(2003) 12 AHC CK 0132

In the Allahabad High Court

Case No : C.M.W.P. No. 46212 of 2000

K.B. Thakur — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Citation : (2004) 1 AWC 636 : (2004) 1 UPLBEC 847

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : V.K. Singh, G.K. Singh, R.N. Singh and Pankaj Barman, for the Appellant; V.K. Barman and A.P. Shai, S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the Impugned order dated 26.6.2000, Annexure-7 to the petition.

2. Heard learned counsel for the parties.

3. The petitioner was initially appointed in 1963 as U.D.C. in the National Coal Development Corporation Ltd., Ranchi. Subsequently, he was promoted as Accountant, then Assistant Accounts Officer, Accounts Officer and lastly as Finance Manager.

4. The Board of Directors of Coal India Limited had approved a scheme known as ''Executive Voluntary Retirement Scheme, 1998'', copy of which is Annexure-1 to the petition. The petitioner applied under that scheme vide Annexure-2. He mentioned in his application that his eyesight is weak on account of old age and ill-health. This application was forwarded to the Chairman-cum-Managing Director on 4.12.1998 vide Annexure-3. However, the application was rejected and he was communicated that decision by the order of the Chief Personal Manager, Khadia Project by order dated 28.1.1999, Annexure-4 to the petition. A perusal of that order shows that his application was rejected on the ground that a vigilance case is pending against him.

5. A memorandum was issued to the petitioner dated 7.1.1999, stating that his case will be considered only after completion of the enquiry vide Annexure-5 to the petition. The petitioner challenged that order in Writ Petition No. 7794 of 1999 and he also filed Writ Petition No. 28000 of 1999 praying that the Chairman-cum-Managing Director/ Disciplinary Authority may be restrained from interfering with the enquiry proceedings against the petitioner. In this petition an order was passed directing the respondents to pass appropriate order on the petitioner''s application for voluntarily retirement. During the pendency of the aforesaid petition the impugned order has been passed by the Chairman-cum-Managing Director dated 26.6.2000, vide Annexure-7.

6. Aggrieved this petition has been filed in this Court.

7. A counter-affidavit has been filed and we have perused the same. It has been alleged in para 20 of the counter-affidavit that the petitioner''s in appeal against the order dated 26.1.2000 has been rejected vide Annexure-C.A. 1.

8. A perusal of the memorandum dated 7.1.1999, Annexure-5 to the petition shows that the only charge levelled against the petitioner was that the petitioner had failed to discharge his duty as officer incharge of the Cash Section of Khadia Project while making payment of Rs. 1,70,575.26 to M/s. J.P. Enterprises. It was alleged that the cheque in favour of M/s. J.P. Enterprises was given to a wrong person. On this allegation the petitioner has been given the punishment vide Annexure-7 and his appeal has also been dismissed which has been challenged by an amendment application.

9. Learned counsel for the petitioner has submitted that the person to whom the cheque was given had been given a power-of-attorney by M/s. J.P. Enterprises and was wholly authorised to accept the said cheque. The proprietor of M/s. J.P. Enterprises had given in writing vide letter dated 14.1.1999, that he had got absolutely no grievance, in this connection.

10. In our opinion, the impugned order was wholly arbitrary and hence deserves to be set aside. In reply to the show cause notice the petitioner has specifically stated that the cheque in question was given to Rabel Singh who held a power of attorney of M/s. J.P. Enterprises Ltd. Hence we fail to understand what wrong the petitioner has committed. M/s. J.P. Enterprises has no grievance at all in this connection and no loss has been caused to the organisation.

11. It has been alleged in para 29 of the writ petition that the cheque had been issued to the representative of the supplier and on account of receiving the said cheque by the representative there was no loss to the company. The petitioner has given details about the withdrawal of the cheque in his appeal, and he had submitted that Jai Prakash proprietor of M/s. J.P. Enterprises had withdrawn his complaint vide letter dated 14.1.1999 and had explained the circumstances. All these facts were not considered by the enquiry officer.

12. The reply to para 29 of the writ petition is contained in para 21 of the

counter-affidavit. A perusal of the said para shows that there is no specific denial to the averments in para 29 of the writ petition and hence the allegations therein have to be treated as correct. The person who received the cheque held a power-of-attorney and the company has made no grievance and no loss has been caused to any one. We fail to understand what misconduct the petitioner has committed. In fact we are of the opinion that the petitioner has not committed any misconduct and the impugned order was wholly arbitrary.

13. For the reasons given above the petition is allowed. The impugned order dated 26.6.2000, is quashed. No order as to costs.

