

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF JUNE 2014

BEFORE

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

WRIT PETITION NO. [] OF 2013 (S-DIS)

C/W

WRIT PETITION NO. [] OF 2012 (S)

WRIT PETITION NO. [] OF 2013

BETWEEN:



R,

...PETITIONER

(BY SHRI [] - PARTY-IN-PERSON)

AND:

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF DEFENCE
DHQ P.O.
SOUTH BLOCK
NEW DELHI-110011
2. CHAIRMAN
HINDUSTAN AERONAUTICS LIMITED
15/1 CUBBON ROAD,
BANGALORE-560 001

3. MR.P.SOUNDARA RAJAN
 AGED ABOUT 60 YEARS
 RETIRED MANAGING DIRECTOR &
 DISCIPLINARY AUTHORITY
 HELICOPTER COMPLEX
 HINDUSTAN AERONAUTICS LIMITED
 VIMANAPURA POST
 BANGALORE-560 017.

...RESPONDENTS

(BY SHRI NAVEEN CHANDRASHEKAR, CGC FOR R1
 SHRI KALYAN BASAVARAJ, STANDING COUNSEL FOR R1
 SHRI SUNDARSWAMY & RAMDAS, ADVS FOR R2 & R3)

THIS WRIT PETITION IS FILED PRAYING TO SET ASIDE
 THE ORDER DT.13.6.13, ISSUED BY R2, AT ANN-A WITH BACK
 WAGES & ALL REIMBURSEMENTS AND CONTINUITY OF SERVICE.

WRIT PETITION NO. [REDACTED] OF 2012

BETWEEN:



BANGALORE-560 075

...PETITIONER

(BY SHRI : [REDACTED] – PARTY-IN-PERSON)

AND:

1. UNION OF INDIA
 REPRESENTED BY ITS SECRETARY
 MINISTRY OF DEFENCE
 DHQ P.O.
 SOUTH BLOCK
 NEW DELHI-110011

2. CHAIRMAN
HINDUSTAN AERONAUTICS LIMITED
15/1 CUBBON ROAD,
BANGALORE-560 001
3. EXECUTIVE DIRECTOR
HAL MANAGEMENT ACADEMY
SURANJAN DAS ROAD,
VIMANAPURA POST,
BANGALORE-560017
4. EXECUTIVE DIRECTOR
KORAPUT ENGINE DIVISION
SUNABEDA, KORAPUT DISTRICT,
ODISHA PIN 763002

...RESPONDENTS

(BY SHRI M.K.DEVAKI, CGC FOR R1
SHRI R.KALYAN BASAVARAJ, ASG FOR R1
SHRI SUNDARSWAMY & RAMDAS, ADVS. FOR R2 TO R4)

THIS WRIT PETITION IS FILED PRAYING TO SET ASIDE THE CANCELLATION OF TENURE POSTING VIDE LETTER DATED 14.9.2012 ISSUED BY CHIEF MANAGER [HR] WORKING DIRECTLY UNDER THE THIRD RESPONDENT, COPY OF THE SAME IS ATTACHED AS ANNEXURE-A, CONSEQUENTLY SET ASIDE THE RELEASE ORDER DATED 25.9.2012 ATTACHED AS ANNEXURE-A1.

IN THESE WRIT PETITIONS ARGUMENTS BEING HEARD, JUDGMENT RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner was represented by the learned Counsel Col. Bhupinder Singh (Retd.). He passed away on 25th March, 2014.

Hence, the petitioner filed a memo seeking permission to submit as party-in-person. The request of the petitioner was acceded to and he was permitted to submit as party-in-person.

2. The petitioner made a prayer in W P No. [REDACTED]/2013 to quash the order dated 13th June 2013 passed by the Appellate Authority and further sought writ of mandamus or any order or direction to the respondent to reinstate him into service with all consequential benefits since the petitioner has been illegally dismissed. The prayer of the petitioner in W P No. [REDACTED]/2012 is to quash order dated 14.9.2012 thereby cancelling the tenure posting and such other reliefs.

3. Petitioner submitted that he was working in Steel Authority of India Ltd. (hereinafter referred to as 'SAIL' for brevity) for about fifteen years and took voluntary retirement as per Voluntary Retirement Scheme (hereinafter referred to as "VRS" for short) on 31st August 2002. For five years he worked in private sector companies. Pursuant to the notification dated 9th May 2007 issued by the second respondent-Hindustan Aeronautics Limited (hereinafter referred to as 'HAL' for brevity),

inviting applications from professionals for various posts, he submitted his candidature for the post of Deputy General Manager (PPC) since he satisfied the qualification and eligible criteria to the said post. While submitting application to the HAL, he had submitted Résumé in which he had stated the fact of having taken voluntary retirement from SAIL and the same was clearly mentioned therein. The copy of the Résumé has been produced as Annexure-E to the writ petition. The petitioner further submitted that he has also submitted his service certificate, which mentions about his taking voluntary retirement and copy of the said certificate is also produced along with the petition. He has not suppressed not hidden any facts which are supposed to be disclosed to HAL. There was an interview on 9th July 2007 in which he was asked reasons for leaving Public Sector Unit and the petitioner satisfied the questions posed by the Committee Members. The Committee Members have verified the certificates issued by the SAIL authority and after having verified all the testimonials produced by the petitioner, he was selected as Deputy General Manager (PPC). It is his submission that the respondent having noticed and satisfied the fact that the

