
(2009) 05 OHC CK 0056
In the Orissa High Court
Case No : Writ Petition (C) No. 6665 of 2003

Birendra Kumar Mishra

APPELLANT

Vs

Orissa Drugs and Chemicals Ltd. and Others

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Citation : (2009) 2 OLR 136 Supp

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Advocate : K. Patnaik, Ranjit Samal and Sanjay Pattnayak, for the Appellant;
B.N. Rath, J.N. Rath, P.R. Sahoo, P.K. Behera, S.K. Deury, M.K. Panda, M.K.
Singhdeo and P.S. Samantara, for the Respondent

Final Decision : Allowed

Judgement

R.N. Biswal, J.—The Petitioner has filed this writ petition with prayer to quash the disciplinary proceeding initiated against him under Annexure-1 and the order of punishment imposed under Annexure-10.

2. The case of the Petitioner in short is that while he was working as Manager, Marketing under opposite party No. 1 company on 2.7.2003 opposite party No. 4 due to personal vendetta issued the following charges against him:

(i) Violation of the guidelines and administrative orders of the competent authority in the matter of purchase and supply of medicine.

(ii) Failing to take all possible steps to ensure and protect the interest of the company in discharge of your duties and acting in a manner prejudicial to the interest of the company.

(iii) Gross dereliction of duties in maintaining discipline, integrity, honesty, devotion, diligence and efficiency in discharging duties properly.

(iv) Dishonestly used your official power by exercising jurisdiction not vested with you and failing to exercise jurisdiction so vested and acting in the exercise

of your jurisdiction illegally and with material irregularities.

(v) Mis-utilization of official powers and extending undue favour to the above manufacturer and distributor in the matter of purchase and sale of medicine of materials committing breach of trust.

(vi) Entered into criminal conspiracy with the manufacturer and distributor committing fraud on the company.

(vii) Causing financial loss to the company.

(viii) Gross negligence in duty.

A statement of allegations, on which the charges were based was also sent to the Petitioner.

3. The Petitioner was issued with show cause notice and accordingly, he submitted his written statement of defence. The case of the Petitioner is that the alleged incident took place in the year, 2000-2001, when Mr. P.K. Mukharjee was the Managing Director of opposite party No. 1 company. After Mr. P.K. Mukharjee, Mr. N.K.P. Sinha joined as Managing Director, both of whom were well acquainted with the management of the company did not find any fault with the Petitioner, but opposite party No. 4 taking advantage of his position being in-charge of the company, framed the aforesaid charges against the Petitioner without any authority. Not a single document was referred in the charge, which shows that the charges were framed basing on no document. However, Petitioner vide letter dated 8.7.2003 requested the management to supply him the documents on the basis of which charges were framed against him. On 18.7.2003, opposite party No. 4 issued a memorandum under Annexure-3 posing himself as the Managing Director of the company, and on the very date, he appointed Dr. J.S. Agarwal Senior Manager (tech.) I.D.P.L, Corporate office Gurgaon as Inquiry Officer. Accordingly, the Inquiry Officer issued notice to the Petitioner to attend the enquiry on 20.10.2003. On that date, the Inquiry Officer directed the Presenting Officer to give chances to the Petitioner to inspect the relevant documents. He also directed him to give the Petitioner copies of earlier statements given by the witnesses. The documents supplied by the Presenting Officer as per the direction of the Inquiry Officer disclosed that those were statement of witnesses recorded by C.B.I, in connection with PE.05/2002-CBI Bhubaneswar, which was initiated against the Petitioner and dropped subsequently.

