

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

APPLICATION NO. 01 OF 2017

PARTIES: Tapas Bhattacharyya
Vs.
Bharat Petroleum Corporation Limited and Five others

REPRESENTATIVES:

For Tapas Bhattacharya : (Applicant / Petitioner)	Mr. P. K. Das, Advocate, and Mr. Ranjit Dey, Advocate.
For Union of India : (Respondent No. 1)	None.
For Management of BPCL : (Respondent No. 2 to 6)	Mr. P. K. Goswami, Advocate, and Mr. V. K. Pandey, Advocate.

INDUSTRY: Petroleum.

STATE: West Bengal.

Dated: 28.08.2025

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A W A R D

1. The petitioner, an employee of Bharat Petroleum Corporation Limited (hereinafter referred to as BPCL) at its Liquefied Petroleum Gas (hereinafter referred to as LPG) Bottling Plant at Durgapur has filed an Application on 03.01.2017 under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act, 1947) accompanied by a Certificate dated 02.11.2016 issued by the Conciliation Officer under Section 2A (2) of the Industrial Disputes (Amendment) Act, 2010, certifying that the workman has been terminated from his service on 22.01.2016 by the employer, the Regional Manager, LPG East, BPCL, having its office at Kolkata-95. The matter was taken up for conciliation on several dates and finally on 02.11.2016 but no settlement was reached.

2. The fact of the case delineated in the application is that the petitioner was appointed under BPCL at its Bottling Plant at Durgapur on 17.05.2000 as an Operator-V (Field), on probation, in Grade-I. After working for sixteen years the petitioner workman was not granted any increment in his basic salary and did not receive any consequential benefits which were granted to his co-workers. It is alleged that in contravention to Clause 5.1, 5.2 and 5.4 of the Standing Orders applicable to him, the petitioner was illegally dismissed from service of the corporation by issuance of order of dismissal bearing No. LGP.HR.DISC.CON dated 19.01.2016 which was pasted on the Notice Board of the Bottling Plant on 23.01.2016. The petitioner herein has challenged the illegal dismissal from service by the respondent authorities on allegation that he has secured employment in BPCL by providing false information regarding his age, qualification, and previous service. It is contended that the order of dismissal of the petitioner dated 19.01.2016 was passed by the Respondent No. 6 based upon

Clause 29.1.19 of the Standing Orders applicable to the employer and employees of the company and the said order of dismissal was communicated to the petitioner only on 12.02.2016.

3. A Charge Sheet was issued to the petitioner on 19.09.2008 after completion of eight years of his service, levelling a charge that he made false declaration of his date of birth, did not disclose particulars of his past employment and about his registration with the Employment Exchange at Barrackpore. Petitioner submitted his reply to the Charge Sheet on 15.10.2008 and 31.10.2008 denying all the charges. Respondent authority not being satisfied with the reply initiated a Departmental Enquiry against the petitioner on 08.04.2009. It is contended by the petitioner that his date of birth is 25.02.1973 and in support of his claim produced a certificate issued by the Headmaster of Majherhati Junior High School dated 21.08.1999, where he studied up to Class-VIII. During enquiry proceeding management did not produce any evidence in support of the charge levelled against the petitioner and examined no witness from the Employment Exchange, Barrackpore or Central Bank of India to prove their case against the petitioner that date of birth mentioned by the petitioner was contradictory to the date of birth of the petitioner recorded with the Employment Exchange or Central Bank of India or that the petitioner was actually registered with the Employment Exchange at Barrackpore or he worked with Central Bank of India. The Handwriting Expert who submitted his report that the handwriting of the petitioner available with the Sub-Regional Office of the Employment Exchange, Barrackpore and the Central Bank of India were like the handwriting of the petitioner appearing in the application for employment before the respondent corporation dated 16.04.2000 was also not examined and the petitioner did not get the opportunity

to cross-examine them. It is urged that without cross-examination of the witnesses the reports and their letters could not be admitted in evidence and are liable to be expunged. The petitioner further stated that he was never enrolled under the Employment Exchange at Barrackpore and he only served as a casual worker in V. P. Singh Generator Electrok Company, Asansol. It is contended that the petitioner was a daily wager and worked as a casual worker at V. P. Singh Generator Electrok Company, Asansol and he was never employed under such company on regular basis and no appointment letter was issued to the petitioner for performing such work. Further case of the petitioner is that signatures cannot be compared on the basis of photocopy of documents. Therefore, the report of the Handwriting Expert, stating that the signatures purported to be of the petitioner, appearing in the photocopies cannot be considered as conclusive. It is urged that as the respondent authority failed to prove the charge levelled against the petitioner and the Enquiry Officer found him not guilty. After passage of one year and five months from submission of report by the Enquiry Officer on 11.02.2014, the respondent authority with a mala fide intention issued a second Show Cause Notice and started a Departmental Proceeding without any jurisdiction. Petitioner contended that respondent authority illegally dismissed him from service after keeping him in probation for sixteen years in violation of provision of the standing order.

4. Being aggrieved with order of dismissal, petitioner preferred an appeal on 15.12.2011 before the Chairman and Managing Director (hereinafter referred to as CMD). The appeal was dismissed on 16.01.2012 against the order passed by the appellate authority under Clause 31.4 of Standing Order. A Writ Petition No. 2795(W) of 2012 was preferred before the Hon'ble High Court at Calcutta, praying for issuance of the Police Verification Record (hereinafter referred to as

PVR) to the petitioner. The Hon'ble Court directed the authority to disclose the PVR to the petitioner within a period of seven days and further directed that to facilitate the enquiry both parties should produce their documents within a period of four weeks and thereafter the enquiry should be concluded in accordance with law. After passing of order by the Hon'ble High Court, the petitioner came to know that the respondent had received PVR dated 11.04.2002 and even after receipt of PVR the management illegally did not confirm his service and kept him in probation, though the service of other employees who joined after him were confirmed. The petitioner thereafter filed a Writ Petition No. 15999(W) of 2012 before the Hon'ble High Court at Calcutta for confirmation of his service from 17.05.2001 and to withdraw the disciplinary proceeding on the basis of Charge Sheet dated 19.09.2008. The Hon'ble High Court upon hearing the submission of the parties directed that :

"The petitioner is at liberty to raise objections during the proceedings as and when he thinks that the authorities are acting beyond the legal parameters and it is expected that if such objection is raised, the authorities would consider the same in accordance with law."