petitioner has taken voluntary retirement from SAIL and after having examined the relevant records, he was selected. The petitioner further submitted that at the time of interview, the petitioner was given an employment questionnaire in which the details of his last employment like salary, reporting structure were asked and the petitioner has correctly filled the form giving all the particulars. The copy of the questionnaire has been produced with the petition for perusal. He reported for duty on 3rd August 2007 and he was given joining form in which also details of each of the job he has done earlier was asked; and the same was furnished. The petitioner further submitted that his services were confirmed by declaring that probationary period as satisfactorily completed by its communication dated 11th November 2008. In the meanwhile, a communication was received by the respondent on 30th October 2008 from SAIL asking for refund of voluntary retirement scheme benefits from the petitioner. Despite the said communication, declaring the probationary period as satisfactorily completed itself shows that prior to the confirmation nothing was committed nor can it be construed as misconduct on the part of the petitioner. On 15th

April 2009, Assistant General Manager (HR) wrote a letter to General Manager (MRO) Division, HAL giving clear instructions to conduct disciplinary action against the petitioner for hiding the fact of voluntary retirement in employment questionnaire. It is submitted that the Officer who has written the said letter himself was a Member in the Committee and was instrumental in selecting the petitioner after a detailed interview. But no action was initiated. The petitioner submitted that till 2009, there was no letter from SAIL to the petitioner and on the first occasion on 29th June 2009, he had received a letter from SAIL asking to refund Rs.8,96,588/- without providing any details of calculation. For the past six years, i.e. from the date of his relieving from the SAIL, no letter has been addressed for repayment of voluntary retirement scheme benefit. The petitioner wrote back to the SAIL asking to clarify the exact amount and also stating that the income tax deducted at source was not paid to the petitioner. As things stood thus, the petitioner had made demand to pay as per the notification of appointment as it is his case that there was a deduction in payment in contravention of the notification. Having felt discomfort, the petitioner was transferred to Koraput

in Orissa during 2011. Since the transfer was not as per the transfer policy of the company, as the same requires minimum tenure of ten years in one location and the petitioner has served only four years in Bangalore, he requested the authorities to give effect to the said guidelines and to retain him in the same place. Despite making request, the petitioner accepted the transfer order and moved to Orissa in the month of October, 2011 and stayed for eight months without getting any entitled family accommodation, etc. In March 2012 an internal circular was issued on behalf of the second respondent mentioning about a vacancy in HMA and the petitioner applied for the said post and he appeared for interview. In the interview petitioner got selected to the said post. In order to prevent the petitioner from reporting back at Bangalore a charge sheet was issued and according to the petitioner the charge sheet is issued only out of vengeance, is biased and as a measure of victimization. The petitioner was asked to furnish explanation within seven days from the date of its receipt and within the stipulated time he has furnished reply and requested the respondent to drop the proceedings since he has not suppressed or hidden any

materials. In his reply he has stated that he is ready to repay the voluntary retirement scheme benefit after the same is rectified from SAIL. He has also stated in his representation that he had got the benefit amount of Rs.9.00 lakh from SAIL of which 30% was deducted at source as income tax and he has taken about 6.00 lakh. If anything is to be repaid, it is only Rs.6.00 lakh and not Rs.9.00 lakh and the communication between the SAIL and the petitioner stood at that stage. The initiation of enquiry and proceedings of enquiry has been challenged by the petitioner. It is his case that the respondent has not summoned witnesses for evidence and also documents have not been furnished. The initiation of enquiry is mala fide, capricious and colourable exercise of power.

4. The second respondent filed statement of objections. It is the case of the second respondent that the petitioner has suppressed and hidden the material facts at the time of appointment which is of serious concern and rightly after holding a detailed enquiry it is proved that he has committed misconduct and on the basis of findings he has been dismissed from service

and there is no error in it and accordingly, the petition be dismissed. In the notification dated 9th May 2007 calling for applications to the various posts, the petitioner had applied to the post of Deputy General Manager (PPC) and he was called for interview and he was handed over the employment questionnaire in which details like salary was mentioned and the petitioner had filled the same but not all particulars. The Director of HAL received letter dated 30th October 2008 from SAIL asking for refund of VRS benefits from the petitioner. It was stated in the letter that as per the voluntary retirement, the petitioner had agreed to repay the benefit, in case if he takes re-employment in Public Sector Undertaking or the Central Government. Since he had got appointment in Public Sector Unit viz. HAL, he should have refunded the entire amount and he has committed irregularity in not refunding the VRS benefit to SAIL. Pursuant to the letter issued from SAIL, the second respondent given clear instructions to take disciplinary action against the petitioner for withholding the facts in employment questionnaire. The petitioner was directed to refund VRS benefit and the same has not been done. Hence, a vigilance enquiry was initiated and

thereafter charge sheet was issued. It was replied to by the petitioner. The enquiry committee was appointed. The committee has gone into the matter and held that two charges are proved and one is not proved. The allegation made against the petitioner falls under Rules 4 and 5 of HAL Conduct, Discipline and Appeal Rules, 1984 (hereinafter referred to as 'CDA Rules' for brevity). On the basis of the finding by the enquiry authority, the Disciplinary authority, by its order dated 8th March 2013 imposed punishment of dismissal from service in accordance with Rule 6(ii)(j) of the CDA Rules with immediate effect. The petitioner had preferred an appeal and the Appellate Authority also considered the case of the petitioner and having found the gravity of misconduct, the punishment of dismissal has been awarded.

