
(2016) 09 JH CK 0069
In the Jharkhand High Court
Case No : W.P. (S) No. 4795 of 2009

Dipak Chandra Choudhuri	Vs	APPELLANT
Steel Authority of India Ltd.		RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 16, Article 22, Article 311

Citation : (2017) 1 AIRJharR 193 : (2017) 1 JCR 648

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Rajiv Ranjan, Sr. Advocate and Mr. Shresth Gautam, Advocate, for the Respondents-SAIL; Mr. R.S. Majumdar, Sr. Advocate and Mr. Kumar Vaibhav, Advocate, for the Petitioner; Mr. Pravin Kr. Rana, J.C to S.C (L &C), for the State

Final Decision : Allowed

Judgement

Mr. Pramath Patnaik, J. - In the accompanied writ application, the petitioner has inter-alia prayed for quashing the order dated 23.06.2009 (Annexure-7) issued by the disciplinary authority pertaining to removal of petitioner from the services of the company and for quashing the order dated 04.09.2009 (Annexure-10) issued by Chairman (appellate authority) in terms of which the respondent on upholding the findings of the enquiry officer and disciplinary authority has modified the order of punishment to reduction to a lower grade of E-6 and to the lowest pay scale in the reduced grade and for direction to respondents to restore the petitioner to his original grade & Pay Scale (i.e. E-7 in the basic scale of Rs. 25350/-) with all consequential benefits.

2. Sans details, the facts as disclosed in the writ application, in a nutshell, is that the petitioner was posted as DGM (RMP). In pursuance to office order dated 29.10.2007, all his actions were subject to the approval of the GM (Ref.). The main duty assigned to the petitioner was to coordinate with other concerned DGMs and AGMs, develop a plan and execute the same on approval by the

concerned GM. The petitioner was placed under suspension vide office dated 07.04.2009 in contemplation of a departmental proceeding. In the said office order vide Annexure-2, the statement of implication of misconduct has been alleged against the petitioner for contravening Rule 4.0 (1) (ii), 4.0(2) and 5.0(9) of SAIL, Conduct, Discipline and Appeal Rules. In pursuance to article of charges and implication of misconduct, the petitioner submitted his reply denying the charges. In the reply, it has been asserted by the petitioner that on account of inferior refractory bricks, the kiln were not functioning properly, for which he took proper measures planning and managing to over come the defects but in spite of his best judgment, not much could be done to minimize the loss. The petitioner also denied the allegations of lack of devotion to duty and integrity. The aforesaid reply of the petitioner was not found satisfactory hence an inquiry committee was constituted and the petitioner was directed to appear before the enquiry committee. The petitioner was provided with a questionnaire and was asked to reply to the queries. The petitioner gave answer to the said queries. During inquiry the petitioner was not given opportunity to cross examine the management witnesses. The inquiry committee submitted its report but the same was not provided to the petitioner to enable him to file his defence against the findings of the inquiry committee. On 23.06.2009, the disciplinary authority vide Annexure-7 to the writ application imposed a punishment of removal from services of the company, which shall not be a disqualification for future employment. On receipt of the order of disciplinary authority, the petitioner preferred an appeal before the appellate authority vide Annexure-10 to the writ application. The appellate authority modified the order of the disciplinary authority and imposed a punishment of reduction to E-6 grade and to the lowest pay scale in the aforesaid grade. Being aggrieved by and dissatisfied with the order passed by the disciplinary as well as appellate authority, the petitioner, left with no other alternative efficacious and speedy remedy has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Mr. R.S. Majumdar, learned senior counsel for the petitioner has strenuously urged that the article of charges and statement of implication of misconduct against the petitioner does not constitute a misconduct under the SAIL, Conduct, Discipline and Appeal Rules. Learned senior counsel for the petitioner further submits that the departmental enquiry has been conducted against the petitioner in violation of the aforesaid provisions and there has been contravention of principles of natural justice and fair play and the impugned order inflicting major punishment has been passed in violation of Article 14 of the Constitution of India. Learned counsel further submits that the impugned order of punishment by the disciplinary as well as appellate authority dated 23.06.2009 and 04.09.2009 have been passed without second show cause notice. Learned senior counsel during course of hearing has referred to the decisions of Hon''ble Apex Court as reported in (2010) 11 SCC 278 in the case of Indu Bhushan Dwivedi v. State of Jharkhand at paragraph nos. 22 and 23, which is quoted herein below -

