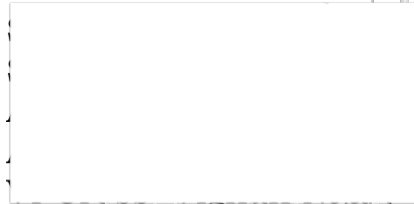
3. Executive Director,
Koraput Engine Division
Sunabeda Koraput District,
Odisha Pin-763 002.

.. APPELLANTS

(By Sri S.S. Ramdas, Senior Counsel
along with Sri. Abhilash Raju, Adv and
Sri. Kamalacharan S.R. Adv. for
M/s. Sundaraswamy & Ramdas, Advs.)

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Rep. by its Secretary,
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New Delhi-110 011.

...RESPONDENTS

(By Sri [Redacted], Party in person for R1,
Sri Naveen Chandrashekar, CGC for R2)

These writ appeals are filed under Section 4 of the
Karnataka High Court Act praying to set aside the order
passed in W.Ps. [Redacted]/2013 and [Redacted]/2012 dated
[Redacted]/2014.

These writ appeals having been reserved on
21.10.2014 and being listed for pronouncement today,
Budihal R.B., J., made the following:

C.A.V. JUDGMENT

In these writ appeals, the appellants have challenged the legality and correctness of the common order dated [] .2014 passed by the learned Single Judge, in W.P. Nos. [] /2013 and [] /2012 by which the writ petition filed in W.P. No. [] /2013 by respondent No.1 was allowed quashing the order dated [] .2013 passed by the enquiring authority, and ordering reinstatement of respondent No.1 into service with all consequential benefits with interest at 9% p.a. from the date of dismissal till the date of reinstatement. In W.P. No. [] /2012, the learned Single Judge has also quashed the transfer order dated 14.9.2012 wherein respondent No.1 was transferred from Bangalore to Koraput Division of the appellant employer ('HAL' for short).

2. Heard the arguments of the learned Senior Counsel appearing for the appellants and also the arguments of respondent No.1, who is party-in-person.

3. Learned Senior Counsel for the appellants, during the course of his arguments, made the submission that respondent No.1 was working as a Chief Manager (MS&T) at appellant company and in view of certain act of misconduct alleged to have been committed by respondent No.1, charge sheet dated 12.4.2012 (Annexure-N) was issued to him, for which, respondent No.1 submitted reply dated 15.5.2012 (Annexure-N1) denying all the allegations. The competent disciplinary authority constituted one-man committee to enquire into the charges levelled against respondent No.1, and respondent No.1 had participated in the proceedings before the enquiring authority. Though opportunity was provided to respondent No.1 to take assistance of the fellow

employees to assist him during the enquiry, he refused to take the assistance.

4. The learned Senior Counsel in his further arguments made the submission that the enquiry officer submitted report dated 15.1.2013 holding that charges 'A' and 'C' were proved and the charge at 'B' was not proved. The charges held to have been proved were as under:

“(A) The ‘Employment Questionnaire’, (at serial no. 9) was very specific with regard to availing VRS from any PSU/Govt. If so, further details with regard to the date and amount received as ex-gratia with regard to the date and amount to serial no. 9 of ‘Employment Questionnaire’ you had stated ‘Not Applicable (serving in private company)’ knowing fully well that you had taken VRS from Steel Authority of India Limited (SAIL) and drawn VRS compensation, as admissible to you. You chose not to furnish/declare the information regarding previous service, when

it was asked for. **You have thereby willfully suppressed the material fact, regarding VRS in the 'Employment Questionnaire', at the time of interview, on 09.07.2007.**

(C) You did not return the voluntary retirement benefits received from SAIL, despite having been advised by the MRO Division vide letter no. H/A/SM(HR)-MRO/95349/451/09 dt 23.01.2009. Further, in reply to another letter from SM(HR)-MRO dt 14.11.2009, reminding you to return the amount, it was informed by you that you are expecting certain clarification from IT Department. **It is understood that the amount has not yet been returned by you to SAIL, even after a lapse of more than two years.**

