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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 13th August, 2026.

\# **CNR No. DLHC010119112023**

\+ W.P.(C) 4274/2023

PRASANT KUMAR SAHOO .....Petitioner

Through: Mr. S. Sasibhusan and Mr. K. Sandhya Rani, Advocates.

versus

INIDIAN RAILWAY STATIONS DEVELOPMENT CORPORATION LTD. & ORS. .....Respondents

Through: Mr. Sanjay Kumar Sharma, Advocate for R-1, 2.
Mr. Nirvikar Verma, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The question in this petition is a narrow one. Could Indian Railway Stations Development Corporation Limited ("IRSDC") terminate a confirmed employee on three months' notice for conduct characterised as wilful negligence, carelessness and insubordination, when substantially the same conduct constitutes misconduct under its Conduct, Discipline and Appeal Rules and attracts an inquiry before imposition of a major penalty?

2. The answer, in the Court's view, must be in the negative. An employer may possess a right under the contract or service rules to bring an employment relationship to an end. That power does not, however, permit it

to make findings of misconduct against an employee and then avoid the disciplinary procedure attached to those findings by describing the resulting action as termination *simpliciter*.

Facts

3. The Petitioner joined IRSDC on 24th April, 2015 as Company Secretary in the rank of Assistant Officer, E1, on probation for one year. During the probationary period, IRSDC raised concerns regarding his performance, which led to extension of his probation. The record also reflects certain instances in which lapses were attributed to the Petitioner and explanations were sought from him.

4. One such incident arose from the Annual General Meeting held on 26th September, 2016. IRSDC called upon the Petitioner to explain, amongst other matters, his failure to carry the shareholders' list and register, deficiencies in the arrangements for the meeting, and his inability to answer a query concerning the shareholding of the company. The Petitioner did not meet those allegations with a bare denial. He explained the circumstances, accepted that the statutory registers, though prepared, had inadvertently not been carried to the meeting, apologised for the inconvenience and undertook to exercise greater care in future.

5. A warning followed on 11th December, 2018 in relation to delay in pursuing payment of stamp duty. The communication described the lapse as "carelessness amounting to dereliction of duty" and warned the Petitioner to be more careful. It was directed to be placed in his APAR dossier.

6. In the meantime, Ms. Sudha Venkata Varadhan joined IRSDC as Company Secretary on 1st October, 2018. Consequent upon her appointment, the Petitioner was redesignated as Assistant Officer, Company

Affairs, in his existing E1 scale, and was directed to hand over charge of the post of Company Secretary to her.

7. The decisive change in the Petitioner's service status came shortly thereafter. Office Order No. 05/2019 dated 29th January, 2019 noticed that his probation had not been cleared earlier and that he had been afforded opportunities to improve his working. Upon reconsideration, the competent authority declared that the Petitioner had successfully completed his probation and regularised his services as Assistant Officer, E1 (Company Affairs), with effect from 1st January, 2019. The order recorded:

> *"On reconsideration of present factual position with regards to Sh. P K Sahoo, the competent authority has been pleased to decide that Sh. Sahoo... Asstt. Officer E1 (Company Affairs) are regularized w.e.f. 01.01.2019."*

8. His actual pay was consequently made payable from 1st January, 2019, described in the order itself as the date of clearance of probation.

9. There is no ambiguity about the legal effect of that order. The Petitioner ceased thereafter to be a probationer and became a regular employee. The General Service Rules of IRSDC themselves define a regular employee as one engaged against a vacancy on the regular establishment who, unless exempt from probation, has been declared in writing to have satisfactorily completed probation.

10. The record also contains material subsequent to confirmation which IRSDC relies upon heavily. On 20th January, 2019, Ms. Varadhan cautioned the Petitioner that an amendment to Article 5 of the Articles of Association had been missed. His response was, "Ok..will follow." On 22nd May, 2019, she complained that an agenda forwarded by him was incomplete and that some items contained headings without adequate material. On 12th July,

2019, another exchange concerned incorrect agenda papers and their delayed delivery to Directors. The Company Secretary characterised the episode as displaying a careless attitude towards official responsibilities. The Petitioner responded with his version of events. On 21st August, 2019, he was again advised that papers concerning the Company Secretary Division were to be routed through the Company Secretary.

11. This material reflects continuing concerns regarding the quality and manner of the Petitioner's work. Whether the instances relied upon amounted to misconduct or wilful disobedience, or were instead matters of error or inadequate performance, is a separate question. That question was never examined through the procedure prescribed for determining misconduct.