4. The inquiry was conducted on 21.12.2003 and the Petitioner participated in it. But, instead of proceeding as per O.D.C.L. Conduct, Discipline and Appeal Rules (hereinafter referred to as the "Rules"), the Inquiry Officer produced the statement of witnesses, recorded by the C.B.I, and the Petitioner was asked to cross-examine those witnesses. But he choose not to cross-examine them, since they were not examined by the Presenting Officer in the Disciplinary Proceeding. So, the Inquiry Officer concluded the proceeding on that day and found the Petitioner guilty of the charges. Thereafter, the second show cause notice was

published in the daily newspaper "The Samaj" on 9.11.2005. The Petitioner vide letter dated 14.11.2005 requested the disciplinary authority to supply him the enquiry report, and, accordingly, it was supplied to him. Then, the Petitioner vide his letter dated 28.11.2005 submitted his reply to the second show cause notice, but without taking it into consideration, the disciplinary authority erroneously passed the order of termination of his services under Annexure-10. Hence, the prayer to quash Annexures-1 and 10.

5. Opp. party Nos. 1 and 4 in their joint counter affidavit contended that the initiation of the Disciplinary Proceeding against the Petitioner was not made by any officer junior to him. It was initiated by the Managing Director in-charge of the opposite party No. 1 company, (the controlling authority) as per the delegation of power. Admittedly, after the suspension of Shri N.K.P. Sinha, the then Managing Director, the Petitioner was the next man in the seniority but since there was a C.B.I. proceeding pending against him, it was thought proper not to hand over the charge of the company to him. The I.D.P.L. thought it proper to handover the charge of the company to opposite party No. 4-R.K. Satpathy, and, accordingly, he was kept in-charge thereof. On completion of preliminary enquiry in the vigilance case, initiated against the Petitioner, the Deputy Manager, Vigilance by his letter dated 21.03.2003 intimated that the D.I.G. of Police, C.B.I., Kolkata vide his letter dated 21.03.2003 forwarded the report to S.P., C.B.I. Bhubaneswar stating that there was sufficient materials for initiating regular departmental action (major penalty) against the Petitioner. The S.P., C.B.I., Bhubaneswar vide his letter dated 21.04.2003 clearly recommended for initiation of a regular departmental action for major penalty against the Petitioner. So, the Petitioner was charged for his misconduct, on the basis of investigation made by the C.B.I. The managing Director in-charge has no axe to grind against the Petitioner. Under such grounds, opposite party Nos. 1 and 4 prayed to dismiss the writ petition. Opposite party No. 2 adopted the counter of opposite party No. 1 and 4.

6. Learned Counsel for the Petitioner submitted that the Inquiry Officer ought to have recorded the statement of the witnesses in presence of the Petitioner, but instead, he relied on the statement of the witnesses given before the C.B.I., which is against the principle of natural justice and the Rules. On the contrary learned Counsel for the Opp. Parties contended that the previous statement made by the witnesses can be relied upon and if the delinquent is given a chance to cross-examine those witnesses with reference to their earlier statement, then there is no violation of the principle of natural justice or any law or rules. In the case at hand, the Petitioner was given chance to cross-examine the witnesses examined by the C.B.I.

7. Learned Counsel for the Petitioner further submitted that the Petitioner had made a representation challenging the decision of keeping opposite party No. 4 in-charge of Managing Director, so out of malice he initiated the Departmental Proceeding against the Petitioner, put him under suspension and ultimately

dismissed him from service. Learned Counsel for the opposite parties contended that the Disciplinary Proceeding was initiated against the Petitioner on the basis of report of D.I.G. of Police, C.B.I., Calcutta.

8. Learned Counsel for the opposite parties submitted that the Rules is very much in existence where there is provision for appeal and review and in fact the Petitioner has preferred an appeal vide Annexure-11 against the impugned orders, which is Sub-judice. So, the filing of the writ petition is bad in law. Learned Counsel for the Petitioner admitted that the Petitioner filed an appeal vide Annexure-11 before the appellate authority against the impugned orders. But, since the appellate authority is not functioning, he filed the present writ petition.