A copy of the enquiry report was furnished to respondent No.1 and he was asked to give reply to the enquiry report. Respondent No.1 gave reply by letter dated 7.2.2013 (Annexure-T2), which was

communicated on 4.3.2013 (Annexure-T3). The disciplinary authority, namely the Managing Director of Helicopter Division, considering the reply as also the submission made by respondent No.1, passed an order of dismissal dated 18.3.2013 (Annexure-V). Respondent No.1 challenged the said order by filing a writ petition before this Court in W.P. No.12405/2013 and the said writ petition was disposed of permitting respondent No.1 to file an appeal as per conduct, discipline and appeal rules of HAL. Being aggrieved by the order of the enquiring authority and challenging the order of dismissal as also seeking his reinstatement, respondent No.1 preferred two aforesaid writ petitions. The learned Single Judge, while allowing both writ petitions, has set aside the order of dismissal and directed the appellant company to reinstate respondent No.1 and pay backwages with interest at 9% p.a. The learned Single Judge has not at all considered the scope of enquiry in the writ proceedings wherein the order

passed by the enquiring authority was challenged. The contentions of the appellant are that learned Single Judge cannot sit as an appellate or revising authority over the order challenged in the said writ proceedings. The scope of enquiry was as to whether proper opportunity of hearing was given to respondent No.1 by the enquiring authority, and consider whether the order passed by the enquiring authority was against the principles of natural justice.

5. Learned Senior Counsel for the appellants further submitted that, on the application of respondent No.1 to the said post, the employment questionnaire was given to him containing columns to furnish the required information with regard to his previous employment and also about his voluntary retirement, but, respondent No.1 suppressed the material facts, which conduct is against the rules and accordingly, enquiry was initiated against him. He submitted that

the appellants examined four witnesses including an officer from Steel Authority of India Limited in support of the charges and produced as many as 30 exhibits and the copies of the said documents were furnished to respondent No.1. Respondent No.1 cross examined all the four witnesses and he examined himself before the enquiring authority and produced the documents. All the four witnesses examined on behalf of the appellant company before the enquiring authority have consistently deposed about the misconduct of respondent No.1, which has been rightly accepted by the enquiring authority in dismissing respondent No.1 from service. However, the learned Single Judge has not taken these aspects into consideration and passed the order which is against the provisions of law and the materials placed on record.

6. Regarding the contention of respondent No.1 that the competent authority has not initiated enquiry

proceedings and also not issued the charge sheet, the learned Senior Counsel for appellants submitted that appointment of respondent No.1 at the initial stage was at Bangalore and subsequently, he was transferred to Koraput in Orissa. Therefore, the enquiry proceedings initiated by the Bangalore Division is in accordance with law. As for the aspect of limitation, learned Senior Counsel submitted that, it is not made applicable to the enquiry proceedings. Therefore, the reasoning adopted by the learned Single Judge holding that there was no suppression of material facts, was contrary to the materials placed on record.

7. The learned Senior Counsel referred to Voluntary Retirement Scheme-2002 ((Annexure-C) and made the submission that the said document goes to show that respondent No.1 had undertaken to abide by all the terms and conditions of the said scheme and also undertaken that if he were released on voluntary

retirement, he shall not be allowed to take up employment in other public sector undertakings and if he does so, he shall have to return the voluntary retirement benefits received by him to Steel Authority of India Limited (for short 'SAIL')/Government. In spite of such undertaking and though the SAIL had addressed a letter to respondent No.1 for repayment of the amount towards VRS benefits, till today, he has not repaid the amount.

8. With regard to the contention put forth by respondent No.1 that the list of witnesses and the documents were not furnished along with the charge sheet, the learned Senior Counsel made the submission that respondent No.1 understood the charges framed, he had participated in the proceedings, cross examined all the four witnesses and he had also given his evidence. Therefore, no *prejudice* has been caused to respondent No.1, which aspect is also totally ignored by

the learned Single Judge. The observation made by the learned Single Judge that the charges were vague, was not correct as the statement of imputation furnished along with the charges is very clear and unambiguous. It is also not the case of respondent No.1 that because of the charges as alleged, he has been put into any kind of prejudice in the enquiry proceedings. The reasoning adopted by the learned Single Judge in both the writ petitions was against the materials placed on record as also the very Voluntary Retirement Scheme-2002. The enquiry proceedings, findings of the enquiry officer and the penalty imposed on respondent No.1 were in accordance with law, and hence learned Senior Counsel urged to allow the appeals and to set aside the impugned order.