12. There was a further development in December 2019. The APAR for 2016 to 2017 was communicated on 18th December, 2019 and the Petitioner was expressly given seven days to represent against the entries and final grading. The APAR for 2017 to 2018 followed on 20th December, 2019, again with seven days to represent. The APAR for 2018 to 2019 was communicated on 23rd December, 2019 on similar terms.

13. On 30th December, 2019, before that sequence had run its full course, IRSDC terminated the Petitioner's services under Clause 27 of Chapter 1 of the HR Manual.

14. The termination order is fairly detailed. It first refers to the Petitioner's earlier unsatisfactory performance and notes that his probation had ultimately been cleared with effect from 1st January, 2019, by taking a "lenient view". The order then addresses his conduct after redesignation, recording that he continued to display "wilful negligence and carelessness"

and that his attitude towards his superiors "smacks of insubordination".

15. The order further records "repeated instances of irresponsible working coupled with insubordinate attitude" and attributes to the Petitioner a "habit of committing glaring mistakes" on account of "carelessness and willful negligence". It also states that he had repeatedly failed to perform assigned duties and was "in the habit of defying advice/orders of his seniors". After referring to his confirmation as having been granted as a "goodwill gesture" and "on compassion", the order concludes that the Petitioner was an "incorrigible character" who would not become a good professional capable of serving the interest of the company.

16. On this basis, the competent authority found the Petitioner unfit for retention in service and invoked Clause 27 of the HR Manual. His services were accordingly terminated with immediate effect, with three months' pay in lieu of notice amounting to INR 1,60,560.

17. The Petitioner appealed on 22nd January, 2020. Among his grounds was the specific complaint that his services had been terminated without a reasonable opportunity of hearing. He also asserted that the representations submitted by him in relation to the APARs were dealt with only after the termination order had been made.

18. The Board eventually considered the matter in September 2022. By communication dated 27th September, 2022, the Petitioner was informed that the Board found no significant legal or policy infirmity in the termination and considered the action to be in accordance with IRSDC's HR policies.

Rival Contentions

19. Counsel for the Petitioner submits that once the Petitioner stood confirmed and regularised, his employment could not be terminated on

findings of wilful negligence and insubordination without resort to the disciplinary procedure contained in the IRSDC Conduct, Discipline and Appeal Rules, 2017.[1] The incidents relied upon from the period of probation preceded the conscious decision of IRSDC to clear his probation and regularise his services with effect from 1st January, 2019. The APARs for earlier years were communicated only days before the termination, and the opportunity to represent against them was rendered meaningless by terminating the Petitioner on 30th December, 2019 itself.

20. The Respondents answer that Clause 27(d) expressly extends to regular employees and empowers IRSDC to terminate their services in exceptional circumstances upon three months' notice or pay in lieu. They rely upon the Petitioner's history of poor APARs, the 2016 AGM incident, the warning of December 2018 and the exchanges with the Company Secretary during 2019. Their maintain that the Petitioner's services were governed by the General Service Rules contained in the IRSDC HR Manual, 2019, and not by the CDA Rules, 1999 relied upon in the petition.

Analysis

21. At the outset, it is noted that the Respondents are correct to the extent that Clause 27 is not confined to probationers. Clause 27(d) expressly provides:

> *"The services of a regular employee unless otherwise provided in the service contract can be terminated in exceptional circumstances, by either side by giving 3 months' notice, or payment of salary in lieu thereof, consisting of pay and dearness allowance in lieu thereof."*

22. The Petitioner's contention that Clause 27 has no application to a regular employee therefore cannot be accepted. That, however, does not

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[1] "CDA Rules"

conclude the matter. The question that still remains is this: what is the field in which that power may lawfully operate, and can it displace the disciplinary code when the foundation of the action is misconduct?

The Disciplinary Code

23. The HR Manual relied upon by the Respondents also contains, in Chapter 8, the "IRSDC Conduct, Discipline and Appeal Rules, 2017". Rule 2 of the CDA Rules leaves little room for debate about their application. They apply "to all employees except those in casual employment or paid from contingencies". The definition of "employee" is equally wide.

24. The reference in the pleadings to the "CDA Rules, 1999" has generated unnecessary confusion. What matters is not that nomenclature. The governing HR Manual itself incorporates the IRSDC Conduct, Discipline and Appeal Rules, 2017, and those Rules expressly apply to the Petitioner. No further recital in the order of regularisation was necessary to make them applicable.