The petitioner participated in the enquiry proceeding. After completion of the enquiry proceeding and before passing of the order of dismissal in the year 2016, the workman preferred another Writ Petition No. 22590(W) of 2015 before the Hon'ble High Court at Calcutta, praying for Writ Mandamus to confirm the service of the petitioner from 17.05.2001 and also prayed for directing the respondent to cancel, recall or set aside the Show Cause Notice dated 31.07.2015. The respondent authorities were directed to file report in the form of an affidavit as to why the petitioner's service has not been confirmed till date in spite of Enquiry Officer's report dated 11.02.2014, exonerating him from all the charges. A report was submitted in the form of an affidavit dated 22.09.2015.

The matter was taken by the Hon'ble High Court on 23.09.2015 where it was overserved that the petitioner's service had not been confirmed and in view of facts and circumstances made out in the report on affidavit, the Hon'ble Court directed the Disciplinary Authority to conclude the disciplinary proceeding expeditiously and preferably within a period of three (3) months but not later than four (4) months from the date of communication of the order. On 19.01.2016 the dismissal order was passed by the Respondent No. 6, terminating the petitioner from his service illegally. The petitioner preferred an appeal against the order of dismissal before the CMD of BPCL as per Clause 34.1 of the Standing Orders. The appeal was dismissed summarily by the appellate authority without assigning any reason by passing an order dated 25.04.2016. The petitioner herein has prayed for passing of order directing the respondent authorities to withdraw the order of dismissal dated 19.01.2016 against the petitioner and order dated 25.04.2016 by which the appeal of the petitioner was dismissed, for further order of confirmation of service of the petitioner w.e.f. 17.05.2001 and an order for payment of back wages, service benefits, increments and all applicable dues to the petitioner w.e.f. 17.05.2001 and to grant interest upon the said amount.

5. BPCL, the Respondent No. 2 to 6 have contested the case through Smt. Mallika Ganguly, the Constituted Attorney of the respondents. A written objection has been filed by the respondent on 09.01.2018 wherein it is stated that Tapas Bhattacharyya, the petitioner applied for the post of Operator-V (Field) at Durgapur LPG Plant of BPCL on the basis of newspaper advertisement in "Dainik Banga" dated 28.10.1999 inviting application from candidates. The applicant was required to mention his work experience and enclose attested copies of certificates in support of date of birth, educational qualification,

marksheet, cast, experience. The petitioner having satisfied the broad requirements was called for a written test and thereafter for an interview. In his application dated 16.04.2000 the petitioner stated his date of birth as 25.02.1973 and his father's name as Late Phani Bhusan Bhattacharyya. In the column for "Educational Qualifications", petitioner mentioned "VIII" from "Majherhati Junior High School" but did not provide details regarding his past work experience as Generator Operator under V. P. Singh Generator Electrok Company and no details was provided about his period of employment. In the column seeking details about "Employment Exchange Registration Sr. No." and "N.C.O. No." the petitioner mentioned "NIL".

6. The petitioner was appointed as Operator-V (Field) in Grade-I on probation at LPG Plat of BPCL at Durgapur, pursuant to Corporation's letter No. CA.ER.PERS dated 12.05.2000. The petitioner agreed to accept employment on terms and conditions mentioned in the appellant's letter. Clause No. 4 of the appointment letter stated the terms of probation and confirmation. Clause 4(a) laid down that appointment would be effective from the date of joining duty and the probation period would be one year from the date of joining which may be extended by the corporation, if necessary. Clause 4(c) laid down that appointment and subsequent confirmation would be subject to the character and antecedents of the employee being found satisfactory on verification. Clause 4(d) stated that upon satisfactory / successful completion of probationary period the employee would be confirmed as a regular employee by the corporation in writing and the service would not be regarded as confirmed until a letter of confirmation was issued by the corporation.

7. Further case of the respondent is that the petitioner reported for duty on

17.05.2000 and was on probation till his dismissal from service. Respondent contended that the petitioner submitted a pass certificate issued to him by the Headmaster of Majherhati Junior High School, Nimta, Kolkata dated 21.08.1999 as proof of his date of birth and educational qualification. From the certificate it appeared that the petitioner had left the school on 30.04.1992 and his date of birth in the admission register was recorded as 25.02.1973. The petitioner produced no other document in support of his date of birth or educational qualification and no marksheet or certificate of Class-VIII of the year 1992 was submitted. According to the standing order applicable to the petitioner and the respondent, the petitioner was considered on 17.05.2001 for his confirmation but the same was extended due to non-receipt of his PVR.

8. It is inter-alia submitted that in the intervening period a complaint was submitted against the petitioner, addressed to the officials of the corporation and their investigation team in the year 2000 and 2001 respectively, containing some annexures and details. The PVR of the petitioner was returned on 11.04.2002 but his confirmation was kept in abeyance as an internal investigation against the petitioner was in progress. Information from various sources were sought for clarification on the issue of date of birth, past work experience, Employment Exchange registration details, etc. A prima facie case was established against the petitioner as discrepancies surfaced regarding his date of birth, contrary to what was mentioned in the application for employment, his past work experience and registration with Employment Exchange, Barrackpore. The management the respondent company issued a Charge Sheet against the petitioner on 19.09.2008, arraying therein specific charges. First charge is that he failed to declare the period of service as Generator Operator with V. P. Singh Generator Electrok Company, Asansol and failed to produce any employer's certificate to

verify the declaration made in the application for employment dated 16.04.2000. The second charge is that 25.02.1973 which was declared as date of birth in the application for employment along with a certificate issued by the Headmaster of Majherhati Junior High School is contrary to the report received from the Office of Sub-Regional Employment Exchange, Barrackpore, where his year of birth is record as 1959. It is stated that if the year of birth of the chargesheeted employee is 1959 then he would not be covered for employment and the management is entitled to rely upon the statutory record of the Sub-Regional Employment Exchange, Barrackpore. The third charge of the petitioner employee is that he failed to submit details pertaining to his registration with the Employment Exchange, Barrackpore and thereby suppressed material facts.