9. In support of his contentions, learned Senior Counsel for the appellants relied upon the following decisions:

1. AIR 2007 SC 2793 (para 15) -
Bank of India Vs. T. Jogram
2. AIR 1996 SC 484 (paras 12, 13 & 18) -
B.C. Chaturvedi Vs. Union of India
3. AIR 2010 SC 137 (para 12) -
State of U.P. Vs. Man Mohan Nath Sinha
4. AIR 2012 SC 2250 (para 13) -
Ministry of Defence Vs. Prabash Chandra Mirdha
5. (2013) 2 SCC 740 (para 20) -
State Bank of India Vs. Narendra Kumar Pandey
6. (1996) 9 SCC 69 (para 7) -
Disciplinary Authority Cum Regional Manager Vs.
Nikunja Bihari Patnaik
7. AIR 1996 SC 484 (para 11) -
B.C. Chaturvedi Vs. Union of India
8. 1999 III LLJ (Supp) SC (para 7) -
Additional Superintendent of Police Vs. T.
Natarajan
9. AIR 2003 SC 1709 (paras 11 & 12) -
Kendriya Vidyalaya Sangathan Vs. Ram Ratan
Yadav
10. AIR 2005 SC 4292 (para 8) -
A.P. Public Service Commission Vs. Koneti
Venkateshwarlu

10. Per contra, respondent No.1 party-in-person, submitted that he has not suppressed the material facts. He submitted that when he applied to the post advertised in the appellant company, in his resume as well as in the employment questionnaire, he has furnished all the details of his previous employment in the SAIL and about voluntary retirement from the said employment. In view of those particulars furnished in the documents, it cannot be said that there was suppression of material facts. Respondent No.1 also submitted that even the testimonials which he has produced along with the application goes to show that he was serving in the SAIL earlier and that, he retired voluntarily from his previous employment at SAIL, and in spite of these things, charge sheet was issued to him by making false allegations.

11. Respondent No.1 further submitted that, according to transfer policy adopted by the appellant-

company, if an employee has continuously served the company for a period of more than 10 years at a place, he can be transferred to some other place. But in this case, after joining the appellant company, he had served only for a period of four years at Bangalore, even then, all of a sudden, he was transferred to Koraput in Orissa, with *mala fide* intention, vengeance and also to take revenge against him.

12. As to the letter addressed by SAIL to HAL regarding return of the VRS benefits, respondent No.1 submitted that he made correspondence with the SAIL in order to know the exact amount, which he has to repay/return, and that he was prepared to return the said amount to the company. But when the Court enquired as to whether he has returned the VRS benefits to SAIL at least by now, he submitted that he

has not yet returned the amount and contended that he is not liable to return the said amount to SAIL.

13. Respondent No.1 also submitted that, though he was serving at Koraput in Orissa, the enquiry proceedings were initiated and charge sheet was issued by the Bangalore Division which is against the provisions of law. It is also his contention that in the charge sheet, the particulars such as his name, place of work and the alleged misconduct, have been wrongly mentioned. He has also submitted that though the alleged misconduct took place about four years back, the appellant company kept mum for a period of four years and even his probationary period was declared as satisfactory by appellant company and subsequently, all of a sudden, charge sheet was issued against him. It is also his contention that when the charge sheet was furnished to him, the list of witnesses and all the documents, on which the appellant company wanted to

rely during the enquiry proceedings, were not furnished to him and hence, it has caused *prejudice* and because of this reason, he was not able to make out his defence properly during the enquiry proceedings. The delay in initiation of the enquiry proceedings was also taken note by the learned Single Judge and the learned Single Judge has properly appreciated the materials and rightly came to the conclusion in allowing the writ petitions. Hence, he made the submission that no illegality was committed nor was any perverse or capricious view taken by the learned Single Judge in allowing the writ petitions. He submitted that there is no merit in both the appeals and hence, they are liable to be dismissed.

14. In support of his contentions, respondent No.1 relied upon the following decisions:

1. Gouri Shankar Ghosh Hazra Vs. Hindustan Copper Ltd. & Ors. – Civil Appeal No.3740/2001

(arising out of SLP (Civil) No.17935/2000 dated 08/05/2001

2. Manu/AP/0377/2003 – 2003(4) A.L.D 609
S. Rami Reddy Vs. Vice-Chairman and Managing Director, Andhra Pradesh State Irrigation Development Corporation Limited and Ors.
(decided on 25.06.2003)
3. 2006(4) JCR 508 (Jhr) -
Binod Kumar Singh Vs. Coal India Ltd., and Ors.
4. AIR 1995 SC 1811-
L.I.C. of India & Anr. Vs. Consumer Education & Research Centre & Ors. Etc.
5. Kamal Nayan Mishra Vs. State of Madhya Pradesh and Ors. - Civil Appeal No.8317 of 2009 (Arising out of SLP (C) No.6959 of 2009) dated 07.12.2009
6. AIR 1985 SC 504 –
Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and another
7. Government of A.P. and Ors. Vs. V. Appala Swamy dated 25.01.2007 Civil Appeal No.393 of 2007 (Arising out of SLP (C) Nos.20120-20129/2005)
8. 2000(7) SCC 502 -
Prabhudayal Birari Vs. M.P. Rajya Nagrik Aapurti Nigam Ltd. dated 22.08.2000
9. 1994 SCC Supl. (2) 391 -
Managing Director ECIL Vs. B. Karunakar (II)