25. More importantly, Rule 5 expressly identifies the following conduct as misconduct:

> *"Wilful insubordination or disobedience... of any lawful and reasonable order of employee's superior."*
> *and*
> *"Neglect of work or negligence in the performance of duty..."*

26. Rule 23 classifies removal and dismissal from service as major penalties. Rule 25 then states in unqualified terms that no order imposing a major penalty under clauses (f) to (j) of Rule 23 shall be made except after an inquiry in accordance with that Rule. The Rule provides for articles of charge, a statement of imputations, disclosure of the documents and witnesses relied upon, a written defence, inspection of documents,

examination and cross examination of witnesses, defence evidence and findings supported by reasons.

27. Clause 27(d) and the disciplinary provisions in Chapter 8 must be read harmoniously. Clause 27(d) undoubtedly permits termination of a regular employee in exceptional circumstances upon three months' notice or pay in lieu thereof. That power, however, cannot be used to bypass the disciplinary procedure where the termination itself is founded upon allegations of misconduct. Where the employer treats the employee's conduct as misconduct and relies upon findings to that effect as the basis for termination, the procedure prescribed under Chapter 8 must necessarily follow.

28. Otherwise, the safeguards contained in Rule 25 would be rendered meaningless. An employee accused of wilful insubordination or negligence could be removed without being afforded an opportunity to answer those allegations, merely by invoking Clause 27(d) and paying three months' salary in lieu of notice. Clause 27(d) cannot be construed as permitting the employer to dispense with the disciplinary procedure where misconduct forms the very basis of the action.

The Character of the Impugned Order

29. The law on this aspect is settled. The description placed upon an order by the employer is not conclusive. In ***Anoop Jaiswal v. Government of India***,[2] the Supreme Court held that the form of an order of discharge is not decisive and that the Court must ascertain its true character. Where termination is founded upon misconduct, negligence or a other disqualification, the procedural protection attending punitive action cannot

be avoided by the form in which the order is expressed.

30. ***Dipti Prakash Banerjee v. S.N. Bose National Centre for Basic Sciences***,[3] explains the distinction between “motive” and “foundation”. Complaints against an employee may merely furnish the motive for termination where the employer does not inquire into their truth or arrive at any finding of misconduct. The position is different where findings of misconduct are recorded and form the basis of the termination. In such a case, the misconduct constitutes the foundation of the action, which cannot be treated as termination simpliciter.

31. ***Dr. Vijayakumaran C.P.V. v. Central University of Kerala***,[4] is instructive. The Supreme Court emphasised that a case resting merely on unsatisfactory performance stands on a different footing from one in which misconduct forms part of the foundation of termination. Once the order is stigmatic and punitive, a regular inquiry under the applicable service rules becomes necessary.

32. In the present case, the Court need not search behind an innocuously worded order to discover its true foundation. The foundation is written into the order itself. IRSDC did not merely say that the Petitioner’s work fell short of expectation. It found wilful negligence, habitual carelessness, insubordination, repeated failure to perform assigned duties, defiance of orders and an incorrigible disposition. These expressions carry a charge of culpability and attach a stigma to the employee.

33. There is a further, rather striking, feature. Two of the descriptions chosen by IRSDC, wilful insubordination and negligence in the performance

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[2] (1984) 2 SCC 369.
[3] (1999) 3 SCC 60.

of duty, substantially reproduce the very acts which Rule 5 of its disciplinary code declares to be misconduct. Having characterised the Petitioner's conduct in the language of its misconduct rule, the management could not then proceed as though it was merely exercising its power of separation as per the contract.

34. The correspondence relied upon by the Respondents does reflect concerns regarding the Petitioner's work, including errors, delays and disagreements with his superiors. Whether these instances amounted to misconduct is, however, not for this Court to determine in the first instance. That determination had to be made through the disciplinary procedure prescribed under the CDA Rules.

35. The Petitioner's earlier service record does not alter this position. Although his performance during probation had been questioned, IRSDC subsequently regularised his services with effect from 1st January, 2019 without reservation or condition. The subsequent description of that decision as one taken out of "compassion" or as a "goodwill gesture" cannot undo its legal effect.