5. The petitioner has taken the following grounds. That the charge sheet was issued by the wrong disciplinary authority and the incompetent authority. At the time of issuance of charge sheet he was in Orissa at Koraput and he is Grade-I Officer for whom the disciplinary authority is the concerned

Divisional Head in respect of Divisions and concerned Head of Department in respect of Complex Office and Corporate Office. The Director or the concerned authority at HAL, Koraput, Orissa was competent to issue charge sheet, whereas the charge sheet has been issued by Managing Director (HC) a Disciplinary Authority at HAL Bangalore, who is not competent. Hence on this ground also the charge sheet vitiates. He submitted that Rule 5(xi) of the CDA Rules does not cover non-furnishing of remittance of VRS benefits for the purpose of misconduct. The respondent had no authority to extend the meaning to include a point not covered in the Rules. Rule 5 of the CDA Rules, which has been extracted in the charge sheet is not completely quoted but left blank to include new circumstances for the purpose of misconduct. The charge cannot be leveled against the petitioner which is not falling either under Rule 4 or Rule 5 of the CDA Rules. Hence, he submitted that the charge sheet is liable to set aside since it contravenes CDA Rules. He has referred Section 27 of the Limitation Act, 1963 to submit that the suit relating to claim should have been made three years ago and in the instant case it is about seven years old claim from the date of voluntary

retirement and hence the action of the respondent in initiating recovery is barred by limitation. Despite request made, the respondent has not provided requisite documents and witnesses sought for etc.

6. Heard both sides. The respondent has issued charge-sheet dated 12th April 2012 to the petitioner calling upon him as to why disciplinary action should not be taken and to submit his explanation in writing within seven days from the date of receipt of the charge sheet. When a charge sheet is issued, it should be specific, apt and definite and contrary to the same it proceeds in a vague manner. The charge sheet issued to the petitioner is extracted herein below:

"HAL

HELICOPTER COMPLEX
HINDUSTAN AERONAUTICS LIMITED
BANGALORE - 560 017

CONFIDENTIAL

12 April, 2012

Sub: Charge Sheet

*Certain acts of Commission and Omission as detailed in the Articles of Charges/Imputations of Misconduct, enclosed as **Annexure-I** have been reported against you wherein you had alleged concealed*

the factual information regarding VRS while furnishing information in 'Employment Questionnaire', at the time of your interview for employment in HAL, as DGM (PPC & CE). The list of documents and the list of witnesses by which the Articles of Charges/Imputation of misconduct indicated in **Annexure-I**, are proposed to be proved, are given in **Annexure-II** and **III** respectively.

2. The said acts of Commission and Omission, if proved, would constitute misconduct and violation of the provisions contained in HAL Conduct, Discipline and Appeal Rules, 1984, applicable to you as detailed below:-

Rule 4: Code of Conduct

- (i) Every Officer of the Company shall at all times-
 - (a) Maintain absolute integrity,
 - (b) Do nothing which is unbecoming of an Officer of the Company or any act which may bring disrepute to the Company.

Rule 5:

- (xi) Furnishing at the time of employment or during the course of employment or during the course of employment wrong or incomplete information or suppressing any information regarding age, previous service,

3. You are hereby called upon to submit your explanation in writing as to why Disciplinary Action should not be taken against you on the charges indicated

above. Your explanation should reach the undersigned within SEVEN days from the date of receipt of this Charge Sheet, failing which further action as deemed fit under the HAL Conduct, Discipline and Appeal Rules, 1984 will be taken against you.

(P. SOUNDARA RAJAN)
MD(HC)& DISCIPLINARY AUTHORITY

Shri. [REDACTED]
[REDACTED]-Koraput
HAL, Koraput, Orissa"

7. For the purpose of convenience, Rules 4 and 5 of the Hindustan Aeronautics Ltd. Conduct, Discipline and Appeal Rules, 1984, are extracted hereunder:

"RULE-4:

- (i) Every Officer of the Company shall at all times:
 - (a) Maintain absolute integrity;
 - (b) Maintain devotion to duty; and
 - (c) do nothing which is un-becoming of an officer of the Company or any act which may bring disrepute to the Company.
- (ii) Every officer of the Company shall take all possible steps to ensure the integrity and devotion to duty of all employees for the time being under his control and authority.

- (iii) Rules that are to be followed by officers in respect of specific matters/transactions such as sale/purchase of property, gifts, contracts with foreign nationals etc., are stipulated in Schedule-I. Breach of any of these rules would be deemed as misconduct and the Officers who violate these provisions are liable for disciplinary action in accordance with the provisions contained in these rules.

RULE-5

Further, the following acts would be deemed to be misconduct and officer committing such acts would be liable to disciplinary action:

- (i) Willful insubordination or disobedience whether or not in combination with others of any lawful and reasonable order of his superior;
- (ii) Participation in strikes, gheraos and other agitational activities such as picketing or participating in demonstrations within the factory premises which involves incitement to an offence or abetting, inciting, instigating or acting in furtherance thereof;
- (iii) Theft, fraud or dishonesty in connection with the business or property of the Company or of the property entrusted to the Company or of another employee within the premises of the Company;
- (iv) Leaving duty station without previous permission.