9. The respondent contended that the petitioner in order to secure gainful employment adopted unfair means to establish his age within the stipulated requirement of age for employment under General Category i.e., from 18 years to 32 years and made false statements. He also tried to mislead the corporation regarding his prior employment and his registration with Employment Exchange.

10. General Secretary, Petroleum Worker's Union, Kolkata submitted two complaints dated 28.08.2000 and 30.05.2001, forwarding copy of letter dated 'Nil' which was written and signed by the petitioner addressed to the Regional Manager, Kolkata Central Bank of India, where the petitioner mentioned his date of birth as 05.02.1964 and Employment Exchange Registration No. as B-8389/80. The corporation requested an Ex-Director of Questioned Documents Examination Bureau, CID, Government of West Bengal as an expert to compare the signature of the chargesheeted employee on his application for employment with the signature appearing on the questioned document i.e., letter addressed

to the Central Bank of India. In the report dated 25.10.2012 the Handwriting Expert confirmed that both the signatures were from the hand of one and the same individual. After preliminary findings a Charge Sheet under Clause 29.1.19 of the Standing Order was issued against the workman as follows :

“ 29.1.19. Securing employment in the Corporation by giving false information regarding one’s age or qualifications or previous services or other relevant details.”

The charged employee submitted his reply to the Charge Sheet on 15.10.2008 in which he claimed that his date of birth as 25.02.1975. Thereafter, he submitted another application dated 31.10.2008, mentioning his correct date of birth as 25.02.1973. The reply was not found satisfactory and a Departmental Proceeding was initiated against the workman. The petitioner participated in the enquiry and took the assistance of one, Shri Dipak Bhattacharyya, as co-workman. Opportunity was given to the charged employee to defend himself. The Enquiry Officer followed the principle of natural justice and submitted his report on 11.02.2014 finding the petitioner not guilty of the charge levelled against him in the Charge Sheet dated 19.09.2008.

11. The Disciplinary Authority disagreed with the findings of the Enquiry Officer and issued a notice to the petitioner, stating that on considering the oral evidence of the witness examined and the documents produced during enquiry he disagreed with the report and findings of the Enquiry Officer and directed the petitioner to show cause as to why he should not be held guilty of the charges levelled against him. In the said Notice reference was made to the petitioner’s application dated 16.04.2000 and the appointment letter based upon which he disagreed with the findings of the Enquiry Officer. The Disciplinary Authority further gave opportunity to the chargesheeted employee that in the event he

wanted hearing in-person, he was at liberty to state the same in the reply to the Show Cause Notice and that he would be informed about the date of such hearing, if so requested.

12. During pendency of the enquiry, petitioner filed Writ Petition No. 2795(W) of 2012 before the Hon'ble High Court at Calcutta seeking direction from the Hon'ble High Court to cancel or withdraw the said Disciplinary Proceeding in which inter-alia, he prayed for disclosure of his PVR. The respondent stated that in compliance with court's direction the PVR was disclosed to him. The petitioner thereafter, filed Writ Petition No. 15999(W) of 2012 before the Hon'ble High Court at Calcutta praying for direction to the respondent to confirm the service of the petitioner on and from 17.05.2001. The Hon'ble High Court passed an order dated 17.09.2013 disposing the writ petition with an observation that the enquiry proceeding had not reached its logical end and is in progress.

13. The petitioner submitted his reply to the Show Cause Notice on 18.08.2015, raising objection to the observations of the Disciplinary Authority and that the findings of the Enquiry Officer was correct and proper. The petitioner preferred Writ Petition No. 22590(W) of 2015 before the Hon'ble High Court at Calcutta, wherein he prayed for confirmation of his service from 17.05.2001 and also to cancel, rescind, recall and set aside the Notice to show cause dated 31.07.2015. The Hon'ble Court by order dated 23.09.2015 directed the Disciplinary Authority to conclude the Departmental Proceeding as expeditiously as possible preferably within a period of three (3) months but no later than four (4) months.

14. On 09.11.2015 the Disciplinary Authority found that the reply of the

petitioner to the Notice to show cause was unsatisfactory and directed the petitioner to undergo medical examination by the Medical Board. The petitioner was advised to report for medical examination on 17.11.2015. The petitioner preferred an appeal dated 14.11.2015 before the CMD, against the letter issued by the Disciplinary Authority for not holding his medical examination. The Appellate Authority disposed the appeal on 03.12.2015 and advised the petitioner to comply the order of Disciplinary Authority. Meanwhile, the Disciplinary Authority by letter No. RM.LPG.BP.CON.DGP dated 25.11.2015 advised the petitioner as his last opportunity to appear before the Medical Board on 08.12.2015. The appellate authority disposed the appeal on 21.12.2015 and advised the petitioner to cooperate for expeditious completion of Departmental Proceeding and to comply with the order of the Disciplinary Authority.

15. The Disciplinary Authority by order dated 24.12.2015 advised that petitioner and extended a third and last opportunity to him to appear before the Medical Board on 30.12.2015 for his medical examination with an object to have the benefit of the opinion of the Medical Board regarding age and date of birth of the charged employee. The petitioner requested the Disciplinary Authority to withdraw his decision of holding medical examination and that he is not duty bound to attend any medical examination as desired by the Disciplinary Authority.

16. The Disciplinary Authority after considering the entire matter and having considered all documents, evidence and providing full opportunity to the petitioner to represent his case passed an order dated 19.01.2016 dismissing the petitioner from service of the corporation. The petitioner filed an appeal dated 12.02.2016 and 20.02.2016 before the CMD of the corporation which was disposed

by Order No. LGP.HR.DISC.CON dated 25.04.2016, wherein it was observed that he found no reason and infirmity with the reasoning of the Competent Authority in his order dated 19.01.2016 and held that the Competent Authority has rightly found the appellant guilty of serious misconduct as per the applicable Standing Orders and imposed the punishment of dismissal from service. Accordingly, the appeal was rejected.