10. AIR 1980 SC 1717 –
Superintendence Company of India (P) Ltd. Vs. Sri
Krishan Murgai
11. ILR 2003 KAR 3066 -
G.V. Aswathanarayana Vs. Central Bank of India,
by Chairman and Ors.
12. WP. No. []/2013 (Karnataka) D.D. 11.8.2014 –
[] Vs. Union of India and another
13. Civil Appeal No.9043/2014 (Arising of Special
Leave Petition (C) No.12019/2014 – Vijay
Shankar Pandey Vs. Union of India and Another
14. AIR 1999 SC 2326 –
Commissioner of Police, Delhi and Anr. Vs. Dhaval
Singh
15. Civil Appeal Nos.316-317, 318, 324, 328, 1875
and 3002/2005, 1687/2007 and 6892/2003 and
Civil Appeal No.954/2009 (Arising out of SLP (C)
No.22300/2007 - Rajasthan State Road Transport
Corporation and Anr. Vs. Bal Mukund Bairwa

15. Regarding the first contention of respondent No.1 that the disciplinary/enquiry proceedings were initiated after lapse of five years after he joined the appellant company, and before initiation of the disciplinary proceedings, his probationary period was declared as satisfactory, the Hon'ble Supreme Court in

B.C. Chaturvedi Vs. Union of India reported in AIR 1996 SC 484, at para No.11, has laid down the proposition as under:

“The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not know to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tedious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure 1973 to collect and collate the entire evidence establishing the essential

links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise, Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution.

In Additional Superintendent of Police Vs. T. Natarajan reported in 1999(III) LLJ (Suppl) SC, at para No.7, the Hon'ble Supreme Court has held as under:

"In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings

would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen.”

In another decision in Ministry of Defence Vs. Prabash Chandra Mirdha reported in AIR 2012 SC 2250, at para No.13, the Apex Court has held as under:

“ Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent

employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings. ”

In the facts of the case on hand, respondent No.1 has pleaded only about the delay in initiation of the disciplinary proceedings. He has not revealed before the disciplinary authority what *prejudice* was caused to his interest or right due to the delay. Therefore, delay is not a ground to say that the proceedings in the disciplinary enquiry were vitiated.

16. The second contention canvassed by respondent No.1 is that the charges framed by the disciplinary authority are vague and copy of the charge sheet, the list of witnesses and the documents were not at all supplied to him and hence on that ground also, he has challenged the validity and correctness of the enquiry proceedings. In this regard, in State Bank of

India Vs. Narendra Kumar Pandey reported in (2013) 2

SCC 740, the Apex Court has held as under:

“ We are of the view that the High Court has committed an error in holding that the charge sheet should have mentioned about the details of the documents and the names of the witnesses which the bank proposed to examine and a list to that effect should have been appended to the charge sheet. We may point out that the charge sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge sheet. Of course, statement of allegations has to accompany the charge sheet, when required by the Service Rules.”

17. We have also perused the decisions, relied upon by the learned Senior Counsel for the appellants on the point of suppression of facts, which amounts to misconduct. Hence the contention of respondent No.1 that he has furnished all the particulars in his application and other documents to the appellant company before the interview cannot be accepted.

18. We have perused the decisions relied on by respondent No.1. Perusing the decision in Civil Appeal No.3740/2001 (arising out of SLP (C) No.17935/2000), the appellant in the said case had made an application for voluntary retirement, which was accepted by the respondents therein on 6.9.1995. The appellant had applied for employment in another public sector undertaking i.e., Uranium Corporation of India. After being relieved, the appellant took up a new assignment. It was thereafter, that is on 19.9.1995, the respondent Hindustan Copper Limited passed an order cancelling

the voluntary retirement on the ground that the appellant had not disclosed at the time when he had applied for voluntary retirement that he was seeking employment with another public sector undertaking. But in the case on hand, it is not so. Respondent No.1 had been already relieved from the SAIL after taking voluntary retirement and had joined HAL.

