

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.1438/2019  
with  
OA No.2175/2019**

This the 21<sup>st</sup> day of January, 2020



**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. A. K. Bishnoi, Member (A)**

**OA No.1438/2019**

Anupam Anand, Group-A,  
Director Personnel (Under suspension),  
Hindustan Copper Limited,  
Office at Tamra Bhawan,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB).

... Applicant

(By Mr. Anando Mukherjee and Mr. Nishant Piyush,  
Advocates)

Versus

1. Union of India, Ministry of Mines,  
Government of India, New Delhi,  
Shastri Bhawan, Rajendra Prasad Road,  
New Delhi, through Secretary.

2. Hindustan Copper Limited  
A Government of India Enterprise,  
Office at Tamara Bhawan,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB), through its CMD.

3. The Chairman-cum-Managing Director,  
Hindustan Copper Limited,  
A Government of India Enterprise,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB).

... Respondents

(By Mr. Naresh Kaushik with Ms. Akshita Rao, Mr. Kazi  
Sangay Thupden and Mr. Sanjay Upadhyay, Dr. Ch.

Shamsuddin Khan and Mr. Virendra Kumar for Mr. Gyandnera Singh, Advocates)

**OA No.2175/2019**

Anupam Anand, Aged about 59 years, Group-A,  
Director Personnel (Under suspension),  
Hindustan Copper Limited,  
Office at Tamra Bhawan,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB).

... Applicant



(By Mr. Anando Mukherjee and Mr. Nishant Piyush,  
Advocates)

Versus

1. Union of India, Ministry of Mines,  
Government of India, New Delhi,  
Shastri Bhawan, Rajendra Prasad Road,  
New Delhi, through Secretary.
2. Hindustan Copper Limited  
A Government of India Enterprise,  
Office at Tamara Bhawan,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB), through its CMD.
3. Santosh Sharma,  
The Chairman-cum-Managing Director,  
Hindustan Copper Limited,  
A Government of India Enterprise,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB).
4. Hindustan Copper Limited,  
A Government of India Enterprise,  
Office at Tamara Bhawan,  
1, Ashutosh Chowdhury Avenue,  
Kolkata-700019 (WB).

... Respondents

(By Mr. Naresh Kaushik with Ms. Akshita Rao, Mr. Kazi Sangay Thupden and Mr. Sanjay Upadhyay, Dr. Ch. Shamsuddin Khan and Mr. Virendra Kumar for Mr. Gyandnera Singh, Advocates)

## ORDER

**Justice L. Narasimha Reddy, Chairman :**

These two OAs are filed by the same applicant. The subject matter of OA No.1438/2019 is an order of suspension dated 11.04.2019 passed against the applicant. In OA No.2175/2019, the applicant has challenged the charge memorandum dated 24.05.2019.



2. The applicant was selected and appointed as Director (Personnel) of the Hindustan Copper Limited, the 2<sup>nd</sup> respondent, a Unit of the Ministry of Mines, Government of India, the 1<sup>st</sup> respondent. The term of the appointment was five years. It was extended by another term of five years up to 04.08.2019, through an order dated 05.04.2014. According to the Service Rules of the 2<sup>nd</sup> respondent, the applicant was entitled to remain in service till he attained the age of superannuation, i.e., 30.04.2020, in case his performance was found to be satisfactory, and further extension is granted.

3. It is stated that the 1<sup>st</sup> respondent asked the Chairman-cum-Managing Director of the 2<sup>nd</sup> respondent, the 3<sup>rd</sup> respondent, to forward the Special Performance Report (SPR) of the applicant in the context of extension of the term beyond 04.08.2019, and in the evaluation process, the applicant crossed

the benchmark by scoring 40, out of 50 points. It is also stated that the Board of Directors of the 2<sup>nd</sup> respondent deferred the decision to be taken six months before the date of expiry of the term, and that the applicant was expecting such a decision to be taken in his case.



4. The 1<sup>st</sup> respondent issued an order dated 11.04.2019, placing the applicant under suspension, in exercise of powers under Rule 20.1(a) of the Hindustan Copper Limited (Conduct, Discipline and Appeal) Rules, 1979 (hereinafter referred to as the Rules), stating that disciplinary proceedings are contemplated against him.

5. The applicant contends that there was absolutely no basis for placing him under suspension, particularly when he was found fit to be continued till the age of superannuation. He submits that the order of suspension was passed only with a view to deny him the benefit of remaining in service till he attains the age of superannuation. The applicant further contends that the very fact that no charge memorandum was issued along with the order of suspension, nor anything negative was pointed out against him, discloses that the order of suspension was totally unwarranted. Certain other grounds are also pleaded.



6. While the applicant was continuing under suspension, the respondents issued an order dated 11.04.2019, requiring him not to leave the headquarters without prior permission of the competent authority. He was also directed to handover the office keys to the AGM (Admn.). Thereafter, charge memorandum dated 24.05.2019 was served upon him on 03.06.2019. In OA No.2175/2019, the order dated 11.04.2019 and the charge memorandum dated 24.05.2019 are challenged.

7. The applicant contends that the allegations made in the articles of charge are referable to the discharge of routine duties, and the very fact that he was given extension of term in the year 2014, and SPR was called, and he was found to be otherwise fit for extension, as late as in 2018, discloses that the allegations are made only with a view to deprive him, of the remaining part of service. He submits that at no point of time in his tenure spread over ten years, any exception was taken as to his functioning, and the charges were invented when his term was about to be extended. The applicant has also raised the ground of competence and jurisdiction.

