
(2019) 02 CHH CK 0112
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3829 Of 2008

Arun Kumar Rana

APPELLANT

Vs

South Eastern Coalfields Limited And Ors

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 311(2)

Citation : (2019) 02 CHH CK 0112

Hon'ble Judges : Ajay Kumar Tripathi, CJ

Bench : Single Bench

Advocate : Ashok Kumar Shukla, H.B. Agrawal, Sudhir Bajpai, O.P. Agrawal

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, CJ

1. Heard counsel for the Petitioner and Senior counsel for the Respondents-SECL.
2. An office order dated 18.02.2008 was passed by the Chief General Manager of the Korba Area, dismissing the present Petitioner from service of South Eastern Coalfields Limited, Bagdeva Mine, summarily. In the detailed office order, the background of the incident relating to 18.02.2008 has been narrated in detail coupled with some other past incidents of omission and commission committed by the Petitioner which formed the fundamental reason not to hold any departmental enquiry against the Petitioner, but to dismiss him from service holding that it was not practicable to hold an enquiry against him in the so-called atmosphere of terror and despair.
3. From the reading of the impugned order Annexure-P/1, it is evident that the Respondent authorities have exercised power akin to proviso to Article 311 (2) of the Constitution of India.

4. The question of law which arises for consideration in the present writ application is whether such order of summary dismissal from service passed against the Petitioner is sustainable under law or not ?

5. When the matter was heard earlier, the Court adjourned the matter to enable the counsel for the Respondents-SECL to produce any Rule or

certified Standing Order applicable to the workmen of the Company where they have similar provision akin to Article 311 (2) proviso.

6. No such provision has been brought to the notice of this Court for the obvious reason that there is no Standing Order which vests powers of

summary dismissal of a workman, for whatever be his omission and commission.

7. The power of punishment to be imposed upon an employee by an employer has to flow from a set of Rules, in this case, a Certified Standing Order.

If a particular punishment has not been prescribed for, then an employer cannot innovate or go beyond the ambit of such Rule or Standing Order and

impose a punishment not vested in him.

8. Since the Hon'ble Apex Court does not support, even otherwise exercise of power of summary dismissal in a casual manner even where such

power is vested in the concerned authority in case of a civil servant, because such exercise of power is to be exercised sparingly and not a routine.

9. Since no person can be condemned without hearing and summary dismissal takes away the right of such hearing, therefore, such powers cannot be

read into an authority without there being provision for the same under the Standing Orders or the Service Rules.

10. Since in the present case, the Respondents-Company has failed to produce any provision akin to Article 311(2) proviso, therefore, mere narration

of events and saying that it is not practicable to hold enquiry against the Petitioner cannot make it a case where such power could be exercised.

11. The writ application is allowed. The impugned order dated 18.02.2008, dismissing the Petitioner from service summarily as well as the rejection of

appeal dated 06.06.2008 by the Appellate Authority contained in Annexures P/1 and P/2 respectively are set aside.

12. As a consequence thereof, Petitioner is ordered to be restored back in service forthwith.