9. Learned Counsel for the Petitioner further submitted that during the time of initiation of the Departmental Proceeding, the Petitioner was Manager (Marketing), whereas the Managing Director in-charge was Asst. Manager (Legal). The Managing Director in-charge being junior to the Petitioner could not have initiated the Disciplinary Proceeding. Per contra, learned Counsel for the Opp. Parties contended that earlier Mr. N.K.P. Sinha was the Managing Director but since a vigilance case was registered against Shri Sinha and he was put under suspension and a C.B.I, proceeding was pending against the Petitioner, opposite party No. 4, the Assistant Manager (Legal) was kept in-charge of the Managing Director by the Board of Directors in accordance with the provision laid down under the Rules. So, he rightly initiated-the Departmental Proceeding against the Petitioner and suspended him.

10. Learned Counsel for the Petitioner further submits that since there was no delegation of power to terminate the service of an employee the Director in-charge committed gross illegality in terminating the service of the Petitioner. Per contra, learned Counsel for the opposite parties contended that when the Board of Directors delegated disciplinary power to the Director in-charge to maintain day to day discipline of the factory he had authority to terminate the service of the Petitioner.

The rival submissions of the parties are decided in seriatim.

11. Rule 25, Sub-rule 11 of the Rules reads as follows:

On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the employee.

In the case at hand, the Presenting Officer produced the statement of five witnesses who had been examined earlier by the C.B.I, and the Petitioner was asked to cross-examine those witnesses. On perusal of inquiry proceeding, it is seen that the delinquent-Petitioner refused to cross-examine any of them. As

submitted by learned Counsel for the Petitioner in view of the provision quoted above the witnesses of the department ought have been examined in presence of the delinquent. But in first part of the said provision it is laid down that the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The statements made before the C.B, I. by which articles of charge were proposed to be proved and the witnesses who gave those statement were produced on behalf of the disciplinary authority and the delinquent-Petitioner was given chance to cross-examine those witnesses. In the decision *Union of India v. Sardar Bahadur* Labour Law Journal (I) 1972, the Apex Court held that previous statement made by witnesses to be received as evidence provided the witness is produced before the disciplinary authority or before the inquiry officer to be cross-examined by the delinquent officer. In the present case, the witnesses who had given the statement before the C.B.I., as well as their statements were produced before the Inquiry Officer and the Petitioner was given chance to cross examine the said witnesses, but he did not avail that opportunity. So, there was no violation of principle of natural justice or Rules.

12. There is no dispute that the Petitioner had made a representation before the authority against the appointment of opposite party No. 4 as the Managing Director in-charge. So, as stated earlier, learned Counsel for the Petitioner submitted that opposite party No. 4 posing himself as the Managing Director in-charge out of malice initiated the Departmental Proceeding against the Petitioner, suspended him and ultimately terminated him from service. The C.B.I, agency indicated that there was sufficient material to initiate regular departmental action (major penalty) against the Petitioner. So, on the basis of it, opposite party No. 4 in the capacity Managing Director in-charge and in view of delegation of power in his favour to exercise disciplinary powers to maintain day-to-day discipline in administration of the factory suspended the Petitioner. So, it can not be said that only because the Petitioner made a representation against the appointment of opposite party No. 4 as Managing Director in-charge of the company, on being biased he suspended the Petitioner. So far initiation of Departmental Proceeding and termination of service of the Petitioner are concerned the same would be decided by and by.

13. As per Rule 32 of the O.D.C.L. Rules, an employee may appeal against an order imposing upon him any of the penalties specified under Rule 23 or against the order of suspension referred to Rule 20 to the authority in the Schedule. In fact the Petitioner has preferred such an appeal. The present writ petition having been filed in the year 2005, at this belated stage, we do not want to dismiss the writ petition on the ground that an alternative remedy is available, particularly when the learned Counsel for the Petitioners submits that the Board of Directors (appellate authority) is not functioning.