22. "As a general rule, an authority entrusted with the task of deciding between the parties or empowered to make an order which pre-judicially affects the rights of any individual or visits him with civil consequences is duty-bound to act in consonance with the basic rules of natural justice including the one that material sought to be used against the person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of the concept of rule of law. This right has its roots in the notion of fair procedure. It draws the attention of the authority concerned to the imperative necessity of not overlooking the cause which may be shown by the other side before coming to its decision.

23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also to disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty-bound to act in consonance with the rules of natural justice".

Learned senior counsel has also referred to the decisions as reported in 2014 (2) JLR 5 in the case of Shanti Devi v. The State of Jharkhand & Ors. at paragraph nos. 10 and 11, which is quoted herein below -

"10. On an anonymous complaint as would appear, the matter has been inquired by the three Deputy Superintendent of Police of JAP-10 and the petitioner was also called to give her answer which is enclosed to the inquiry report of the 3 Dy. S.P.s of JAP-10, Annexure-A to the counter affidavit. On perusal of the inquiry report it further appears that apart from the 3 Dy.S.P. Of JAP-10, who had submitted the preliminary report, one another witness have been examined. It however, appears that the Inquiry Officer after taking into account the materials adduced during the course of inquiry and the preliminary inquiry report reiterated by the 3 prosecution witnesses has held the petitioner guilty. Apparently, after the aforesaid findings of guilt by the Inquiry Officer, no second show cause notice has been issued neither the copy of the inquiry report was served upon the petitioner to allow her to offer her reply to the same before the Disciplinary Authority before he proceeded to pass an order of punishment. The requirement of second show cause notice and service of the inquiry report has been held to be an integral part of the conduct of the Disciplinary proceeding by the celebrated judgments rendered by the Hon"ble Supreme Court in the case of Union of India & others v. Mohd. Ramzan Khan reported in (1991) 1 SCC 588 and also in the case of Managing Director, ECIL Hyderabad and Ors. v. B. Karunakar & Ors. reported in (1993) 4 SCC 727. Para 15 and 18 of the judgment rendered in

the case of Union of India & others v. Mohd. Ramzan Khan (supra) is reproduced herein below for better appreciation of the case.

"Para 15 :- Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

Para 18 :- We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter".

11. The Hon"ble Supreme Court held that the Disciplinary Authority is required to exercise his independent mind before passing the order of punishment after taking into account the material adduced in the inquiry together with the reply to the second show cause by the delinquent employee. In the instant cases as it appears the impugned order has been passed without service of inquiry report and the second show cause, which obviously has vitiated the conduct of the disciplinary proceeding and prejudiced the petitioner."

4. Mr. Rajiv Ranjan, learned senior counsel for the respondent-SAIL has reiterated the submissions made in the counter-affidavit. Learned senior counsel for the respondents-SAIL has vehemently submitted that the petitioner has not pleaded as to what prejudice has been caused to him moreover, the appellate authority has passed modified order of punishment to lowering down the grade which is commensurate to the proved charges levelled against the petitioner. Learned senior counsel for the respondent SAIL further submits that the

petitioner was in-charge and head of RMP which may be seen in the statement of article of charges therefore he was responsible and accountable for the affairs of the RMP. During course of hearing, learned senior counsel for the respondents has referred to Rule 4.0(1), (ii) of Conduct, Discipline and Appeal Rules which inter-alia envisages that every employee of the company shall all time maintain devotion to duty and its contravention amounts to misconduct. Further, Rule 5.0(9) of the said Rules prescribes the neglect of work or negligence in the performance of duty including lingering or slowing down of work is misconduct. Learned senior counsel submits that there has been no procedural irregularity in the inquiry and therefore, the petitioner had not been denied natural justice. During course of hearing learned counsel for the respondents has referred to the decisions of Hon''ble Apex Court as reported in (2010) 3 SCC 556 in the case of Sarva Uttar Pradesh Gramin Bank v. Manoj Kumar Sinha, at paragraph 38, thereof is quoted herein below -