36. The reliance upon the earlier APARs also does not answer the central issue. IRSDC communicated the APARs for 2016-17, 2017-18 and 2018-19 to the Petitioner in December 2019 and afforded him seven days to represent against them. The termination order followed on 30th December, 2019. It is unnecessary to examine the Petitioner's allegations of fabrication or *mala fides* in relation to those APARs. Even assuming that they could be relied upon, an opportunity to represent against an adverse APAR could not substitute the inquiry required where misconduct formed the basis of

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[4] (2020) 12 SCC 426.

termination.

37. It is also not the Respondents' case that the prescribed inquiry could be dispensed with under Rule 30. The termination was not founded upon a criminal conviction, any recorded satisfaction that an inquiry was not reasonably practicable, or considerations concerning the security of the Corporation. The exceptions contemplated by Rule 30 therefore have no application.

38. The Court therefore holds that the order dated 30th December, 2019 is punitive in substance. It rests upon findings of conduct which the applicable CDA Rules themselves treat as misconduct. The order could not lawfully have been made without following the disciplinary procedure prescribed by those Rules.

The Appellate Order

39. The appellate decision does not cure this defect. The Board proceeded on the footing that the termination complied with the HR policy and that no significant legal or policy infirmity had been demonstrated. It did not itself conduct the inquiry which was omitted at the original stage.

40. The Board Sub Committee also appears to have attached significance to the Petitioner having encashed the cheque representing three months' pay, treating that circumstance as acceptance of the termination. That inference cannot be sustained. The payment was made by IRSDC itself in terms of Clause 27, and the Petitioner challenged the termination by preferring an appeal on 22nd January, 2020, less than a month later. In these circumstances, mere encashment of the cheque could not be construed as acceptance of the termination or abandonment of his right to challenge it.

41. The termination order dated 30th December, 2019 and the appellate

decision communicated on 27th September, 2022 must consequently be set aside.

Relief

42. That conclusion does not resolve the case entirely. Events subsequent to the termination have fundamentally changed the relief which can be granted.

43. The Ministry of Railways took an in principle decision to close IRSDC on 18th October, 2021. The Respondents state on affidavit that no business activity or operation has been carried on by IRSDC since April 2022 and that its operational contracts stand terminated or closed. More recently, a special resolution dated 5th May, 2026 commenced voluntary liquidation under the Insolvency and Bankruptcy Code, 2016. The Liquidator has taken custody and control of the assets, property, effects and actionable claims of IRSDC.

44. A direction for actual reinstatement at this stage would therefore have little relation to present reality. Under Regulation 4 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the corporate person ceases to carry on business from the liquidation commencement date, save to the extent required for beneficial winding up, although it continues to exist until dissolution. In these circumstances, reinstatement would serve little practical purpose, there being no operational establishment in which the Petitioner could resume service.

45. Ordinarily, where punitive termination is set aside for absence of the required inquiry, reinstatement with liberty to proceed in accordance with the service rules may be an available consequence. The Supreme Court recognised that course in ***Dr. Vijayakumaran***. The subsequent liquidation of

IRSDC, however, makes that course inappropriate in the present case. The consequential relief must therefore be moulded in light of the circumstances which now obtain.

46. Counsel for the Petitioner submits that other employees of IRSDC were accommodated in other organisations and seeks similar treatment for the Petitioner. No scheme, order of absorption, list of employees, eligibility condition, or other material supporting that plea has been placed before the Court. The organisations in which such accommodation is sought are not before the Court either. No direction for absorption or appointment elsewhere can therefore issue on the basis of that oral assertion.

47. The claim for back wages presents a different difficulty for the Petitioner. During the hearing, counsel submitted that the Petitioner remained without employment for approximately one and a half years after his termination. The Respondents have, however, filed an additional affidavit setting out a substantially different employment history. It records employment with Elango Industries Ltd. from February 2020 to June 2020, NGC Transmission Chennai Pvt. Ltd. from June 2020 to November 2021, Gwalior Smart City Development Corporation from December 2021 to April 2025, and National Highways and Infrastructure Development Corporation Ltd. from May 2025 onwards. The Petitioner has not controverted this affidavit. There is also no material comparing the emoluments received in these employments with what he would have drawn in IRSDC.

48. Back wages do not follow mechanically from the setting aside of an order of termination. In ***Deepali Gundu Surwase v. Kranti Junior***

Adhyapak Mahavidyalaya,[5] the Supreme Court recognised the entitlement of an illegally terminated employee while also making gainful employment during the intervening period directly relevant to the relief. In ***Rajasthan State Road Transport Corporation v. Phool Chand***,[6] the Supreme Court reiterated that back wages do not follow as a matter of right merely because termination is set aside. The employee must plead and establish that he was not gainfully employed during the relevant period, while it remains open to the employer to establish the contrary.