17. The respondents contended that the Disciplinary Authority has the right to differ with the decision of the Enquiry Officer which has been laid down in the decision of the Hon'ble Supreme Court of India in the case of **S. P. Malhotra Vs. Punjab National Bank [Civil Appeal No. 5128 of 2013]**. Further contention of the contesting respondents is that the records of the Employment Exchange, Barrackpore are statutory public records and though the date and month of the date of birth of the petitioner are not mentioned, the year of birth of the petitioner mentioned as 1959 is relevant. The management is therefore, entitled to rely upon the statutory records. Regarding the letter issued by the Central Bank of India dated 'Nil', the copy of which was admitted in the course of enquiry, the Handwriting Expert on comparing the said document with the admitted document for employment of the petitioner has opined that the signature on the letter and the signature on the application for employment of the petitioner were same and the copy of the letter may be considered as Secondary Evidence. It is urged that the petitioner admittedly, was employed under V. P. Singh Generator Electrok Company at G.T. Road, Asansol, and for the first time in the enquiry he disclosed that he was engaged as a casual worker. Respondent contended that in his application for employment he did not mention that it was a "casual employment". The charged employee also did not produce any letter from V. P. Singh Generator Electrok Company during his evidence before the Enquiry Officer.

18. It is urged that the petitioner produced Birth Certificate based on fake, forged, fabricated and interpolated documents. The School Leaving Certificate was fabricated and manipulated. The workman failed to produce certificate of his engagement under V. P. Singh Generator Electrok Company, Asansol. In his application for employment, he stated that he was not employed and subsequently declared that he was a casual employee. Respondent contended that a person under probation has no right to be confirmed to his post and office. Furthermore, until the Departmental Proceeding is complete, the workman has no right of confirmation in service. It is urged that the Industrial Dispute raised by the petitioner is liable to be dismissed and if it is found that the enquiry held by the respondent is not fair or proper, for any reason, the management of the corporation may be given the right to prove the charge by leading further evidence.

19. Long after six years from filing, on 14.02.2023 the petitioner sought for amendment of his original application by introducing Paragraph No. 49, III, IIIB, IIIC, which have essentially challenged the findings of the Disciplinary Authority by differing with findings of Enquiry Officer, on the ground that no Notice was given to the workman granting opportunity of hearing before arriving at such decision. It also challenged the order of dismissal passed by the Disciplinary Authority as illegal, unjustified and mala fide and also claimed the relief of reinstatement and full back wages.

20. On the basis of the pleadings of the parties the issue which has been framed for adjudication is as follows :

“ Whether the dismissal of Tapas Bhattacharyya from service of BPCL w.e.f. 25/04/2016 is justified? If not, what relief the workman is entitled to? ”

21. Tapas Bhattacharyya, the dismissed workman, in support of his case examined himself as Workman Witness No. 1. He submitted his affidavit-in-chief and reiterating his case disclosed in the written statement. The witness produced the following documents :

- (i) Copy of the order of dismissal dated 19.01.2016 issued by the Executive Director (LPG) has been produced as Exhibit W-1.
- (ii) Copy of the letter dated 22.01.2016, communicating the order of dismissal dated 19.01.2016, as Exhibit W-2.
- (iii) Copy of the letter of appointment dated 12.05.2000, as Exhibit W-3.
- (iv) Copy of the letter dated 21.05.2001 regarding extension of probation period, as Exhibit W-4.
- (v) Copy of the Charge Sheet dated 19.09.2008, as Exhibit W-5.
- (vi) Copy of the Enquiry Report, in twenty-one pages, has been collectively marked as Exhibit W-6.
- (vii) Copy of the order of the Hon'ble High Court at Calcutta dated 13.06.2012 in Writ Petition No. 2795(W) of 2012, as Exhibit W-7.
- (viii) Copy of the letter dated 19.06.2012 enclosing PVR of the workman, as Exhibit W-8.
- (ix) Copy of the Notice to Show Cause dated 31.07.2015, as Exhibit W-9.
- (x) Copy of the Reply to the Show Cause Notice dated 18.08.2015, as Exhibit W-10.

22. In course of cross-examination of Workman Witness No. 1, a copy of the Application for employment which he submitted before BPCL has been marked as Exhibit M-1, on admission. The witness denied that he was registered under

the Employment Exchange, Barrackpore before applying for employment at BPCL and further denied that his year of birth was recorded as 1959 at Barrackpore Employment Exchange. He further denied that he was employed at Central Bank of India, Berhampore Branch, where his date of birth was recorded as 05.02.1964 in the Service Record of the Bank. The witness denied the suggestion that after five to six years of his employment at Central Bank of India, Berhampore Branch he raised an Industrial Dispute claiming a permanent job under the Bank or that an Industrial Dispute was raised before the Regional Labour Commissioner (Central), Kolkata and it resulted in failure of Conciliation before the Assistant Labour Commissioner (Central), Kolkata. The witness further deposed that his date of birth is 25.02.1973 and it has been correctly recorded in the Service Record with BPCL. It may be gathered from the evidence of the workman that he had studied at Majherhati Junior High School, Belghoria Area and in the Admission Register his date of birth is recorded as 25.02.1973. The witness also denied that the order of his dismissal from service is just and proper.

23. Management of BPCL in order to substantiate their case has examined Mr. Debasish Dey, Plant Manager at Durgapur LPG Plat as Management Witness No.

1. He filed an affidavit-in-chief and produced the following documents :

- (i) Copy of the letter dated 26.08.2002 issued by the Employment Officer, Sub-Regional Employment Exchange, Barrackpore addressed to the Manager Vigilance East, BPCL has been produced as Exhibit M-2.
- (ii) Copy of the Charge Sheet dated 19.09.2008, as Exhibit M-3.
- (iii) Copy of the Reply dated 15.10.2008 to the Charge Sheet, as Exhibit M-4.