19. In Andhra Pradesh State Irrigation Development Corporation Limited's case (Manu/AP/0377/2003), the learned Additional Advocate General had denied the contention of the petitioners that the impugned notices issued to them of VRS were laced with an element of coercion. According to him, it was open for the identified surplus employees either to accept the VRS or reject it. Inasmuch as the identified surplus employees were being paid monetary benefits, the imposition of condition requiring the employees to give an undertaking that they would not seek re-

employment in government undertakings, according to the learned Additional Advocate General, was valid and suffered from no arbitrariness. At any rate, merely by giving such undertaking, the petitioners were not waiving their fundamental rights nor could there be an estoppel against the Constitution of India. But in the case on hand, respondent No.1-employee was not asked to undertake that, in case, he takes voluntary retirement, he would not seek re-employment in government undertakings. The condition imposed in the case on hand was that, in case, respondent No.1 would get an employment in a public sector undertaking, he had to return the VRS benefits which he had already received from SAIL.

20. In another decision in C.A. No.8317/2009 (arising out of SLP (C) No.6959/2009) decided on 7.12.2009, the Chief Engineer, Bansagar Project (2nd respondent) had referred the attestation for verification

of particulars. After such verification, the Deputy Inspector General of Police, Special Cell, Bhopal, by letter dated 14.7.1995, informed the 2nd respondent that appellant had furnished wrong information in regard to the queries in column No.12 of the attestation form. On receipt of such report, no show cause notice or charge sheet was issued to the appellant. The appellant continued to work. Nearly, seven years later, abruptly, the 2nd respondent issued an office order dated 7.3.2002 terminating services of the appellant forthwith for giving wrong information and concealment of facts in attestation form at the time of initial recruitment. Therefore, in the facts and circumstances, the Hon'ble Supreme Court held that the termination of service without an enquiry was illegal and invalid. However, in the case on hand, respondent No.1 has been issued with the charge sheet, he was given an opportunity to participate in the enquiry proceedings, he has cross examined the witnesses examined by the appellant

company and himself was also examined as one of the witnesses. Hence, it cannot be held that respondent No.1 was discharged without affording an opportunity and without following the principles of natural justice.

21. In C.A. No.393/2007 (arising out of SLP (C) Nos.20120-20129/2005) decided on 25.1.2007, the appeal was directed against the judgment and order dated 28.2.2005 passed by the Division Bench of the High Court of Andhra Pradesh at Hyderabad in W.P. No.9412/1998, questioning the correctness of the judgment and order dated 17.4.2003 of the Andhra Pradesh Administrative Tribunal. The principal issue, in the opinion of their Lordships, for determination in view of the rival contentions was whether the High Court was justified in passing the impugned judgment quashing the disciplinary proceedings and issuing a direction to the appellant to pay all pensionary benefits to the respondent therein only on the ground of delay in

concluding the departmental proceedings. But that is not the grievance of respondent No.1 employee in this case.

22. In Managing Director ECIL's case [1994 SCC Supl (2) 391], the respondent therein had challenged the order of dismissal order from service by way of a writ petition in the High Court. The grounds urged by him in the writ petition was that the complainant Sri. Rajakumar was not tendered for cross examination though his testimony was relied upon by the corporation and enquiry officer against him. But in the case on hand, there is no such complaint by respondent No.1, as he was provided with opportunity to cross examine the witnesses.

23. We have also perused the other decisions referred above and relied upon by the respondent No.1. The facts and circumstances and the legal aspects involved in the said decisions are altogether different

and they are not applicable to the facts and circumstances of the case on hand.

24. During the enquiry proceeding, respondent No.1 was afforded opportunity to participate in the proceedings and accordingly, he appeared in the matter. He was also asked to engage the services of a fellow employee to conduct the case on his behalf. However, he himself has not chosen to take the assistance and he has cross examined all the four witnesses examined on the side of the appellant company, and also led his evidence. Therefore we are of the view that sufficient opportunity was given to R-1 in the enquiry proceedings. There is no denial of the opportunity. When that is so, not supplying the list of witnesses and the documents to him along with the charge sheet, is not a ground to challenge validity of the findings of the enquiry officer.