49. In view of the Petitioner's gainful employment shortly after his termination, coupled with the three months' notice pay of INR 1,60,560 already tendered to him, no case is made out for an award of back wages.

50. At the same time, merely setting aside the termination while denying every consequential remedy would reduce the judgment to a declaration of little practical value. The Petitioner was a regular employee whose services were brought to an end by a stigmatic order without following the disciplinary procedure prescribed under the applicable Rules.

51. The Supreme Court in ***O.P. Bhandari v. Indian Tourism Development Corporation Ltd.***,[7] recognised that reinstatement need not invariably follow an invalid termination in public employment and that, where restoration of the employment relationship is no longer an appropriate remedy, compensation may be substituted. The quantum is necessarily fact sensitive and the measure adopted in that case cannot be treated as a tariff for later cases.

52. The Court has considered the Petitioner's status as a regular

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[5] (2013) 10 SCC 324.
[6] (2018) 18 SCC 299.

employee, the stigmatic nature of the termination, the notice pay already received by him, his gainful employment from February 2020, and the subsequent cessation of IRSDC's operations and commencement of voluntary liquidation. No mathematical formula can satisfactorily translate those considerations into compensation. The amount must be sufficient to make the relief real without converting it into back wages which the evidence does not justify.

53. In the circumstances, a lump sum of INR 10,00,000 in lieu of reinstatement, continuity of service, back wages and other consequential service benefits would meet the ends of justice. The sum of INR 1,60,560 already paid to the Petitioner as three months' salary in lieu of notice shall be adjusted against this amount. The balance monetary liability consequent upon this judgment is therefore INR 8,39,440.

54. One final matter remains. IRSDC entered voluntary liquidation while this writ petition was pending. Regulation 3 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 requires disclosure of pending litigation and sufficient provision to meet obligations arising from such pending matters. Regulation 18 further permits employee dues to be proved, amongst other material, by an order of a court or tribunal adjudicating upon such dues. At the conclusion of the process, Regulation 38 requires the Liquidator's Final Report to demonstrate that no litigation remains pending against the corporate person or that sufficient provision has been made to meet the obligations arising from any pending litigation.

55. This Court will therefore not direct payment of the aforesaid amount outside the statutory liquidation process. The present judgment crystallises

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[7] (1986) 4 SCC 337.

the monetary consequence of litigation which was pending when voluntary liquidation commenced. The Petitioner shall be at liberty to place this judgment and his consequential claim before the Liquidator, who shall deal with it in accordance with the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations. Nothing in this judgment dispenses with any requirement of that statutory regime or determines the priority which the claim carries. The present Regulations also prescribe timelines for submission and verification of claims, and any issue arising on that account shall be dealt with by the Liquidator or the competent forum in accordance with law, bearing in mind that the liability now adjudicated arose out of litigation already pending at the commencement of liquidation.

56. Before parting with the case, it is necessary to make one aspect clear. As already noted above, this conclusion does not amount to an exoneration of the Petitioner on the merits. The complaints against him were never tested through the prescribed disciplinary process. The finding of this Court is confined to the manner in which IRSDC acted upon those complaints by invoking Clause 27 without following that process.

57. Accordingly, the following directions are issued:

(i) the termination order dated 30th December, 2019 and the appellate order communicated on 27th September, 2022 are set aside;

(ii) the prayer for reinstatement is declined in view of the cessation of IRSDC's operations and the subsequent commencement of voluntary liquidation;

(iii) the claim for back wages is declined;

(iv) the Petitioner is held entitled to lump sum compensation of INR 10,00,000 in lieu of reinstatement and consequential service benefits. After adjustment of INR 1,60,560 already received as notice pay, the balance stands at INR 8,39,440;

(v) the Petitioner may place this judgment and the consequential monetary claim before the Liquidator, who shall deal with it in accordance with the Insolvency and Bankruptcy Code, 2016 and the applicable regulations. No direction is issued for payment in derogation of the liquidation process, and this Court expresses no opinion on the classification or priority of the claim; and

(vi) no direction is issued on the oral prayer that the Petitioner be accommodated in another organisation, for want of any scheme or material establishing such an entitlement.

58. The writ petition is allowed to the aforesaid extent. Pending applications, if any, stand disposed of.

SANJEEV NARULA, J

AUGUST 13, 2026/*nk*