
(2013) 04 JH CK 0165
In the Jharkhand High Court
Case No : WP (S) No. 7254 of 2011

Arjun Prasad

APPELLANT

Vs

Coal Mines Provident Fund Organization and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 3 AJR 702 : (2013) 3 JLJR 145

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant; B.K. Bashishtha, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner had initially filed a writ petition praying for quashing the memorandum dated 11.3.2010 issued by respondent No. 2, whereby enquiry was proposed to be held under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The petitioner further prayed for quashing the charges framed against him and the departmental proceeding initiated against him. During pendency of the writ petition, the respondents concluded the departmental proceeding and awarded punishment of petitioner's removal from service by order dated 10.2.2012 (Annexure-13). The petitioner has brought the said order on record by way of amendment. The petitioner has challenged the legality and validity of the said order of punishment and has prayed for quashing the same. He has also prayed for a direction to the respondents to reinstate him with full back wages and other consequential benefits.

2. By impugned order dated 10.2.2012, the petitioner has been held guilty in departmental inquiry initiated under Rule 14 of CCS (CCA) Rules, 1965.

3. A memorandum of charge was issued to the petitioner containing six articles of charges. The charges were as follows:--

Article-I

That the said Shri Arjun Prasad, Cashier/Assistant, Coal Mines Provident Fund Organization, Region-III, Dhanbad, while functioning as Assistant (Cashier) during the period 2008 to 2010 continued to operate and spearhead the illegal and unauthorized trade union, namely, Coal Mines Provident Fund Employees Congress, Dhanbad, in CMPFO, against the decision and directions of Ministry of Coal Government of India, New Delhi, in violation of Rule 3(1)(iii) and Rule 6 of CCS (Conduct) Rules, 1964.

Article-II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Arjun Prasad, Cashier/Assistant, Coal Mines "Provident Fund Organization, Region-III, Dhanbad, attempted to bring political and outside influence to bear upon the Commissioner, CMPFO, Dhanbad, in the interest of errant and striking officials of CMPFO and thereby violated Rule 20 of the CCS (Conduct) Rules, 1964.

Article-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri Arjun Prasad, Cashier/Assistant, Coal Mines Provident Fund Organization, Region-III, Dhanbad, gheraoed superior authorities, gave threats and intimidated them with the indulgence of outside for releasing of undue payment to seven striking officials and dropping disciplinary proceedings against them in violation of Rule 3(1)(iii) and 3-C(23)(4) of CCS (Conduct) Rules, 1964.

Article-IV

That during the aforesaid period and while functioning in the aforesaid office the said Shri Arjun Prasad, Cashier/Assistant, Coal Mines Provident Fund Organization, Region-III, Dhanbad, made interference in the administrative matters of CMPFO by way of making repeated representations to Secretary to Govt. of India, Ministry of Coal, New Delhi, in violation of Rule 3(1)(iii) and Rule 7(3) of CCS (Conduct) Rules, 1964. He also abused and threatened superior officers including, CMPFO and the CVO of the CMPFO in association with his followers on the 26th day of February, 2010 in the office of the Commissioner, CMPFO, which is a grave misconduct in his part.

Article-V

That during the aforesaid period and while functioning in the aforesaid office the said Shri Arjun Prasad, Cashier/Assistant, Coal Mines Provident Fund Organization, Region-III, Dhanbad, willfully and deliberately disobeyed the instructions of the competent authority by way of operating trade union in CMPFO which tantamount to dereliction of duties in violation of Rule 3(1), (ii) and (iii) and Rule 3-C(23)(1) of CCS (Conduct) Rules, 1964.

Article-VI

That Shri Arjun Prasad has been getting his duty performed as Cashier by proxy workers in Regional Office, Dhanbad-III, CMPFO, in violation of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

4. The petitioner denied the charges in his written-reply stating, inter alia, that the petitioner is the staff representative of CMPF organization and from the beginning he placed the grievances of the staff and the officers, before the employer. The Commissioner, CMPF Organization is the head of the Organization and for all sorts of grievance, the representative approached the present Commissioner. He is responsible of the past working pattern of the association. But he never violated Rule 3(1)(iii) and Rule 6 of CCS (Conduct) Rules, 1964. He never attempted to bring political and outside influence to influence the Commissioner (CMPFO) and violated the Rule 20 of the CCS (Conduct) Rules, 1964. Though he raised legal demands of the striking officials, he never threatened the superior officer of the Organization. He did not violate Rule 3(1)(iii) and 3-C(23)(4) of CCS (Conduct) Rules, 1964. Petitioner gave representations to the superior authority for legal demands and for enforcing the constitutional rights. He never disobeyed the instruction of competent authority like CVO, CMPFO. Petitioner was competent to discharge his assigned work. He never engaged any proxy to discharge his work.

5. In spite of the said denial and the supporting material on record in favour of the petitioner, the Inquiry Officer submitted a report holding the petitioner guilty of the charges. He did not record any reason. He only repeated the charges and recorded conclusion holding that the same were established.

6. The disciplinary authority also mechanically accepted the said inquiry report and held the petitioner guilty of the charges and awarded penalty of removal from service of CMPFO under Rule 11(viii) of the CCS (CCA) Rules, 1965.

7. The impugned order of the disciplinary authority dated 10.2.2012 has been assailed on the following grounds:--

7.1. The petitioner is an employee of the Coal Mines Provident Fund Organization and he is guided by the provisions of CMPF (Staff and Conditions of Service) Regulations, 1964 (hereinafter to be referred as the Staff Regulation) and not by the CCS (CCA) Rules, 1965 under which he was proceeded against. The entire proceeding conducted under the CCS (CCA) Rules, 1965 is vitiated and wholly without jurisdiction.

