
(2009) 07 JH CK 0085
In the Jharkhand High Court

Chandra Shekhar Rana

APPELLANT

Vs

Central Coalfields Ltd and Others

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0085

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioner in this writ application has prayed for quashing the order dated 1.10.2000 (Annexure-7), whereby the Disciplinary Authority has terminated his service with effect from 03.10.2000. A further prayer has been made for quashing the order of the Appellate Authority communicated to the petitioner vide letter dated 21.7.2001 (Annexure-9), whereby the Appellate Authority had rejected the appeal filed by the petitioner against the order of termination of his service.

2. Heard Shri Sidheshwar Prasad, learned Counsel for the petitioner and Smt. Banani Verma, learned Counsel for the respondents.

3. Background facts:

The petitioner had joined the services under the respondents on the post of Driver in the year 1978. On 12.8.1998, he was served with charge sheet-cumsuspension order (Annexure-1) by his employer. The petitioner submitted his explanation in response to the charge sheet and on considering the same, he was though allowed to resume his duties with effect from 20.8.1998, but a Disciplinary Proceeding was initiated against him on the basis of the charge sheet. In the notice calling upon the petitioner to submit his explanation, the charge against him as stated, was as follows:

On the basis of the preliminary inquiry made by SE (E&M), Giddi "C" Colliery, it is

found that during the duty hours on 6.8.1998, the petitioner has changed the diesel tank of the school bus No. BHM 8906 without taking any permission from the Management. This shows your gross negligence and ulterior motive for pilferage of diesel from the diesel tank.

Notice adds that "if the above charges are proved, they would constitute acts subversive of discipline and also constitute misconduct under Clause 17(1)(a), (f) and (i) of the aforesaid standing order". The Disciplinary Inquiry was conducted giving opportunity to the petitioner to participate. At the conclusion of the inquiry, the Inquiry Officer recorded his finding that charge against the petitioner was proved.

Upon perusing the Inquiry Report, the Disciplinary Authority issued a show-cause notice along with a copy of the Inquiry Report to the petitioner to explain against the proposed punishment. The petitioner submitted his explanation, disputing the findings of the Inquiry Officer. Not being satisfied with the explanation offered, the Disciplinary Authority by the impugned order, terminated the service of the petitioner. The appeal filed by the petitioner against the order of his dismissal, was also rejected by the Appellate Authority by the impugned Appellate Order.

4. The petitioner has challenged the impugned orders primarily on the following grounds:

I. The findings of the Inquiry Officer are perverse and are contrary to the evidences on record.

II. Even otherwise, evidences adduced at the inquiry, do not confirm that the petitioner was actually found to have changed the fuel tank or pilfered any quantity of diesel from the tank.

III. The punishment inflicted upon the petitioner, is extreme and not commensurate with the charges levelled against him.

5. Elaborating the grounds, Shri Sidheshwar Prasad, learned Counsel for the petitioner, would explain that even from the facts as appearing in the evidences of the witnesses, the petitioner was not the only driver of the bus under reference. There were admittedly two other drivers, one of whom was one Lalu Mahato who had in fact, operated the bus on the previous day and had obtained diesel for the bus. Upon taking over charge of the bus on the next day i.e. on 6.8.1998, the petitioner did not obtain any diesel and at the close of duty hours, he had parked the bus at the garage. For the same charge, the co-driver Lalu Mahato was put under suspension and Disciplinary Inquiry was initiated against him on the allegation that with the connivance of the petitioner, he had changed the fuel tank of the bus. Learned Counsel argues that neither the said co-driver or khalashi of the bus was examined by the Management at the Inquiry, nor has any witness come forward to state that it was the petitioner who had actually changed the fuel tank of the bus. Learned Counsel adds that these aspects of the

evidences of the witnesses, adduced by the Management, have been ignored by the Inquiry Officer and merely on the basis of the presumption and attributing motive, the Inquiry Officer has recorded his finding of guilt against the petitioner.

6. A counter-affidavit has been filed on behalf of the respondent Management. Smt. Banani Verma, learned Counsel for the respondents, would argue that the instant writ application is totally misconceived and in fact, not maintainable. Learned Counsel submits that the domestic inquiry against the petitioner, was initiated on the basis of specific charges, in which the petitioner was given adequate opportunity of defending his case. The Inquiry Officer had duly evaluated the evidences adduced at the inquiry and had recorded his findings of guilt against the petitioner by assigning adequate reasons. Learned Counsel adds that the act of the petitioner did amount to misconduct and violation of the standing orders of the respondent Company and for such misconduct and violation of the standing orders, the punishment of termination of services could be imposed against the petitioner. Learned Counsel adds further that this Court in exercise of its writ jurisdiction, cannot sit as a court of appeal and in absence of any question of law raised by the petitioner, this application is liable to be dismissed.

7. From the grounds advanced by the petitioner, it appears that the petitioner's sole grievance is that the finding recorded by the Inquiry Officer, is perverse and not in consonance with the evidences on record and that, material witnesses were not examined by the Management and thereby the petitioner has suffered gross and serious prejudice in his defence.

Admittedly, the petitioner has not expressed any grievance in respect of the manner in which the domestic inquiry was conducted, nor does he claim that he was not offered any reasonable opportunity of defending against the charge. The petitioner's grievance is that the Inquiry Officer has erred in placing implicit reliance on the expert evidence to the effect that the diesel tank was changed, although such evidence was given by the expert only by way of approximate by visual measurement and not by carrying out actual measurement of the capacity of the tank.

8. On perusal of the report of the Inquiry Officer, it appears that the Inquiry Officer has discussed the evidences on record and has drawn inference of guilt against the petitioner on the ground, that during the relevant period, the bus was in the custody of the petitioner alone and it was he who was expected to explain as to how the fuel tank was changed.

It further appears that the Appellate Authority had also gone into the evidences on record and had concurred with the findings of the Inquiry Officer on the basis of the evidences. Merely because some witnesses were not examined by the Management, contrary to his desire, does not demonstrate any perversity in the finding of the Inquiry Officer. The petitioner was admittedly offered adequate opportunity to defend his case and he could very well have opted for examining

those witnesses whom he had desired. The petitioner has not been able to demonstrate any perversity in the findings of the Inquiry Officer.

It is now well settled that standard of proof in connection with disciplinary proceedings is preponderance of probabilities and "not beyond reasonable doubt". Even otherwise, this Court in exercise of its writ jurisdiction, cannot sit as a court of appeal to make reappraisal of the evidences. The Disciplinary Authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a Disciplinary Inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of the evidence or reliability of evidence cannot be permitted to be canvassed before this Court.

9. As regards the punishment imposed, it appears that the acts of the petitioner which constitute the charges, are said to be misconduct under Clause 17(1)-(a) (f) and (i) of the Standing Orders of the CCL and are referred to as acts subversive of discipline. On proof of such misconduct, the provision under Clause-17 of the Standing Orders prescribes punishment of termination of services. The Disciplinary Authority has therefore power and jurisdiction to impose punishment, having regard to the gravity of the established misconduct. It would be manifest from the Inquiry Report and the findings of the Inquiry Officer, that there was some evidence to reach at the conclusion in respect of the charge standing proved against him. Under such circumstances, it is not upon this Court to review the punishment imposed by the Disciplinary Authority which had found concurrence of the Appellate Authority.

10. For the reasons discussed above, I do not find any merit in this application. Accordingly, this writ application is dismissed.