- (iv) Copy of another reply to the Charge Sheet submitted on 31.10.2008, as Exhibit M-5.
- (v) Copy of the Enquiry Report, as Exhibit M-6.
- (vi) Copy of the Show Cause Notice dated 31.07.2015, as Exhibit M-7.
- (vii) Copy of the Reply dated 18.08.2015 to the Show Cause Notice, as Exhibit M-8.
- (viii) Copy of the Disciplinary Action dated 19.01.2016 issued by the Executive Director (LPG), as Exhibit M-9.
- (ix) Copy of the order dated 25.04.2016 passed by the Appellate Authority against the impugned order dated 19.01.2016, as Exhibit M-10.

The management witness claimed that the order of dismissal passed against the workman is justified and that the misconduct of the workman was for providing false information to the employer company, relating to his date of birth.

24. In course of cross-examination the management witness deposed that he was unable to state if appointment was given to the workman after verification of documents produced by him. Witness denied the suggestion that his correct year of birth is 1973. He further deposed that as per information received from the Employment Exchange, the year of birth of the workman is 1959. It is gathered from his testimony that the School Certificate was verified from the School Register but the verification report could not be produced. The witness was unable to state as to how the identity of Tapas Bhattacharyya was established from the letter received from the Employment Exchange, Barrackpore. The witness in his evidence stated that he had no information if the Disciplinary Authority held a de novo enquiry for holding the charged employee guilty of misconduct.

25. Mr. P. K. Das, learned advocate arguing the case on behalf of the dismissed workman submitted that Tapas Bhattacharyya, the petitioner was appointed on 17.05.2000 as an Operator-V (Field), in Grade-I, on probation at the LPG Bottling Plant at Durgapur under BPCL. The period of probation was twelve months, which was extendable by six months. The management of BPCL without confirming his service issued a Charge Sheet dated 19.09.2008 against him, copy of which has been produced as Exhibit W-5. The workman submitted his reply to the Charge Sheet (Exhibit M-4). A Departmental Enquiry was initiated against him under Clause 29.1.19 of the Standing Orders, applicable to BPCL on the charge of securing employment in BPCL by giving false information regarding one's age or qualifications or previous services or other relevant details. Learned advocate submitted that the charged levelled against the workman was that the workman furnished wrong date of birth as 25.02.1973, as per the certificate issued by the Headmaster of Majherhati Junior High School. The management on the basis of some complaint received from the General Secretary, Petroleum Worker's Union, Kolkata was of the view that the date of birth of the workman was 1959 as registered with Employment Exchange at Barrackpore bearing Registration No. as B-8389/80 and on their further allegation that the workman was previously employed at Central Bank of India, Berhampore Branch, where his date of birth was registered as 05.02.1964. Charge was further levelled on the allegation that the workman was registered under the Employment Exchange under Berhampore but did not disclose the same in the application for employment, where he had stated that he was not registered. The third charge against the workman is that in his application for employment he stated that he was not employed and against the column for work experience he stated that he was working as a Generator Operator at V. P. Singh Generator Electrok Company, Asansol but did not furnish details about the period of his

employment. Learned advocate submitted that Mr. Nirmal Kumar Mitra as Enquiry Officer held the Enquiry Proceeding against the chargesheeted employee. The petitioner participated in the enquiry and in the Enquiry Report dated 11.02.2014 (Exhibit W-6), the Enquiry Officer observed that based upon oral evidence, documents, witness produced and relied upon during the enquiry proceeding and on his analysis he found that the following charges as leveled against Tapas Bhattacharyya, EDP No. 44337, Designation: Operator-V (Field) (on probation), of Durgapur LPG Plant vide Charge Sheet No. RM.LPG.BP.CON (DGP) dated 19.09.2008 was not proved. It is submitted that the Disciplinary Authority did not agree with the findings of the Enquiry Officer and issued a Show Cause Notice to the workman on 31.07.2015 (Exhibit W-9) and without holding any further enquiry and without highlighting the evidence on the basis of which he differed with the findings of the Enquiry Officer has arbitrarily dismissed the workman from service. It is submitted that the Notice issued by the Disciplinary Authority was replied by the charged employee on 18.08.2015 (Exhibit W-10) where he denied all the allegation levelled against him in the Notice to Show Cause. Learned advocate argued that without any substance and legal evidence against the charged employee, he has been found guilty of the charge under Clause 29.1.19 of the Standing Order and dismissed from service by Order dated 19.01.2016 (Exhibit W-1/M-9) issued by the Executive Director (LPG), BPCL, who is not the Disciplinary Authority. Learned advocate urged that the order of dismissal passed against the petitioner as well as the order passed by the CMD, the Appellate Authority dated 25.04.2016 (Exhibit M-10), affirming the findings of the Competent Authority and the punishment of dismissal are without merit and are liable to be set aside.

26. Mr. P. K. Goswami, learned advocate appearing on behalf of the

management of Bharat Petroleum Corporation Limited submitted that the petitioner / chargesheeted employee failed to produce any document at the time of his appointment or thereafter to prove that his date of birth is 25.02.1973. It is contended that a certificate issued by the Headmaster of a School is not sufficient to prove the date of birth, as it is not a primary evidence and the workman was required to produce his birth registration certificate or prove his date of birth by calling for the Admission Register of his school of the first instance. It is argued that the charged employee at the time of submitting his application for employment on 16.04.2000 produced a certificate purportedly issued by the headmaster of a school, where he passed Class-VIII examination and his date of birth was recorded as 25.02.1973. Learned advocate argued that the petitioner attended Majherhati Junior High School only for one year as he joined the school on 01.08.1991 and he left the school on 30.04.1992, which implies that the workman has joined the school only for obtaining certificate relating to his date of birth and passing the Class-VIII. It is argued that the petitioner did not disclose the name of the school in which he studied from Class-I to Class-VII and it was incumbent upon the petitioner to produce the Admission Register of the School where he was admitted for the first time and not from the subsequent school. Learned advocate argued that the workman provided false information that his date of birth was 25.02.1973 which was recorded as 1959 with the Employment Exchange at Barrackpore, where the petitioner had registered himself for employment, bearing Registration No. B-8389/80 (Exhibit M-2). It is argued that the Employment Officer of Sub-Regional Employment Exchange, Barrackpore, in his letter dated 26.08.2002 informed the Manager, Vigilance East, BPCL that the person having Registration No. B-8389/80 is Tapas Bhattacharyya and his father's name is P. Bhattacharjee, having permanent address as Deulpara, PO&PS-Naihati and his date of birth was

registered as 1959. It is vehemently argued that the petitioner in his application for employment did not disclose about his registration with the Sub-Regional Employment Exchange, Barrackpore in order to procure employment by establishing that he was within the maximum age of thirty-two (32) years.