- (v) Absence without leave or over-stay the sanctioned leave without sufficient grounds or proper or satisfactory explanations;
- (vi) Habitual indebtedness and/or insolvency;
- (vii) Wilful damage to property of the Company;
- (viii) Interference with any safety devices installed in or about to the establishment;
- (ix) Holding meetings on the premises of the establishment without previous permission of the Competent Authority or attending meetings other than those convened by the Management within the factory premises;
- (x) Distribution and/or exhibition of any newspapers, hand bills, pamphlets or posters without the previous sanction of the Competent Authority;
- (xi) Furnishing at the time of employment or during the course of employment wrong or incomplete information or suppressing any information regarding age, qualification, previous service or experience, conviction in a court of law, dismissal, removal or compulsory retirement by a previous employer;
- (xii) Making representations to persons or bodies out side the company, whether official or otherwise on matters connected with the affairs of the Company or in respect of personal grievances against the Management;
- (xiii) Making representations or sending petitions to Government members of the Board or the Senior Management except through proper channels, making representations to

outsiders or other organizations on matters pertaining to service of the Company;

- (xiv) Accepting or offering any illegal gratification or indulging in any corrupt practice;
- (xv) Possession of pecuniary resources or property disproportionate to the known sources of income by the officer or on his behalf by another person which the officer cannot satisfactorily account for;
- (xvi) Acting in a manner prejudicial to the interests of the Company;
- (xvii) Neglect of work or habitual negligence in the performance of duty including malingering or slowing down of work;
- (xviii) Drunkenness or riotous or disorderly or indecent behaviour in the premises of the company or outside such premises where such behaviour may bring disrepute to the Company;
- (xix) Collection of any money within the premises of the company without the permission of the competent authority;
- (xx) Commission of any act which amounts to a criminal offence involving moral turpitude;
- (xxi) Purchasing properties, machinery, stores, etc. from or selling properties, machinery, stores etc. to the Company without express permission in writing from the Competent Authority;
- (xxii) Commission of any act subversive of discipline or of good behaviour;
- (xxiii) Participation in go slow or work-to-rule agitations or inciting others to resort to go-

slow or stop work or proceed enmasse on casual leave;

- (xxiv) Canvassing for a Union or an Association or party Membership within the factory premises;
- (xxv) Abetment of or attempt at abetment of any act which amounts to misconduct;
- (xxvi) Deliberately making false complaints against employees / supervisors knowing them to be false and writing of anonymous or pseudonymous letters criticising employees / superiors of the Company and making false reports against them;
- (xxvii) Refusal to accept or to take notice of any order or charge sheet or any other communication served either in person or in due course by post, or by notification on the company's notice boards;
- (xxviii) Violation of the terms and conditions of company's quarters or use of company's transport;
- (xxix) Indulging in political activities within the factory premises;
- (xxx) Falsification/forging of the records and/or defalcation;
- (xxxi) Spreading false rumours or giving false information which may bring disrepute to the company or its employees; or spreading panic among the employees; and
- (xxxii) Falsifying or refusing to give testimony in investigations being conducted by management in connection with any accident, misconduct or any other matter."

7. The charge sheet is examined on various aspects. One of the aspects is, it is as vague as it could be. It is referred therein "**Certain** acts of Commission and Omission as detailed in the Articles of Charges/Imputation of Misconduct, enclosed as Annexure-I have been reported against you ..". It is further stated that "you had allegedly concealed the factual information regarding voluntary retirement while furnishing information in employment questionnaire at the time of your interview for employment in HAL, as DGM(PPC & CE). The list of documents and the list of witnesses by which the Articles of Charges/imputation of misconduct indicated in Annexure-I are proposed to be proved, are given in Annexure-II and III respectively." The charge-sheet refers only Rules 4 and 5 of CDA Rules and no further explanations and allegations of misconduct are attributed against the petitioner. The code of conduct under Rules 4 and 5 of the CDA Rules, as extracted above, do not actually attract any misconduct on the part of the petitioner. Rule 4(i)(a) of the CDA Rules is to maintain absolute integrity, which is not applicable to this case for the reason that the integrity in the establishment of the respondent has to be

counted and computed; and in order to suspect the absolute integrity of the petitioner, no instance of misconduct or allegations are attributed. What has been stated in imputations do not attract the sub-clause (a) of clause (i) of Rule 4 of CDA Rules. Sub-clause (c) of clause (i) of Rule 4 is in respect of unbecoming of an Officer of the Company or any act which may bring disrepute to the Company. This also does not attract the case of the petitioner because he was appointed by the Selection Committee of the respondent. At the time of appointment he has produced the certificate dated 21st December 2001 as per Annexure-B issued by the Executive Director of Salem Steel Plant, SAIL; and his Résumé as per Annexure-E in which at relevant column it is referred as "Voluntary Retirement". It is further referred that he was working in SAIL from 1st December 1993 to 31st August 2002 and certificate issued by SAIL as per Annexure-E1 in which it has been referred that the petitioner has been released from services of the Company on voluntary retirement on 31st August 2002 has been produced; and the employment questionnaire is produced as Annexure-F in which at column No.7 it is referred "Private Sector". At column 9, he