38. We have examined the factual situation in this case elaborately to see as to whether any prejudice has been caused to the respondent. We are unable to accept the submissions of the learned counsel for the respondent that any prejudice has been actually caused. We are of the considered opinion that there has been no failure of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent.

Learned senior counsel has also referred to the decisions as reported in 2010 (5) SCC 349 in the case of Union of India And Others v. Alok Kumar (with Analogous cases).

The Hon''ble Apex Court has held that unless prejudice is shown to have been caused by non-supply of the inquiry report, it could not amount to failure of justice.

5. After hearing learned counsel for the respective parties at length and on perusal of the evidences on records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated herein below :-

(i) On perusal of the statement of article of charges fell against the petitioner, who assumed his charge as DGM(RMP). At the relevant point of time, the lime production have gone down, which has adversely effected steel and hot metal production. The situation has occurred due to poor planning and management on the part of the petitioner and the onus was made to keep the shop in working order but the lime production has been adversely affected. The action on the part of the petitioner amounts to lack of maintaining devotion to duty and negligence in the performance of his duties. It has been alleged that the charges have been framed against him for contravention of relevant Rule of SAIL, Conduct, Discipline and Appeal Rules. On perusal of the statement of defence, Annexure-4 to the writ application, the petitioner owned the responsibility for forcing shut down of one blast furnace on moral grounds. But, from the perusal of the order

dated 04.09.2009 of the appellate authority it is manifestly clear that the appellate authority was of the opinion that there were 3 more DGMs in the department, who were also responsible for the mishap on 03.04.2009 and, therefore, the mishap was not the sole responsibility of the petitioner. However, to the best of knowledge of the petitioner, no departmental proceeding has been initiated or any responsibility has been fixed on the other 3 DGMs, who were also responsible for the alleged misconduct, for which the petitioner has been charged though the petitioner could not have abdicated his responsibility, but, at the same time all the blame could not have been fastened on the petitioner alone.

(ii) Although, the appellate authority has modified the penalty of removal from the services of the company to the penalty of reduction to a lower grade in E-6 grade, in the scale of pay but certainly the reduction of pay is a major punishment. Moreover, as stated in the appellate order, there are three more DGMs in the department therefore, the mishap which occurred on 03.04.2009 was not the sole failure on the part of the petitioner. But, since the petitioner has been subjected to rigours of the disciplinary proceeding and he has been found guilty by the inquiry committee, the petitioner cannot be absolved of his guilt. In the meantime, as stated by the learned senior counsel for the petitioner, the petitioner superannuated in the month of March, 2010 and the reduction of pay E-6 grade has adversely affected the pay of the petitioner, which got adverse affect to the post retiral benefits of the petitioner. Since the mishap dated 03.04.2009 was due to the collective in-action on the part of the petitioner as well as other three DGM"s, when other three have been let off given a clean chit, the petitioner can not be discriminated on the impugned order of punishment of reduction of pay scale. On the facts and circumstances of the case the impugned order of punishment dated 04.09.2009 passed by the appellate authority i.e. relating to penalty of reduction to E-6 grade and pay appears to be unjustified being hit by vice of hostile discrimination.

6. The impugned order of punishment dated 23.06.2009 (Annexure-7) being modified by the appellate authority are not legally sustainable. In view of the aforesaid reasons, the impugned order of punishment dated 23.06.2009 passed by the disciplinary authority and the order dated 04.09.2009 (Annexure- 10) passed by the Appellate Authority are hereby, quashed and set aside and the respondents are directed to restore the petitioner with his original cadre and pay scale i.e. E-7 with all consequential benefits.

7. With the aforesaid direction, the writ petition stands allowed.