

(2013) 10 JH CK 0039
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1999 of 2011

Ashok Kumar Rajak

APPELLANT

Vs

Commissioner, C.M.P.F. Organization and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2013) 4 JLJR 462

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Tiwary and Mahua Sinha and Mr. M.B. Lal, in W.P. S Nos. 1999 and 2072 of 2011, for the Appellant; Ratesh Kumar, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioners in both the writ petitions have been removed from service pursuant to a departmental proceeding initiated under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 for certain alleged misconduct. The impugned orders of removal in both the writ petitions are dated 31st March, 2011.

2. In both the writ applications, the common questions of law have been raised by the learned counsel for the petitioners and therefore the writ petitions are being taken up and decided together.

3. Since the writ petitions can be decided on the sole question of law raised by the writ petitioners, the relevant factual details only are being noticed hereunder.

4. The petitioner in first writ petition (W.P.(S) No. 1999 of 2011) was an Assistant in the office of Regional Commissioner, Coal Mines Provident Fund Organization (CMPFO), D-II, Dhanbad. He was proceeded against under Rule 14 of CCS (CCA) Rules, 1965 under a memorandum of charge dated 1st July, 2008, inter alia, alleging that certain payments of house advance were processed by the petitioner in an improper manner. The disciplinary inquiry proceeded and culminated in the order of termination passed by the Commissioner, CMPF,

Organization on 31st March, 2011 (Annexure-12) to the first writ application.

5. The petitioner in the second writ petition (W.P.(S) No. 2072 of 2011) was the Dealing Assistant and was also proceeded against for the same charges as in the case of the petitioner in the first writ petition. The departmental proceeding continued and ended in the order of dismissal passed on 31st March, 2011 as contained at Annexure-12 by the disciplinary authority cum Commissioner, CMPF, Organization.

6. Learned counsel for the petitioners has assailed the impugned orders on the ground that the provisions of CCS (CCA) Rules, 1965 are in applicable to the petitioners being employees of C.M.P.F Organization. It is further contended on their behalf that their service conditions are governed by the CMPF (Staff and Conditions of Service) Regulations, 1964, which provides for conduct of disciplinary proceeding against an employee for charges of misconduct. Learned counsel for the petitioner submits that the question that the provisions of CCS (CCA) Rules, 1965 are in applicable to the employees of Coal Mines Provident Fund Organization like the petitioners are no longer res-integra.

7. The very same issues were raised before this Court by similarly placed persons in W.P.(S) No. 1558 of 2011 as also in W.P.(S) No. 7254 of 2011. The petitioners in the said case were also functioning as Upper Division Clerk/Dealing Assistant, C.M.P.F, Organization, Regional Office, D-I, Dhanbad and Cashier/Assistant under the same Organization, Region-III, Dhanbad respectively, who were also proceeded against for departmental inquiry under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is submitted on behalf of the petitioners that the learned Single Judge of this Court by judgment rendered in two respective cases on 1st February, 2013 and 16th April, 2013 has comprehensively considered and decided the matter by holding that employees like the petitioners are guided by the provisions of CMPF (Staff and Conditions of Service) Regulation, 1964 so far as regulation of the conduct and discipline of the said employees are concerned. In such circumstances, the order of penalty passed by the Commissioner, CMPF Organization against the said persons were quashed and the writ petitions were allowed. Therefore, it is submitted that the instant proceedings also suffer from the inherent lacuna of having been initiated under a Rule which is not applicable to the petitioners under CMPF Organization and no penalty in the manner contemplated under the said Rules can be imposed upon them. The impugned orders are therefore liable to be quashed and the writ petitions deserve to be allowed.

8. Learned counsel for the Respondents-CMPF Organization submits that the Rule 4 of the CMPF (Staff and Conditions of Service) Regulation, 1964 provides for taking recourse to the CCS (CCA) Rules, 1965 in case where the Regulations of 1964 are silent. However, learned counsel for the respondents is not able to dispute that in similar circumstances the disciplinary proceeding initiated and the order of penalty passed under CCS (CCA) Rules, 1965 have been quashed by learned Single Bench of this Court in the judgments referred to hereinabove

(supra) holding that the relevant Rules are not applicable to such employees of CMPF Organization.

9. I have heard learned counsel for the parties on the aforesaid aspect and the question of law raised by the petitioners relying upon the judgment rendered in the case of Devashish Das-Vs.-Union of India (Supra). The issue in the present writ application also appears to be squarely covered by the judgment rendered by learned Single Judge of this Court in the judgment referred to above (supra). The present petitioners have also been proceeded against and punished by removing them from service by the impugned orders contained at Annexure 12 dated 31st March, 2012 by the Commissioner CMPF under the relevant provision of CCS (CCA) Rules, 1965. In this regard the discussions made in the case of Devashish Das-Vs.-Union of India on the aforesaid aspect, paras 15 to 24 thereof, are illustrative on this account and they are being reproduced hereunder for better appreciation:

15. 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.

16. 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 almost also provides for the same Conduct Rules which is applicable to the Central Government employees.

17. Learned counsel submitted that in view of the said provisions of Rules 4 and 27 of the Regulation, there is no illegality if the proceeding was initiated under the CCS (CCA) Rules. He further the Section in which the marriage advance claims were processed and settled. Though the order is to be passed by the officer, the Dealing Assistant, through whom the files passed, cannot be absolved from the charges. He further submitted that since the petitioner has been found to be negligent, his continuation in the submitted that admittedly the petitioner was a Dealing Assistant in the Section in which the marriage advance claims were processed and settled. Though the order is to be passed by the officer, the Dealing Assistant, through whom the files passed, cannot be absolved from the charges. He further submitted that since 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.

18. The Staff Regulation, 1964 has been brought on record by the respondents as Annexure-1, I find that Chapter-V of the Regulation deals with conduct and discipline of the employees of the Organization in details.

19. Regulation-31 prescribes the various penalties to be imposed on an employee.

20. 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. Schedule-III is appended to the Regulation.

21. I find that an exhaustive procedure has been provided for imposing minor and major penalty against employee of the Organisation.

22. Admittedly, the Admittedly the said provisions and procedures, which are applicable to 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 Rules.

23. 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.

24. I, therefore, find that the order of penalty passed by them is contrary to the said mandatory provisions of Regulation 33 of the Staff Regulation.

10. Similar view had also been taken in the judgment in the case of Arjun Prasad-Vs.- CMPF Organization, Dhanbad (Supra). The aforesaid contention raised by the learned counsel for the respondents relating to the applicability of the provisions of Rule, 1965 have also taken into account. In such circumstances, it therefore appears that the impugned proceeding and the order of penalty passed therein suffers from inherent lack of jurisdiction on account of inapplicability of CCS (CCA) Rules, 1965 to the case of the petitioners, who are employees of CMPF Organization. The impugned proceedings therefore cannot be sustained in the eye of law and no order of penalty can be passed on the basis of a disciplinary rule which do not apply to the service condition of such employees like the petitioners under organization like CMPF. It is well settled that the disciplinary proceeding and order of penalty can only be imposed under Rule which is applicable in the employees' organization. The entire proceedings are therefore vitiated in law and therefore deserve to be quashed. The impugned orders dated 31st March, 2011 are accordingly quashed and the petitioners are entitled to be reinstated in service with full salary and other consequential benefits. Accordingly, the writ petitions are allowed in the aforesaid term.