has stated "Not Applicable (serving in private company)". However, at column 19, he has given details that he was working in SAIL from 1993 to 2002 at Salem Steel Plant and between 21st March 1985 and 25th November 1993 at Bokaro Steel Plant, both the units of SAIL. On the basis of these materials, the petitioner was interviewed and was got selected and his probationary period has been declared as "satisfactorily completed" and to that extent certificate dated 11th November 2008 as per Annexure-G1 has been issued. When these materials are available and that too are in possession of the respondent, it cannot be alleged by the respondent that the material facts mentioned in the charge sheet have been suppressed. The allegations that the petitioner has not furnished all the above facts do not attract Rule 4 of the CDA Rules. During the tenure of his service in HAL there was no instance of misconduct and no communication was issued to the petitioner on those allegations.

3. The respondent has framed charge sheet in a mechanical way without application of mind. In the charge sheet it is stated "*Rule 5: (xi) Furnishing at the time of employment or*

during the course of employment wrong or incomplete information or suppressing any information regarding age, previous service". According to clause (xi) of Rule 5 of CDA Rules, acts like furnishing at the time of employment or during the course of employment wrong or incomplete information or suppressing any information regarding age, qualification, previous service or experience, conviction in a court of law, dismissal removal or compulsory retirement by a previous employer, are deemed as misconduct and any officer committing such acts shall be liable to disciplinary action.

9. Furnishing or suppression should be only with regard to the aspects mentioned in clause (xi) of Rule 5 of the CDA Rules. Over and above and more than what is required under the said provision cannot be sought for. Though the charge is very much silent in respect what has been suppressed or hidden by the petitioner has not been disclosed, the respondent has simply left blank (".....") (sic) without filling it. This itself shows that the charge sheet has been framed without any application of mind which bears vengeance attitude of the respondent in petitioner

attempting for payment of salary as per notification of the respondent. The information furnished by the petitioner regarding age, qualification, etc. were examined by the Committee members. With regard to the previous service and experience, the petitioner has produced certificate issued by the SAIL and with regard to reason for retirement, he has stated "VRS". Since he has not been convicted by Court of law or was dismissed or removed or compulsorily retired from previous employer, he has not produced anything. Under these circumstances, the framing of charge is to be held as one without there being any basis and having not committed any misconduct to attract Rules 4 and 5 of CDA Rules. Framing of charge is a fundamental and basic thing in a disciplinary enquiry. Vague charges are referring only to provisions of CDA Rules is not a charge at all. Accordingly charge sheet vitiates and is liable to be set aside.

10. In Annexure-1 of the charge sheet the Articles of charge/imputations of misconduct, clauses (a) to (c) of Item 2 and item No.3 of the CDA Rules are alleged to be the misconduct

on the part of the petitioner. Clause (a) of Item No.2 pertains to a question at Sl.No.9 of the employment questionnaire of the respondent, i.e. with regard to the voluntary retirement from any Public Sector Unit of Government. It is the case of the respondent that the petitioner has written as "not applicable (serving in private company)" knowing fully well that he has taken voluntary retirement from SAIL and drawn retirement benefits. This action of the petitioner is willful suppression of material facts regarding 'voluntary retirement' question in the employment questionnaire and at the time of interview on 9th July 2007. In my considered opinion, this is yet another instance of non-application of mind. In the employment questionnaire supplied by the respondent, at more than two places the petitioner has referred as "VR from SAIL". In column No.7, which pertains to details of present employment, he has written "private sector" since he was working in a private firm. **Similarly at column No.9, he has mentioned as VRS, which cannot be said that he has committed misconduct.** If item No.7 is read with item No.9 it does not show that the petitioner has committed any suppression. In item No.9, he has

specifically stated and disclosed that he was working in SAIL up to 2002. This aspect has been considered by the Committee and selected him. He had also produced a certificate issued to that effect which is in possession of the respondent. Since his service was satisfactorily completed, the probationary period of the petitioner was also declared and to that effect also there is a certificate issued by the respondent. When such being the case, it is to be stated that it is not open for the respondent to state that the petitioner has suppressed the fact in not mentioning the VRS benefit drawn from SAIL.

11. Clause (c) of Item No.2 of the CDA Rules also pertains to VRS benefit from SAIL. It is stated that despite reminders, the petitioner had not repaid the amount. In reply to the charge sheet, the petitioner has stated that 30% of the VRS amount has been deducted as tax deducted at source and the SAIL authorities have to clarify as to how much is to be repaid, whether the amount to be paid is inclusive of 30% or to be paid deducting 30% which was earlier deducted as income tax; and this correspondence between the petitioner and the SAIL has not

been taken note of by the respondent. The charge sheet should consist and contain the list of witnesses and documents. Those particulars have not been furnished along with the charge sheet. That again is violation of principles of natural justice.

12. As regards the submission of the petitioner that the charge sheet has been issued by the authority who is not competent to issue the same is concerned, the disciplinary/appellate authority under the CDA Rules, prescribe that for Grade of officers I to IV the disciplinary authority concerned is the Divisional Head and in respect of Division and in respect of complex office is concerned, the appellate authority is the concerned Director. For the officers of Grade-VI, etc. the authority is the concerned Director and the appellate authority is the Chairman. At the time of issuance of charge sheet, the petitioner was working at Koraput Unit, Orissa for which the concerned Director of Unit should have issued the charge sheet and contrary to the same, the Director in Bangalore, who had no jurisdiction and competency, has issued the charge sheet and hence the same vitiates.