27. In reply, to the argument on behalf of the workman that the Enquiry Officer found the chargesheeted employee as not guilty to the charge and that dismissal of the workman thereafter without any de novo enquiry was illegal, the learned advocate for the respondent argued that the Disciplinary Authority has the right, discretion and jurisdiction to differ with the findings of the Enquiry Officer, as he is not bound by the findings of the Enquiry Officer. Under such circumstances the Disciplinary Authority is required to clearly state the points on which he differed with the Enquiry Officer and he can interpret the evidence, already recorded by the Enquiry Officer and in case due to such difference of opinion if the Disciplinary Authority holds the charged employee guilty, he is required to issue a Notice to the delinquent calling upon him to show cause as to why on the basis of such findings of the Disciplinary Authority he would not be subjected to such punishment. It is submitted that in the instant case the Disciplinary Authority issued Notice to show cause dated 31.07.2015 (Exhibit M-7). The charge employee submitted his reply on 18.08.2015 (Exhibit M-8) and after considering all such materials and evidence on record the Disciplinary Authority issued an order of dismissal dated 19.01.2016 (Exhibit M-9). It is argued that the workman has been found guilty of charges for securing his employment by providing false information regarding his age, qualification, previous service and other relevant details. It is argued that the workman had preferred an appeal before the Appellate Authority as per Standing Orders of the company and after considering all aspects, the Appellate Authority who is the

CMD of BPCL has passed an order dated 25.04.2016 (Exhibit M-10) whereby, the findings of the Competent Authority, holding the appellant guilty of serious misconduct and imposing punishment of dismissal from service is upheld. It is urged that the Industrial Dispute is liable to be dismissed.

28. Considered the argument advanced on behalf of the petitioner and the respondent company, evidence adduced by both the witnesses and documents produced. The petitioner was appointed as Operator-V (Field), Grade-I in the LPG Bottling Plant of BPCL at Durgapur on 17.05.2000. A Charge Sheet was issued against the workman under Clause 29.1.19 of the Standing Orders. The main allegation against the workman is that in his application for employment he has falsely claimed his date of birth as 25.02.1973 in order to make himself eligible for employment, though he had actually crossed the age for employment under the corporation, which is thirty-two (32) years. It is stated that his year of birth is 1959 and the workman suppressed the fact that he was registered under Sub-Regional Employment Exchange, Barrackpore where his age was recorded as 1959. He failed to submit details regarding his registration with the Employment Exchange despite being fully aware of the matter he suppressed such facts and that he did not mention the period he served as a Generator Operator under V. P. Singh Generator Electrok Company, Asansol and failed to produce employer's certificate to verify the declaration made in the application for employment dated 16.04.2000. The Enquiry Officer, Mr. Nirmal Kumar Mitra conducted the enquiry. The workman submitted his reply to the Charge Sheet on 15.10.2008 (Exhibit M-4), denying all the charges levelled against him. Substance of charge under Clause 29.1.19 of the Standing Order was stated to the charged employee who denied the same. It appears from the Enquiry Report (Exhibit W-6) that the

enquiry commenced from 08.04.2009 and was completed on 24.09.2013. The Enquiry Officer followed the principles of natural justice by giving opportunity to the workman to defend, examine and cross-examine all witnesses during the enquiry proceeding. The charge levelled against him was disclosed. In order to prove the charge, the Presenting Officer of BPCL examined Mr. Sudipto Mukherjee as MW1 and Mr. Subhasish Mukherjee as MW2. No evidence was led by the management witnesses to prove that the date of birth of Tapas Bhattacharyya was contrary to the date of birth furnished by him in his application for employment. The date of birth of Tapas Bhattacharyya was recorded as 25.02.1973 in the Certificate No. 125 dated 21.08.1999 issued by the Headmaster of Majherhati Junior High School but it was contended that the headmaster of the said school, by his letter dated 24.07.2007 clarified that he did not verify the date of birth of Tapas Bhattacharyya due to obscurity of the school record. In support of his date of birth the petitioner failed to produce any document. From the Enquiry Report it appears that the chargesheeted employee contended that the Presenting Officer did not produce any authentic documents during course of enquiry to prove that the date of birth declared by the applicant was contrary to the date of birth received from other sources. While relating the defense case the Enquiry Officer has stated that he chargesheeted employee did not produce any witness from his side nor any document except his PAN Card to the establish his date of birth. In order to prove the actual date of birth of the employee and to establish that the date of birth i.e., 25.02.1973, furnished by the workman in his application for employment as false, the respondent was required to adduce positive evidence by calling for the original Admission Register of the school where Tapas Bhattacharyya took admission for the first time and not where he studied for one year. It may be gathered from the evidence adduced that the Headmaster of Majherhati Junior High School, who issued the

certificate dated 21.08.1999 in proof of age was the later school attended by the candidate, where he studied only for one year, in Class-VIII. The chargesheeted employee certainly did not join School in Class-VIII but he had attended some other school on earlier occasion about which he is absolutely silent and no enquiry was held in that regard. It appears to me that the onus of proof, which was upon the employer authority, has not been discharged in proper manner. In the instant case the petitioner has produced a certificate where his date of birth was recorded as 25.02.1973. The burden of proof did not rest upon the charged employee to prove himself innocent but it was the responsibility of the employer to establish the charge that the date of birth of the candidate was other than what he stated in the application for employment.