8. The respondents filed separate counter affidavits in both the OAs. They submit that the applicant was placed under suspension in contemplation of the disciplinary



proceedings, and it was very much competent for the 1<sup>st</sup> respondent to do so. It is stated that the very fact that a charge memorandum was issued wherein nine articles of charge were framed, discloses that there existed basis for placing the applicant under suspension. It is stated that the calling for of the SPR of the applicant was a matter of routine, and no rights can be said to have accrued to the applicant on account of that.

9. As regards the charge memorandum, it is stated that several acts of indiscipline and insubordination on the part of the applicant were noticed, and soon thereafter, the charge memorandum was issued. It is stated that the truth or otherwise of the charges needs to be examined only in the detailed inquiry that would be conducted, duly giving opportunity to the applicant to put forward, his defence. The respondents further state that it is competent for the 1<sup>st</sup> respondent to continue the disciplinary proceedings against the applicant even after expiry of the term of appointment, in view of Rule 30 of the Rules.

10. We heard Shri Anando Mukherjee and Shri Nishant Piyush, learned counsel for the applicant; and Shri Naresh Kaushik, Shri Kazi Sangay Thupden, and Dr. Ch. Shamsuddin

Khan and Mr. Virendra Kumar for Mr. Gyandnera Singh, learned counsel for the respondents.



11 .The applicant was selected and appointed as Director (Personnel) of the 2<sup>nd</sup> respondent, initially for a term of five years. That was extended for another term of five years, till 04.08.2019. It is also not in dispute that in case the performance of an employee, *albeit* appointed on a tenure basis, is found to be satisfactory, he shall be entitled to remain in service till he attains the age of superannuation. The SPR of the applicant has in fact been called for and he was also assessed. However, before any final decision in this behalf was taken, and any formal order was issued, the 1<sup>st</sup> respondent passed an order placing the applicant under suspension. It reads as under:

“Whereas a disciplinary proceeding against Shri Anupam Anand, Dir (Personnel), HCL is contemplated.

Now, therefore, the President, in exercise of powers conferred by Rule 20.1(a) of Hindustan Copper Limited (Conduct, Discipline and Appeal) Rules, 1979 hereby places the said Shri Anupam Anand under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri Anupam Anand, Dir (P), HCL should be Kolkata, West Bengal and the said Shri Anupam Anand shall not leave the headquarters without obtaining the previous permission of Competent Authority.”





The order simply states that the disciplinary proceedings are contemplated against the applicant. Rule 20 of the Rules confers powers upon the 1<sup>st</sup> respondent to pass such an order. The applicant can certainly have a grievance about his suspension. What the Tribunal, however, has to see is whether it was competent for the authority who passed the order, and whether there exists any serious lapses in the order of suspension. It is not necessary that the charge memorandum must be issued along with the order of suspension.

12. The provision itself enables the authority to place an official under suspension in contemplation of disciplinary proceedings. Once, the competence of the authority who passed the order of suspension, is not doubted, and nothing personal is alleged against such authority, the Tribunal finds it difficult to entertain any challenge to that. The very fact that the charge memorandum was issued to the applicant in a matter of six weeks from the date of the order of suspension, discloses that there existed valid basis for it.

13. Coming to the challenge to the charge memorandum dated 24.05.2019, we find that as many as nine articles of charge were framed. Since they run into five closely printed pages, we do not find it necessary or expedient to





reproduce the same. The allegations against the applicant are in the nature of acts of insubordination, dereliction of duties, misuse of power, resorting to acts which are unbecoming of a public servant, and the like. This is not a case in which the authority who issued the order of suspension is not vested with the power, or that the articles of charge, even if taken on their face value, do not constitute acts of misconduct. Unless these two ingredients exist, the Tribunal would not be in a position to interfere with the charge memorandum.

14. There existed some genuine doubt as to whether the disciplinary proceedings can be continued against the applicant beyond 04.08.2019, on which date his term expired. The 2<sup>nd</sup> respondent, however, has reserved to itself, the power to continue the disciplinary proceedings against an employee, even after the expiry of his term of appointment. A provision, akin to Rule 9 of the CCS (Pension) Rules, 1972 is incorporated in Rule 30 of the Rules. Though the applicant made a strenuous effort to treat the entire proceedings as an effort on the part of the respondents to deprive him, of the right to continue up to the age of superannuation, we find it difficult to accept the same. The very fact that the respondents have extended the term of the applicant, and have also considered his case for

further extension, discloses that they do not have anything personal against him. We do not find any basis to interfere with the charge memorandum.

15. The order dated 11.04.2019 requiring the applicant not to leave the headquarters is almost a sequel to the one of suspension, pending inquiry.



16. Though reliance is placed upon certain judgments by the learned counsel for parties, we do not find it necessary to refer to them, having regard to the findings recorded by us, on the basis of well settled principles of law.

17. We do not find any merit in the OAs. The same are accordingly dismissed. There shall be no order as to costs.

**( A. K. Bishnoi )**  
**Member (A)**

/as/

**( Justice L. Narasimha Reddy )**  
**Chairman**