13. The petitioner has alleged malice against the respondent. It is also further alleged that his demand for payment of salary as per the employment notification was the root cause for issuance of charge sheet and also imposing punishment. The said submission has been examined in the light of the facts stated at paragraphs No.10, 16, 19 and 20 of the petition wherein he has stated that his salary, instead of increasing by Rs.10,000/- per month as promised by the respondent in the advertisement, was reduced by Rs.20,000/- per month. He has agitated for non-payment of salary as per Notification and further for reducing the same. This agitation has been taken serious note of by the respondent and thereafter they started harassing the petitioner. His request for salary as per Notification was rejected on frivolous grounds like three months period has elapsed and more salary would be paid after DA merger, etc. There was no reply to the point of Project-linked allowance of Rs.75,000/- per annum, which was promised in the appointment order and the same was never paid. The said denial of salary was due to the persistent demand of the petitioner to pay the salary as promised and due to personal

vengeance and with an ulterior motive of stopping the petitioner from approaching the Court and to teach the other officers a lesson not to raise their voice against management. The petitioner was transferred on September 2011 prematurely to Koraput Unit, Orissa. The said transfer order was in contravention of the policy of the respondent, which requires minimum tenure of ten years in one place, whereas the petitioner had put in only four years of service in Bangalore. As per the said transfer order he has reported at Koraput Unit, Orissa. As the petitioner was so serving, in the month of March, 2012 an internal circular was issued on behalf of the second respondent about a vacancy in HMA, Bangalore. The feature of the said post is that, if a candidate is selected, one has to serve in Bangalore for a period of three years. The petitioner got selected from among twenty applicants and he had to come back to Bangalore. In the meanwhile, the charge sheet has been issued by the third respondent on 12th April 2012, as a part of vengeance and to teach a lesson to the petitioner and also to prevent him from reporting at Bangalore. After the petitioner being selected, he came from Koraput Unit and reported at

Bangalore and this transfer of him back to Bangalore was not taken kindly by the respondent No.3 and the said transfer order to Bangalore got cancelled arbitrarily and further the petitioner was transferred back to Koraput Unit. This action has been challenged before this Court in Writ Petition No. [redacted] of 2012 and in the said writ petition an interim order of stay and there was no material available for the respondent to get the same vacated. This made the respondent to consider the findings of the enquiry officer and dismissed him from service.

14. When the above facts have been alleged against the respondent, it is the duty on the part of the respondents No.2 and 3 to disown the same and rebut the pleadings by filing suitable reply. But the second respondent who filed statement of objections has not tried to disown the allegations. On the other hand, the averments of the petitioner made in paragraphs 10, 16, 19 and 20 have been denied by stating "are false and hereby denied". If, really, the respondents have not prompted their malice attitude against the petitioner, they should have rebutted the same by filing suitable reply. Mere stating "are

false and hereby denied" is not a denial. Denial should be on the basis of materials and facts. In the absence of any such thing from the respondents, the averments of the petitioner remains on record and the mala fide attributed against the respondent has been considered for disposing of these petitions.

15. The enquiry proceedings suffers from principles of natural justice. In the charge sheet, the respondent has not supplied the list of witnesses and documents. The charges itself have not been properly framed and what has been done by the respondent is only listing the provisions from the standing orders. Referring the standing order itself cannot be construed as a charge sheet. In the petition, the petitioner has stated that he had requested the respondent to supply the materials and also to summon witnesses. Since the respondent has not done it, he had issued a legal notice to that effect in which he has requested for supply of documents and also the list of witnesses. The petitioner has stated that the respondent has brought an outsider as witness, whereas the persons sitting in the next room were not brought as witnesses. This action, yet again, is a

classic example of violation of principles of natural justice. Before removing a person from service, he should be given fullest opportunity and proceedings should be conducted fairly in compliance with mandatory provisions and principles of natural justice. Under these circumstances, an inference has to be drawn against the respondents that issuance of charge sheet and imposing the punishment is out of vengeance against the petitioner as he has agitated for payment of salary in pursuance of notification. Hence the enquiry proceedings and also the punishment vitiates in the eye of law.

16. Secondly, the Articles of Charge/imputation of misconduct as is stated in Annexure-1 of charge sheet is also to be held as bad in law. Any misconduct or conduct of a person not in the premises or in discharging of duty which does not find a place in the standing order, shall not be attributed to any person. In this case, what has been alleged against the petitioner pertains to the SAIL at Salem for which the standing order does not permit the respondent to take action. The respondents are not at liberty to name any conduct as

misconduct for the purpose of punishing the petitioner. Before issuance of charge sheet, the respondent should have appreciated whether the conduct on the part of the petitioner as is alleged, was during the course of employment not within the premises of employment. None of the above attracts the provisions of standing order of the respondent. Hence, the impugned action of respondent is without authority of law and there is no basis for issuance of charge sheet.

