

(2014) 01 JH CK 0098
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5919 of 2009

Madan Singh

APPELLANT

Vs

Bharat Coking Coal Ltd., Director (Personnel), BCCL, Project Officer, Satabdi Open Cast Project Colliery, BCCL and Personnel Manager-cum-Enquiry Officer, Satabdi Colliery, BCCL

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 AJR 204 : (2014) 1 JLJR 500

Hon'ble Judges : Chandrashekhar, J

Bench : Single Bench

Advocate : Amit Kumar Das, for the Appellant; Anoop Kumar Mehta, for the Respondent

Judgement

Chandrashekhar, J.—By Court: Heard learned counsel appearing for the parties and perused the documents on record. The petitioner was appointed as a Clerk (T) Category-I vide letter dated 25.02.1991. On 06/10.01.1997, a show-cause notice was issued to the petitioner for committing misconduct under Clauses 26.1.2, 26.1.11 and 26.1.15 of the Certified Standing Order of BCCL. An inquiry was conducted into the matter and the inquiry report dated 05.04.1997 was submitted finding the charges not proved. Subsequently on the basis of joint inspection report dated 03.10.1997, another charge memorandum dated 19.10.2000 was issued to the petitioner. An inquiry was conducted into the matter and the inquiry report dated 04.01.2004 was submitted finding the charges proved against the petitioner. A second show-cause notice was issued to the petitioner on 14.04.2007 to which the petitioner submitted his reply. The penalty of dismissal from service was passed on 28.04.2007, and the appeal preferred by the petitioner has been dismissed by order dated 16.10.2009

2. A counter affidavit has been filed stating as under:

5. That now it is well settled principle of law that exoneration in a criminal case does not mean that the order of dismissal deserves to be quashed. Reference in this regard can be had to the judgments of the Hon''ble Supreme Court of India reported in Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan,

9. That the points formulated in para 2 of the writ application would not fall for consideration of this Hon''ble Court. It is now well settled principle of law that this Hon''ble Court in exercise of powers conferred under Article 226 of the Constitution of India would not reappreciate evidence. The petitioner has not made out a case that the order of punishment is against the doctrine of proportionality or the same is in violation of the principles of natural justice. It is stated that since the charge of theft of diesel has been proved, the order of dismissal from service cannot be held to be disproportionate.

12. That the statements made in paragraph 11 are matters of record. It is stated that the enquiry in respect to charge sheet dated 6/10.01.1997 did not conclude and before conclusion of the said charge sheet the charge sheet itself was cancelled. It is denied that the charges were never proved.

3. The learned counsel appearing for the petitioner has submitted that, though an inquiry has been conducted into the allegation contained in the charge-memo dated 06/10.01.1997 and an inquiry" report dated 05.04.1997 has been submitted finding the charges not proved, nonetheless, for the same charge a second inquiry was instituted against the petitioner by issuing memorandum of charge dated 19.10.2000, which is not permissible in law. The learned counsel for the petitioner has further submitted that, though there is a specific charge of misappropriation of 3499.42 litres of diesel, the said charge was not proved during the course of inquiry, inasmuch as, the inquiry officer has only recorded a finding that shortage of 620.74 litres of diesel has been found. The learned counsel has also submitted that, there was no physical verification of the actual stock of the diesel and only on the basis of the documents prepared by the petitioner, the department has proceeded against the petitioner and due to wrong calculation, the inquiry officer arrived at a finding that there has been a shortage of 620.74 litres of diesel.

4. On the other hand, Mr. Anoop Kumar Mehta, the learned counsel appearing for the respondents has submitted that, since in a properly constituted departmental inquiry in which the petitioner was afforded full opportunity to defend himself, he has been found guilty of the misconduct, no interference is required in this matter. The learned counsel has further submitted that, since the petitioner has not raised a plea of violation of principles of natural justice, the proper remedy for the petitioner would be to approach the Industrial Tribunal where the facts can be adjudicated. The learned counsel has further submitted that it has been consistently held by the Hon''ble Supreme Court that, in cases of workmen, the penalty order should be challenged before the Labour Court.

5. Having appreciated the contentions raised by the learned counsel for the

parties, I am of the opinion that, merely because an inquiry report was submitted on 05.04.1997, the issuance of charge memorandum dated 19.10.2000 is not barred in law. The inquiry report dated 05.04.1997 would disclose that, the inquiry was concluded ex-parte, as inspire of repeated reminders the department did not appear during the course of departmental inquiry. I find that in cases where an inquiry has been found to have been conducted in violation of principles of natural justice or there was some technical defect in the first inquiry, the second inquiry is not barred in law.

6. In Nand Kumar Verma Vs. State of Jharkhand and Others, the Hon''ble Supreme Court has held,

26. On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charge is permissible.

7. From the records produced in the case, I find that the charge against the petitioner relates to the year, 1994. The specific charge against the petitioner is of misappropriation of 3499.42 litres of diesel. It is also an admitted fact that no physical verification with respect to shortage of diesel was conducted nor any evidence with respect to misappropriation was produced during the departmental proceeding.

8. The charge contained in the Memorandum issued on 19.10.2000 is extracted below:

While posted and functioning as Clerk/In-Charge, Muraidih Diesel Dispensing Unit (DDU), Muraidih colliery of Barora Area, BCCL during 1994 and custodian of the diesel stock of Muraidih Diesel Dispensing Unit you committed gross misconduct by misappropriating diesel stock of 3499.42 ltrs. out of the diesel in your physical possession and custody.

Your above acts of dishonesty constitute serious misconduct on your part in contravention of clause of 26.1.2011 of Certified Standing Orders for workmen of Establishments under BCCL, Dhanbad.