7.2. The said Staff Regulation provides for exhaustive procedure for conduct and discipline in Chapter-5 of the Regulation.

7.3. Regulation 33 prescribes procedure for imposing penalties, which reads as under:--

33. Procedure for imposing penalties.--No order imposing on an employee any of the penalties specified in Regulation 31 (including removal from service) shall be passed except in the manner and after following the procedure laid down in

Schedule-III.

...Addition is supplied.

7.4. Schedule-III appended to the said Regulation lays down exhaustive procedure for imposing minor and major penalties.

7.5. The disciplinary authority, contrary to the provisions, arbitrarily passed the impugned order.

7.6. Rule 33 clearly provides that no order imposing any penalty on an employee can be passed except in the manner and after following the procedure laid down in Schedule-III.

7.7. Admittedly none of the procedures laid down in Schedule-III has been followed in the instant case. The entire proceeding as well as the impugned order, are contrary to the said provision and are non est.

7.8. The charges against the petitioner were regarding indulging in illegal and unauthorized trade union activity. The petitioner is the staff representative of CMPF Organization and from the beginning he placed the grievances of the staff and officer before the employer. Commissioner, CMPF Organization is the Head of Organization and for any short of grievance, the representative approached the present Commissioner. He bears the responsibility of past working pattern of association. He raised legal demand of the striking officials as they were in financial hardship. He never threatened the superior officer of the organization. Petitioner gave representation to superior authority for legal demand for enforcing the constitutional rights. He never engaged any proxy person to discharge his work. Petitioner was competent to discharge his assigned work. The charges are absurd and frivolous. The petitioner specifically denied the charges. But neither enquiry officer nor the disciplinary authority considered the reply.

7.9. The charges are not substantiated by any legal evidence.

7.10. The penalty of removal from service was preconceived and not supported by any material on record.

7.11. The punishment is also unconscionably disproportionate and on that ground too, the impugned order is not sustainable and is liable to be quashed.

8. The respondents have contested the writ petition by filing counter affidavit. It has been, inter alia, stated that the petitioner while functioning as Assistant (Cashier) indulged in illegal and unauthorized trade union activities and discharged his work of cashier through proxy workers.

9. It has been further submitted that inquiry officer, after due inquiry, has come to the conclusion and found the petitioner guilty of the said charges. The disciplinary authority agreed with the inquiry report and has imposed penalty of removal of the petitioner from service. Since, the petitioner was found to be a

negligent employee, removal from service is not disproportionate penalty and there is no illegality in the impugned order.

10. I have heard learned counsel for the parties and considered the facts and materials on record.

11. It has not been denied by the respondents that the petitioner is governed by the provisions of the Coal Mines Provident Fund (Staff & Conditions of Service) Regulations, 1964 which provides for dealing with the disciplinary proceeding of the employee in a great detail.

12. Learned counsel for the respondent submitted that Rule 4 of the Regulation empowers to take aid of CCS (CCA) Rules in the matter not covered by the Regulation which are applicable to the corresponding category of Central Government Servants subject to such modifications and variations as the Commissioner may, with the approval of the Central Government, by order, specify from time to time. He further submitted that Regulation 27 also almost provides for the same Conduct Rules which is applicable to the Central Government employees.

13. Learned counsel submitted that in view of the said provisions of Rule 4 read with 27 of the Regulation, there is no illegality if the proceeding was initiated under the CCS (CCA) Rules. He further submitted that the petitioner was an Assistant (Cashier) and was indulged in illegal and unauthorized trade union activities and got his work discharged through proxy workers, his continuation in the service is not in the interest of Organization and, as such, the penalty of removal from the service is not disproportionate, arbitrary or illegal.

14. The Staff Regulation, 1964 has been brought on record by the petitioner as Annexure-18, I find that Chapter-V of the Regulation deals with conduct and discipline of the employees of the Organization in details.

15. Regulation 31 prescribes the various penalties to be imposed on an employee including removal from service.

16. Regulation 33 provides that no order imposing on an employee any of the penalties specified in Regulation 31 shall be passed except in the manner and after following the procedure laid down in Schedule-III, appended to the Regulation.

17. Under the provision of Schedule-III, exhaustive procedure has been provided for imposing minor and major penalty against an employee of the Organisation.

18. Admittedly, the said provisions and procedures, applicable in the case of the petitioner, have not been followed. The proceeding against the petitioner was initiated under the CCS (CCA) Rules and the penalty has been imposed under that Rule.

19. In view of the clear bar imposed by Regulation 33 of the Staff Regulation, no order of any penalty can be passed except in the manner and "after following the

procedure laid down under Schedule-III of the Staff Regulation.

20. I, therefore, find that the order of penalty passed by the respondents is violative of the mandatory provisions of Regulation 33 of the Staff Regulation.

21. It is an admitted position that the petitioner was working as Assistant (Cashier) in the respondent organization and used to raise the grievances of the staff and officers before the management as their representative.

22. Raising legal demand of striking employees is a legal right.

23. The petitioner had taken the said defence in his reply, but that has been totally ignored by the inquiry officer as well as by the Disciplinary Authority.

24. The inquiry officer has only dealt with the charges and has concluded that charges are proved against the petitioner. The finding is not based on any material or evidence on record.

25. For the reasons aforementioned, the impugned order passed by the Commissioner, CMPFO is wholly unfound and perverse. This writ petition is allowed.

26. The impugned order dated 10.2.2012 contained in Annexure-13 is, accordingly, quashed.

27. The petitioner is held entitled to be re-instated forthwith with full back wages and other consequential benefits.

28. This writ petition is allowed in the above terms. However, there is no order as to cost.