

(2010) 02 CHH CK 0032
In the Chhattisgarh High Court

Jagnarayan Singh

APPELLANT

Vs

South Eastern Coal Fields Limited and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 4 MPHT 37

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

Satish K. Agnihotri, J.—Heard.

1. The petitioner by this petition, filed under Article 226 of the Constitution of India, seeks quashing of the Departmental Enquiry, initiated against the petitioner on 27th January, 2009 and further quashing of the suspension order dated 27-1-2009 (Annexure P-1) and the order to charge penal rent.
2. The petitioner was working as Clerk Grade-I when the above stated order was passed. On perusal of the order dated 27-1-2009 it is evident that the charge-sheet was issued on the allegation that the petitioner has occupied the accommodation unauthorisedly. Further, the penal rent was directed to be recovered from the petitioner for the occupation of such accommodation illegally and unauthorisedly. The petitioner was placed under suspension along with the issue of the charge-sheet. The petitioner seeks quashing of the above stated order dated 27-1-2009.
3. Shri Pallav Mishra, learned Counsel appearing for the petitioner submits that no subsistence allowance is being paid to the petitioner during the suspension period, the enquiry is pending since 9-3-2009 and penal rent of the accommodation is being charged from the petitioner.
4. Shri H.B. Agarwal, learned Senior Counsel, assisted by Ms. Meera Jaiswal, learned Counsel, submits that the enquiry has been initiated on the basis of the serious allegation of occupying an accommodation illegally and unauthorisedly

and the petitioner was also suspended by the same order. During the suspension period the petitioner is being paid the admissible subsistence allowance, in accordance with law. However, if the subsistence allowance is not paid, the same shall be released forthwith and the respondents would try to conclude the enquiry as expeditiously as possible.

5. Be that as it may, without going into the allegations of the petitioner, since the charge-sheet has been issued and the petitioner has been placed under suspension on the allegation of illegally and unauthorisedly occupying accommodation/property of the respondents, the charges are not ipso facto proved, unless the opportunity is given to the petitioner to rebut the charges. Thus, at this stage it will not be proper to entertain and quash the Departmental Enquiry/charge-sheet when there is serious allegation against the petitioner which is to be proved in the Disciplinary Enquiry.

6. If in the Departmental Enquiry it is found that the occupation of the petitioner was legal, the petitioner is at liberty to seek quashing of the order for imposition of penal rent, if so advised.

7. The Supreme Court, in Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, , observed as under:

7. So far as the truth and correctness of the charges is concerned, it was not a matter, for the Tribunal to go into- more particularly at a stage prior to the conclusion of the Disciplinary Enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence, i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

8. It is well settled principle of law that the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of rank or status. The employee under suspension continues to be a Government servant, he is not permitted to work keeping in view pendency of criminal trial or Departmental Enquiry to avoid undue influence in the proceedings and likely tampering with on records. [See P.L. Shah Vs. Union of India (UOI) and Another, , Union of India and others Vs. E.G. Nambudiri,]

9. Having regard to the facts situation of the case that the charge-sheet was issued on 27-1-2009, it is just and expedient to direct that the enquiry may be concluded, as expeditiously, as possible. If the petitioner is not being paid subsistence allowance, the same shall be paid in accordance with law.

10. As a result, the petition stands disposed of, accordingly. No order as to costs.