You have failed to maintain integrity and acted prejudicial to the interest of the Company.

You also failed to maintain devotion to duties and less faith of the Company in indulging in the act of misappropriating the Company's property.

9. I further find that the enquiry officer has recorded his conclusion thus;

CONCLUSION:

1. The charge as contained in the statement of imputation of misconduct that CE had recorded the opening balance of diesel in tank-A as 9395 Ltrs. Instead of actual figure of 9593 Ltrs. as the opening balance of diesel in tank-A as on 01.04.1994 in the said monthly statement has been held proved.

2. (i) The charge of shortage of diesel in Tank-A during the tenure of Sri Madan Singh has been proved to the extent of 355.71 ltrs. Only and not 3034.9 ltrs. as given in the statement of imputation of misconduct of the charge sheet.

(ii) The charge of shortage of diesel in Tank-B during the tenure of Sri Madan Singh has been proved to the extent of 265.03 ltrs. only and not 3034,0 ltrs. as given in the statement of imputation of misconduct of the charge sheet.

Hence,

Total shortage = 355.71 + 265.03

= 620.74 ltrs.

Hence, the charge regarding shortage of diesel during the tenure of Sri Madan Singh is held proved to the extent of 620.74 ltrs. in place of 3499.42 ltrs. as contained in the memorandum.

Hence, The Case is Only Partially Proved.

10. I find that a specific charge of misappropriation of 3499.42 litres of diesel was framed against the petitioner however, no finding of misappropriation has been recorded by the enquiry officer. The disciplinary authority has noticed that the enquiry officer has found charge partly proved and he has recorded his concurrence with the finding of the enquiry officer. I further find that the disciplinary authority has also not recorded a finding of "misappropriation of diesel" established from the evidence.

11. The charge-memo which was issued on 06/10.01.1997 is said to have been recalled and a charge memorandum dated 19.10.2000 has been issued, on the basis of a joint inspection report dated 03.10.1997. I do not find any justification for initiating a departmental proceeding against the petitioner in the year, 2000 with respect to the alleged misappropriation committed by him in the year, 1994. The joint inspection report is not the reason for recalling the charge-memo dated 10.01.1997. Even the joint inspection report is dated 03.10.1997. Moreover, the finding recorded in the inquiry report dated 05.04.1997 has not been considered at all. Since, the petitioner has alleged wrong calculation by the Department and the inquiry officer, the inquiry report dated 05.04.1997 should have been considered by the inquiry officer. I further find that, the charge framed against the petitioner is absolutely vague. No particular or detail has been indicated either in the charge memorandum or in the statement of imputation of charge supplied to the petitioner. I am of the view that even if an delinquent employee has not raised objection with respect to vagueness of charge, the charge must contain specific details. In the present case except that, the misappropriation

relates to the year, 1994, no specific instance has been indicated in the memorandum of charge.

12. In *Surath Chandra Chakrabarty Vs. State of West Bengal*, the Hon"ble Supreme Court has held,

5. it is incomprehensible how the details as to date, time, place and person etc. would not have made the charges more definite as appears to have been the opinion of the Division Bench. We are unable to agree that the details without which a delinquent servant cannot properly defend himself are a matter of evidence. In this connection reference may be made to Fundamental Rule 55 which provides, inter alia, that without prejudice to the provisions of the Public Servants Enquiry Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of service unless he is informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly by projecting his own, imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

13. In *Union of India (UOI) and Others Vs. Gyan Chand Chattar*, , the Hon"ble Supreme Court has observed thus,

34. In *Sawai Singh v. State of Rajasthan* this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of

fact in the context of the statute defining the misconduct.

14. The list of documents attached to the charge memorandum would disclose that, a copy of first information report being R.C. 3(A)/98(D) and a copy of joint inspection memo dated 03.10.1997 were produced on behalf of the department. It is an admitted position that, the C.B.I. decided not to proceed in the case after investigation into the matter. The inquiry officer has also recorded that, since the evidence collected was not sufficient for launching prosecution, no charge-sheet was filed in the matter. The charge which pertains to the misappropriation committed in the year, 1994 involving shortage of 3499.42 litres of diesel has not been proved in the course of departmental inquiry. The inquiry officer has found shortage of 620.74 litres of diesel only.

15. I further find that though the petitioner was Incharge of the depot, no other supervisory officer of the petitioner has been proceeded against for dereliction in duty in not detecting the alleged misappropriation. Though the misappropriation was committed in the year, 1994, a charge-memo was issued in the year, 1997 which was recalled and again a memorandum of charge was issued in the year, 2000. The inquiry report was submitted in the year, 2004, the second show-cause notice was issued in the year, 2007, the penalty order was passed in the year, 2007 and the appellate order has been passed in the year, 2009. I am of the view that serious prejudice has been caused to the petitioner as the proceeding has concluded 15 years after the alleged incident. In "State of Punjab Vs. Bani Singh" reported in (1990) Suppl. SCC 738, the proceeding was initiated in the year 1987 with respect to the irregularities committed in the year 1975-77, the Hon"ble Supreme Court held that it will be unfair to permit the departmental enquiry to proceed further.

16. Adverting to the contention raised on behalf of the respondents that the proper remedy for the petitioner is to approach the Labour Court, I am of the opinion that in a case in which the impugned proceeding apparently discloses violation of the principles of natural justice, the petitioner has rightly approached this Court. It is true that the Writ Court cannot re-appreciate the evidence brought on record in the departmental proceeding, however, on the admitted facts, this Court has power to interfere with the penalty imposed upon an employee. In view of the aforesaid, this writ petition is allowed. The respondents are directed to reinstate the petitioner in service.