29. In the instant case the management of BPCL claimed that the workman was registered under the Employment Exchange, Barrackpore, where his year of birth was recorded as 1959. The Enquiry Officer while considering such contention has observed that the Employment Officer in his letter dated 30.05.2007 (ME-11) confirmed that the actual date of birth of the candidate is not available. It may be gathered from Exhibit M-2, the letter dated 26.08.2002, issued by the Employment Officer, Sub-Regional Employment Exchange, Barrackpore to Mr. S. Chatterjee, Manager, Vigilance East, BPCL that regarding information sought for relating to Tapas Bhattacharyya who had been registered bearing Registration No. 8389/80 his father's name was recorded as P. Bhattacharjee and his permanent address was Deulpara, PO&PS- Naihati, and year of birth was recorded as 1959. Learned advocate for the charged employee argued that the management failed to verify the identity of the person registered with the Employment Exchange, Barrackpore and that the said person bearing the same name had different address. It is further argued that in order to place

reliance upon such information management ought to have summoned the Employment Officer along with original file and document relating to the candidate bearing Registration No. 8389/80 so that the workman had opportunity to cross-examine the witness to establish that it was not related to him. I find substance in the argument advanced by the learned advocate for the petitioner, as a Government Office maintain record for the purpose of employment would certainly have recorded the date, month and year of birth the candidate registered with it. No endeavor has been made by the employer establishment to establish the Photo Identity of the candidate by calling for the original record from the Employment Exchange. From the Enquiry Report it appears that the Enquiry Officer did not accept the claim of the Presenting Officer that the workman was registered with the Employment Exchange, Barrackpore. Therefore, it is observed in the report that the chargesheeted employee did not suppress any fact from the corporation regarding registration with the Employment Exchange at Barrackpore. Furthermore, contention of the management is that the workman was previously employed with Central Bank of India, Berhampore Branch where his date of birth was recorded as 05.02.1964 and he made a representation before the Bank dated 'Nil', praying for making him permanent. Over this issue an Industrial Dispute was raised before the Conciliation Officer, the Assistant Labour Commissioner (Central), Kolkata-II, and the conciliation had failed. A Handwriting Expert who was privately appointed by the corporation to verify the photocopy of letter purportedly written by the charged employee to the Central Bank of India and on examination and comparison of such document with the signature of the employee on the application for employment before BPCL, the expert opined that the signature in the letter to the Central Bank of India and that of Tapas Bhattacharyya in his application for employment before BPCL were of the same hand. In this

connection management only produced a photocopy of the letter said to have been written by Tapas Bhattacharyya to the Central Bank of India authority and the report of the Handwriting Expert. During enquiry neither the Handwriting Expert was examined nor the original letter of Tapas Bhattacharyya to the Central Bank of India, containing the questioned signature of the charged employee was called for. The Enquiry Officer on such evidence held that the photocopy of the letter from the Central Bank of India could not be relied upon.

30. With reference to suppression of fact about previous employment as a Generator Operator under V. P. Singh Generator Electrok Company, Asansol, it has been noted by the Enquiry Officer that the petitioner being a casual employee did not require any certificate from the employer for which the chargesheeted employee could not produce any documentary evidence regarding his past employment. It is further stated that the charged employee did not conceal about his employment in his application to the corporation. On the basis of such findings, the Enquiry Officer concluded that the charge levelled against Tapas Bhattacharyya under Clause 29.1.19 of the Standing Orders was not proved.

31. The Disciplinary Authority of BPCL did not accept the findings of the Enquiry Officer and issued a Show Cause Notice to the charged employee dated 31.07.2015 (Exhibit W-9/M-7), stating the points on which he disagreed with the findings and also reasoned out the basis on which he found employee guilty of the charge. In the Notice to show cause the Disciplinary Authority granted fifteen days' time to the chargesheeted employee to submit his cause and to state if he needed any personal hearing. It is axiomatic that the Disciplinary Authority has the right to disagree with the findings of the Enquiry Officer and he is also empowered to proceed with enquiry and hold the delinquent, guilty of charge by

stating the reason of his difference / disagreement with the Enquiry Officer and record his own findings on such charges and hold him guilty in respect of all or some of the charges and imposed punishment irrespective of the fact that the Enquiry Officer found him not guilty. However, at the time of Show Cause Notice, the report of the Enquiry Officer, containing its findings had to be conveyed to the delinquent so that he had the opportunity to persuade the Disciplinary Authority to accept the favorable conclusion of the Enquiry Officer. It will not stand to reason if the Disciplinary Authority disagrees with the findings of the Enquiry Officer and does not state the reason of his differing and yet hold the chargesheeted employee guilty of the charge without giving him the opportunity to understand the basis on which the Disciplinary Authority disagreed with the findings of the Enquiry Officer.

32. In the case of **Chief Personnel (Disciplinary Authority), Punjab National Bank Vs. Kunj Behari Misra and Shanti Prasad Goel [1998 (7) SCC 84]**, the Hon'ble Supreme Court of India observed that:

“.....whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

It is therefore clear that even though the Enquiry Officer found the petitioner not guilty of the charge, the Disciplinary Authority while differing with the findings of the Enquiry Officer stated that he was inclined to disagree with the findings of the Enquiry Officer for the following reason :

“(a) I am of the view that a plea has been taken by you that your past employment was casual in nature and therefore you could not produce documentary evidence to substantiate your period of previous service as declared by you in your Application for Employment dated 16.04.2000, a key material that was relevant for your recruitment. Even if your employment was casual in nature as stated by you is accepted, the same ought to have been categorically and explicitly set out by you in your Application for Employment. You have also failed to furnish this pertinent information even at a subsequent stage which has been deliberately withheld by you.

(b) Further in your acceptance of employment you declared that you had fully read and understood the contents of the letter and agreed to accept the terms and conditions mentioned therein. As per the letter of Appointment dated 12.05.2000 issued to you, you are governed and bound by the clause 8.(i) which reads as below:

“This appointment is offered on the basis of your having furnished the Corporation correct information regarding your past service and other records. If at any time it is revealed that employment has been obtained by furnishing false information or withholding pertinent information, the Corporation will be free to terminate your services at any time with notice as required.”

(c) Thus, it is revealed that you have secured employment in the Corporation by giving false information regarding your previous services and other details. It is also revealed that you have obtained employment by withholding pertinent information or by furnishing false information. It is noticed that the Enquiry Officer however failed to take into account these aspects of the matter.”