17. Thirdly, the charge sheet and the enquiry proceedings and also the impugned order of punishment is bad in law on the ground of delay also. The petitioner was appointed on 20th July 2007 as Chief Manager at HAL in Bangalore. At the time of interview as stated in the earlier paragraph, he had furnished all the details about his past experience and also about the fact of his taking voluntary retirement from SAIL. In his resume as per Annexure-E, he has mentioned the reason for having left SAIL as "Voluntary Retirement". He has also produced certificate issued by SAIL wherein it is stated that the petitioner is released on voluntary retirement on 31st August 2002. In the employment

questionnaire also at column No.19 he has furnished particulars right from his date of appointment till taking voluntary retirement. More than that, the two persons, who have been examined as management witnesses during the enquiry, were the members in the interview committee and have very much examined the fact about the petitioner taking voluntary retirement from SAIL. When such particulars were in possession of the respondent, if at all, it is a misconduct according to the respondents, they should have initiated action immediately or at the earliest reasonable time. Since the petitioner has not committed any misconduct, confirmation order dated 11th November 2008 has been passed informing him that his probationary period has been satisfactorily completed and was communicated to him. Satisfactory completion of probationary period is a piece of legal evidence that between the date of appointment and till the declaration of probationary period he is having no adverse remarks. When such being the case, the respondents digging out cause from the materials the petitioner has furnished and issuing charge sheet and further dismissal of petitioner from service, is to be viewed that the same is with an

ulterior motive of taking vengeance on the petitioner. The petitioner has also stated in the petition that though he has taken voluntary retirement in the year 2002 till 2009, he had not received any notice from SAIL. Under the circumstance, issuance of charge sheet is to be held as one issued on non-existing ground or as the one which is not in consonance with the standing order. For issuance of charge sheet the respondents have taken five years. This long delay has not been established by the respondents. For all acts of authorities, there is a limitation under the Limitation Act. If that is considered, this length of five years taken for issuance of charge sheet vitiates and creates lot of scope to suspect the respondents in initiating enquiry against the petitioner.

18. Issuance of charge sheet on the ground of non-refund of voluntary retirement benefits, is an arbitrary one for the reason that the petitioner had not been given an opportunity as to explain why he has not deposited and whether it is to be deposited or whether limitation applies for refund of the amount. If this was issued from the respondents, the petitioner could

have taken his defence; and if the respondents file a suit for recovery, it is definitely barred by limitation. When these technical lapses are there on behalf of the respondents, despite verifying all these technical lapses, charge sheet is issued and enquiry proceedings is initiated which is in violation of Article 14 of the Constitution of India. The gist of charge is that the petitioner has suppressed the fact for having not returned the voluntary retirement benefits is not a misconduct since it does not fall under any provisions of standing order. Suppression was to be established if it is with regard to the post which the petitioner holds. The Hon'ble Supreme Court in the case of TATA OIL MILLS COMPANY LTD. v. THE WORKMEN reported in AIR 1965 SC 155 has held that the domestic enquiry conducted in violation of principles of natural justice would be a valid ground to discard the finding that workman was guilty of misconduct. Misconduct must refer to those acts or omission or commission, which constitute misconduct as enumerated in the settlement.

19. In RASIKLAL VAGHAJIBHAI PATEL v. AHMEDABAD MUNICIPAL CORPORATION & ANOTHER, reported in AIR 1985

SC 504 it is observed, "It is a well-settled canon of penal jurisprudence that removal or dismissal from service on account of the misconduct constitutes penalty in law - that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct".

Hence, the enquiry proceedings is vitiated by not properly complying the above requirement. Lapse in not issuing the charge sheet for a misconduct committed by the employee, for over a period of time, the same vanishes and is not available for the respondent to initiate action. In Appeal (Civil) No.4095 of 2005 in the case of P.V. MAHADEVAN v. MANAGING DIRECTOR, TAMILNADU HOUSING BOARD, the Hon'ble Supreme Court by referring to a judgment in the case of STATE OF U.P vs. N RADHAKISHAN, reported in 1998(4) SCC 154 has held, unexplained delay in conclusion of the proceedings, further held, itself is an indication of prejudice caused to the employee.

20. In case of M V BIJLANI vs. UNION OF INDIA & OTHERS, reported in (2006)5 SCC 88, the Hon'ble Supreme

Court has quashed the proceeding initiated after a lapse of six years.. In 2010(iii) LLJ 415 MADRAS at Paragraph 14, it is observed that the charge sheet has been issued by an incompetent person as per the standing order. An incompetent person cannot issue such charge sheet and enquiry proceeded on the basis of said charge sheet vitiates and the enquiry proceedings are to be set aside.

21. This reason is fortified by a judgment of Hon'ble Supreme Court in the case of UNION OF INDIA & OTHERS v. UPENDRA SINGH reported in (1994)3 SCC 357 wherein it observed thus:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the

disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

22. Therefore, it is clear that High Court should not assume that it is an Appellate Court and interfere in the findings of the Tribunal. I have gone through the judgments and I hold that these judgments are not applicable for the reason that though the High Court cannot be an appellate authority in the enquiry proceedings, but certainly it could interfere wherever the principles of natural justice are violated and mala fide and irregularities in enquiry proceedings and victimisation is found and this Court can interfere and set aside the proceedings. Under these circumstances, I have not devoted much time on the judgments supplied and relied upon by the second respondent on the said point.