14. Since the previous Managing Director Mr. M.K.P. Sinha was put under suspension and a C.B.I. proceeding against the Petitioner was pending, opposite

Party No. 4 being the next senior most officer was appointed as Managing Director in-charge of the company. On perusal of Annexure-A/1, it is found that in the 95th meeting of the Board of Directors of O.D.C.L. held on 10.6.2003, opposite party No. 4 was appointed as M.D. in-Charge of O.D.C.L. and he was authorized to exercise disciplinary powers to maintain day to day discipline in administration of the factory. Rule 20, Sub-rule 1 of the O.D.C.L. Conduct, Discipline and Appeal rules reads as follows:

The appointing authority or any authority to which it is subordinate or the disciplinary authority or any authority empowered in that behalf by the management by general or special order may place an employee under suspension.

In the instant case, Managing Director is the appointing and disciplinary authority of the Petitioner. In his absence, the Board of Directors could have suspended the Petitioner. As per the above quoted provision, Board of Directors also can delegate power to any authority by general or special order to suspend and employee on any of the grounds mentioned in the said provision. In the present case since the Board of Directors appointed opposite party No. 4 as the Managing Director in-Charge of opposite party No. 1-company and authorized him to exercise disciplinary power to maintain day-to-day discipline in administration of the factory employee, it cannot be said that he had no power to suspend any employee from service.

15. Admittedly, the Board of Directors had delegated power to the Director in-charge to maintain day to day discipline of the factory. As held earlier, because of this power the Director in-charge has rightly suspended the Petitioner. Now, the question is whether the Director-in-charge can legally frame charge against the Petitioner and terminate his service.

Rule 25 of the Rules lays down the procedure for imposing major penalties. As envisaged under Sub-rule 3 of the said Rule, where it is proposed to hold an enquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. So, the disciplinary authority can alone frame charges. Even though Opp. Party No. 4 was kept in-charge of the Director and was authorized to exercise disciplinary powers to maintain day-to-day discipline in administration of the factory in our view he can not frame charge.

16. With regard to termination of service, it would be profitable to quote Rule 24 of the Rules.

Rule 24 Disciplinary Authority. The disciplinary authority, as specified in the schedule or any authority higher than it may impose any of the penalties in Rule 23 on any employee.

As per Rule 23 the following are the major penalties:

(i) reduction to a lower grade or post.

(ii) Removal from service which shall not be a disqualification for future employment.

(iii) Dismissal.

It is stipulated in the schedule that the Managing Director is the disciplinary authority of the Petitioner. So, the Managing Director or any authority higher than him can only remove the Petitioner from service. It cannot be said that because power was delegated to Director in-charge to maintain day to day discipline of the factory, he can terminate the Petitioner from service. Had it been the intention of the framers of the Rules, they would have made a provision for delegation of disciplinary power to any authority junior to the disciplinary authority at par with Rule 20. Moreover, as found from Annexure-10 the service of the Petitioner was terminated. The Petitioner was neither removed from service nor he was dismissed as per Rule 23(e). As stated earlier reduction in rank, removal from service, which shall not be a disqualification for future employment and dismissal from the service are the only three major penalties prescribed by Rule 23(e), but not termination from service. Rule 23(vi) of the Rules deals with termination of service of an employee. As per the said provision an employee appointed on probation, in a temporary capacity, on a contract or agreement or on reduction of establishment can only be terminated from service. Since the Petitioner does not fall under any of these categories, his termination of service is against the Rules. As such Annexure Nos. 1 and 10 deserve to be quashed.

It is stated at the bar that the opposite party No. 1 company is under liquidation. So, it would be just and proper, if a lump sum amount of Rs. 2,00,000/- is paid to the Petitioner as compensation.

Therefore, the writ petition is allowed. Annexure Nos. 1 and 10 are quashed and the opposite party No. 1 company is directed to pay a sum of Rs. 2,00,000/- to the Petitioner, as compensation within three months hence. No costs.

B.P. Das, J.

17. I agree.