33. In Paragraph 4(a) of the Notice to show cause the Disciplinary Authority noted that the chargesheeted employee could not produce the documentary evidence to substantiate his period of previous service as declared by him in his application for employment dated 16.04.2000. Even if his employment was casual in nature the same should have been categorically and explicitly set out and such pertinent information had been withheld. Paragraph 4(b) of the Notice to show cause disclosed that at the time of acceptance of employment as per letter of appointment dated 12.05.2000 the chargesheeted employee was bound by Clause 8.(i) of the letter, appointment was offered on the basis of furnishing correct information regarding past service and other records and if anytime it was revealed that false information was furnished and pertinent information was withheld the corporation is free to terminate him from service. The 3rd point raised in the Paragraph 4(c) of the Show Cause Notice was that employment was secured by false information regarding previous and other details. It is revealed that employment was obtained by withholding proper information and furnishing false information and the Enquiry Officer failed to take into account these aspects and matter. On close scrutiny of three indictments levelled against the petitioner it appears to me that Paragraph 4(b) and 4(c) are identical in nature which also levels a general allegation of furnishing false information and withholding pertinent information at the time of submitting the application for

employment. The Disciplinary Authority has not specified in Paragraph 4(b) and 4(c) as to what information have been falsely made by the petitioner and what were withheld by him, which were considered to be pertinent by the employer authority. It does not reason out how the Disciplinary Authority differed with the Enquiry Officer while considering these aspects. So far as Paragraph 4(a) is concerned, the charged employee had mentioned about the previous employment as a Generator Operator under V. P. Singh Generator Elektro Company, Asansol, but he did not specifically mention that his employment was casual in nature. Such omission does not amount to suppression of fact or providing false information. In the Notice to show cause the Disciplinary Authority has preferred to remain absolutely silent about the alleged discrepancies in the date of birth of the petitioner who furnished a certificate from the Headmaster of Majherhati Junior High School, disclosing his date of birth as 25.02.1973. It appears to me that the Disciplinary Authority by not recording his findings on the issue related to discrepancies in the date of birth of the petitioner, has given a goodbye to such case. The delinquent in reply to the Notice to show cause submitted his reply on 18.08.2015 denying the charge levelled against him and reiterated his case.

34. It appears from the record as well as from the admitted position that no further hearing was held by the Disciplinary Authority and no additional evidence was adduced to establish the charge to the hilt. On scrutiny of the entire enquiry proceeding, it appears that the management simply initiated the Departmental Proceeding against the chargesheeted employee without any endeavor on its part to garner legal evidence against the charged employee. In order to prove that 25.02.1973 was not the actual date of birth of Tapas Bhattacharyya or he furnished false information by procuring false certificate from the Headmaster of Majherhati Junior High School, it was incumbent upon

the employer to call for the original Admission Register of the School of the charged employee and prove the entries in the Admission Register and that the certificate relating to date of birth of the workman was not consistent with the entries in the Admission Register of the first school. In the case where a person is facing the charge, the burden lies upon the employer to prove the charge but in this case the employer has failed to discharge its onus. Management on various occasions issued Notice to the charged employee calling him to appear for medical examination for assessment of his age but the workman did not attend the medical examination. Be that as it may, after framing of charge the management cannot fish for evidence on the basis of a medical examination. Even if such medical examinations were conducted following medical jurisprudence and it came to light that the age, so determined was not consistent with the date of birth furnished by the charged employee, the delinquent could not be held guilty on the basis of post facto evidence. The materials on record, in relation to the enquiry proceeding reveals that no original document from the Employment Exchange, Barrackpore was called for and no such witness was examined to prove that the registration in the name of Tapas Bhattacharyya with the Employment Exchange was in fact related to the charged employee. Original records from the Central Bank of India were not produced during the enquiry proceeding to prove that the person who raised the dispute before the Assistant Labour Commissioner (Central), Kolkata – II, claiming permanent employment under Central Bank of India and the chargesheeted employee are one and the same person. Considering the facts and circumstances and all evidence on record, I have no hesitation to hold that there is dearth of legal evidence to hold the charged employee guilty of the charge under Clause 29.1.19 of the Standing Orders. Therefore, the impugned order dated 19.01.2016 (Exhibit M-9) passed by the Executive Director (LPG), BPCL, dismissing the petitioner from his service

is bad in law, the same violates the principles of natural justice, it is arbitrary and is liable to be set aside. Consequently, the order dated 25.04.2016 (Exhibit M-10), passed by the Chairman and Managing Director of BPCL, as Appellate Authority is also devoid of substance and the same is not maintainable. In view of my above discussion, I hold that the dismissal of the petitioner on the basis of the impugned enquiry proceeding and the orders passed on 19.01.2016 and 25.04.2016 are not based on legal evidence and materials on record and the same being not tenable are set aside. The respondent authority is directed to reinstate the petitioner in his service within one (1) month from the date of communication of the order. He is also entitled to his full back wages from the date of his termination till the date of his reinstatement. The employer authority however, shall reserve the right for determining the age of petitioner according to the scientific test and medical jurisprudence, especially when the employee has failed to produce any Birth Registration certificate under the West Bengal Registration of Births and Deaths Act, 1969 and he has not produced any certificate of public examination from any statutory Examination Board.

Hence,

ORDERED

that the Application under section 2A of the Industrial Disputes Act, 1947 is allowed on contest against Respondent No. 2 to 6 and ex-parte against Respondent No. 1. It is ordered that the order of dismissal dated 19.01.2016 passed by the Executive Director (LPG), Bharat Petroleum Corporation Limited and affirmed by the Appellate Authority, Chairman and Managing Director,

Bharat Petroleum Corporation Limited on 25.04.2016, dismissing Tapas Bhattacharyya from his service are set aside. The workman be reinstated in his service under Bharat Petroleum Corporation Limited, Durgapur within one (1) month from communication of the Award. Management of the employer corporation is directed to pay full back wages to the workman from the date of termination till the date of his reinstatement and allow continuity of his service. Let an Award be drawn up in light of the above decision.

Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

Sd/-
(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.