25. When the appellant company released an advertisement on 9.5.2007 (Annexure-D) along with the terms and conditions inviting professionals for various posts, respondent No.1 applied for the post of Deputy General Manager (PPC). It is the contention of the appellant company that respondent No.1 had suppressed the material fact that earlier, he was serving in the SAIL and he had taken voluntary retirement in the year 2002 availing the scheme therefor. We have perused the employment questionnaire dated 9.7.2007 (Annexure-F) which was given to the applicants wherein, respondent No.1 has suppressed the fact of his taking voluntary retirement from SAIL, even though there was a specific column at Sl. No.9, to mention whether he had taken VRS from any public sector undertaking/government organization and if so, to mention the date of VRS and the amount received as *ex-gratia*. Respondent No.1 has mentioned, against the said column: "not applicable (serving in private

company)". In the application form for voluntary retirement, the terms and conditions of voluntary retirement scheme-2002 (Annexure-C) are mentioned and respondent No.1 has declared that he has fully understood the said scheme and undertook to abide by all the terms and conditions of the said scheme and he understood that he shall not be eligible for future employment in SAIL and its subsidiaries or joint ventures. He has also mentioned that he understood that if he is released on VR, he shall not be allowed to take up employment in other public sector undertakings and if he does so, he shall have to return the VR benefits received by him to SAIL/government. In spite of that, respondent No.1 has not mentioned about these particulars in the employment questionnaire.

26. The appellant company has also produced a letter dated 30.10.2008 addressed by SAIL to the Director (Personnel), HAL, Bangalore (Annexure-G). We

have perused the said letter, wherein it is mentioned that respondent No.1 was relieved under the voluntary retirement scheme 2002 of SAIL and he would not be allowed to take up employment in other PSUs and if he does so, he would have to return the VR benefits received by him. SAIL has requested the Director, HAL, Bangalore by that letter to direct respondent No.1 to immediately refund the VR benefits received by him to Salem Steel Plant, failing which action, as deemed fit, will be initiated against him.

27. Even during the course of hearing, the party-in-person was asked to submit whether he has returned the VRS benefits to SAIL. But, respondent No.1 clearly replied in the negative.

28. We have also perused the decisions, relied upon by the learned Senior Counsel for the appellants on the point of suppression of facts, which amounts to

misconduct. Hence the contention of respondent No.1 that he has furnished all the particulars in his application and other documents to the appellant company before the interview cannot be accepted.

29. So far as the contention of respondent No.1 that Bangalore Division had no jurisdiction to initiate disciplinary proceeding as he was working at Koraput Division is concerned, para-3(f) of the order dated 8.3.2013 issued by the disciplinary authority is to be referred, wherein it is stated that as respondent No.1 was appointed in the division falling under the Helicopter Complex, MD (HC) was the disciplinary authority under the HAL CDA Rules, 1984. It is further stated that all officers of HAL were covered under HAL CDA Rules 1984 (as amended) and MD (HC) was the appointing and disciplinary authority for officers in grade-VI in Helicopter Complex. Therefore, the MD (HC) of Bangalore Division had the authority to issue

charge sheet and he had the power to impose punishment under the HAL CDA Rules 1984. In view of that, the contention of respondent No.1 that initiation of disciplinary enquiry by the Bangalore Division is without jurisdiction, cannot be accepted at all.

30. The learned Single Judge, while considering the writ petitions, has re-appreciated the entire evidence adduced before the enquiring authority, as if hearing an appeal on the findings of the enquiring authority. While exercising jurisdiction under Article 226 of the Constitution, where findings of the enquiring authority are challenged, the Court has to see whether fair opportunity is given to the person who has approached the Court under the writ jurisdiction and whether the principles of natural justice have been followed. Further, the Court has to see whether there is any patent illegality in the decision making process by the

enquiring authority, and not the decision itself, unless it is wholly arbitrary or perverse.

31. The learned Single Judge has, in the impugned order, re-appreciated the entire matter and ultimately, held that there is no suppression of material facts and the charges framed were also vague. The learned Single Judge further observed that respondent No.1 was not furnished with list of witnesses and the documents along with the charge sheet. Therefore, the impugned order is not sustainable in law.

32. Thus, considering merits in both the appeals, we deem it proper to allow the appeals. The challenge to the order transferring respondent No.1 to Koraput would not survive in view of the order discharging him from service being upheld. Accordingly, both the appeals are allowed and the common order dated 23.6.2014 passed by the learned Single Judge in W.P.

Nos.2 []/2013 and []/2012 is hereby set aside and both the writ petitions filed by respondent No.1 herein stand dismissed, with no order as to cost.

33. I.A. No.2/2014 for vacating stay in W.A.No. []/2014 and I.A. No.1/2014 for stay in W.A.No. []/2014 do not survive for consideration and they are disposed accordingly.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Cs/-