23. The learned counsel has also relied on judgments in the case of RASIKLAL, supra reported in AIR 1985 SC 504 and referred to paragraph 1; in the case of KENDRIYA VIDYALAY SANGHATAN & OTHERS vs., RAM RATAN YADAV, reported in AIR 2003 SC 1709 and referred to paragraph 12 to the effect that suppression of material information or giving a false information cannot claim right to continue in service. It is further held that the employer, having regard to the nature of employment and all other aspects had discretion to terminate his services, which is made explicitly clear in paragraph 9, the offer of appointment. This judgment is not applicable in view of Rule 4 and 5 of CDA Rules wherein these allegations do not find a place. It has been held that all the information need not be furnished, however, the requisite information, if it is demanded in the notification or the Conduct Rules, those information have to be supplied. In sub-rule (ix) of Rule 5 of the CDA Rules what is required is, furnishing of incomplete information or suppressing any information regarding age, qualification, previous service or experience, conviction in a court of law, dismissal, removal or compulsory retirement by a previous employer. The petitioner

has satisfied and furnished all information including the fact that he has taken voluntary retirement from SAIL. When these particulars satisfy Rule 5 of CDA Rules, then it is not open for the respondent to pick and choose anything he wants nor foist a case against the petitioner, though the respondent has no power or discretion to initiate action.

24. An employer can initiate against its employee in a manner known to law (standing orders). The reliance placed by the learned counsel on the decision in the case of FARIDABAD CLAIMANT. SCAN CENTRE Vs. D.G.HEALTH SERVICES & OTHERS, reported in (1997)7 SCC 752 wherein it is observed that Article 14 of the Constitution cannot be pressed into service since it is not attracted in cases where wrong orders are issued in favour of others. This judgment is not applicable to the facts of the case.

25. The reliance placed in the case of B.C. CHATURVEDI v. UNION OF INDIA & OTHERS, reported in AIR 1996 SC 484 wherein at paragraph 11 it has been held that "Therefore, delay by itself is not fatal in this type of cases, it is seen that the CBI

had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(i)(e) of the Act.” This judgment also is not applicable in this case. There is no hard and fast standing rules or regulations prescribing limit for issuance of enquiry proceedings. What is to be required is reasonableness. Reasonable person should feel that duration of time is reasonable in the peculiar circumstance of the given case. In the instant case, having satisfied with the information furnished by the petitioner, the respondent keeping quiet for more than five years and later digging out information furnished that too only after the petitioner agitating his right for having not paid the salary as per the notification, is nothing but arbitrariness. It only shows that the respondent got offended when the petitioner approached this Court and obtained interim order which is taken as vengeance and the impugned action is initiated only to punish the petitioner. Salary, pension and other benefits are property of a person and is also a fundamental right of the person. When this fundamental right is to be denied by the respondent, it could be only done when the law permits it. A standing order or some

statutory provisions shall not stand in the way where the rights have been treated as fundamental rights. In the instant case, the voluntary retirement taken by the petitioner from SAIL is supposed to be represented in case of obtaining appointment or re-appointment in any Public Sector Undertaking or Central Government, has not been properly understood by the respondent. Re-employment has to be understood in case it is in the same Public Sector Undertaking in the same cadre or in any other Public Sector Undertaking or Government, immediately after taking voluntary retirement. It is to be understood that reemployment means "employing an employed". But in the instant case, the petitioner has not been employed by the same Public Sector Undertaking or any other Public Sector Undertaking or by the Government, immediately after voluntary retirement.

26. I have gone through each and every material placed before me by the parties and I am fully convinced that respondents No.2 and 3 have acted in a prejudiced manner in order to punish a person and for the sake of punishment they

have initiated action and have got malice in their mind. The case of malice, as already stated, is the petitioner agitating for his non-payment of salary as notified in the notification; for transferring him from Bangalore to Koraput in Orissa in contravention of the Standing Order and again he came to Bangalore on being selected in a different capacity; and further for the fact that he approached this Court and obtained interim order. Any of these allegations made by the petitioner has not been denied at any point of time by the respondent. The only inference required to be drawn is that the third respondent acted most arbitrarily, whimsically and capriciously and with a malice mind. The Respondent No.2 being an instrumentality of State should be a model employer and should try to protect its employee. Instead the impugned action, i.e. dismissing the petitioner from service, has been initiated by the respondents, which is unconstitutional, arbitrary and violative of Articles 14 and 16(1) of the Constitution of India.

27. In view of the above reasons, I am of the view that the order foreclosing the tenure posting is also without any basis and

is nothing but victimization in the backdrop of the case. No reasons are assigned to pass such an order. The order without reason is arbitrary and unsustainable. Hence, I pass the following:

ORDER

1. Both the writ petitions are allowed. The dismissal order dated 13.6.2013 in No.HAL/P&A/19(3)/A-HC/2013 (Annexure-A in W P No. /2013 (S-DIS) is hereby quashed. Further the order dated 14.9.2012 in No.FMA/HR/205(1)/2012 (Annexure-A to W P No. /2012) is also hereby quashed.
2. Respondent No.2 is directed to reinstate the petitioner into service within four weeks from today and to pay all consequential monetary benefits with interest at the rate of 9% per annum from the date of his dismissal till the date of reinstatement; and also to restore his seniority.

Rule issued and made absolute accordingly.

**Sd/-
JUDGE**

Inn