
(2014) 04 JH CK 0094
In the Jharkhand High Court
Case No : W.P. (S) No. 768 of 2014

Mahadeo Bhuian

APPELLANT

Vs

Central Coalfields Ltd.

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Citation : (2014) 2 JLJR 572

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Amit Kr. Sinha, Advocate for the Appellant; Raj Nandan Sahay, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. Office order dated 31.1.2014, Annexure-4, issued by the Staff Officer (Mining), Kuju Area of the respondent-CCL imposing the punishment upon the petitioner has two parts-- (i) stoppage of one annual increment with cumulative effect and he would not be posted at sensitive post during his service career, and (ii) the petitioner, who is a senior cashier, has been posted at Karma Project to work as a Pitman/Dumpman. The petitioner, while holding the post of senior cashier under the respondent, was proceeded under charge-sheet-cum-suspension order dated 22.3.2013, Annexure-3 for the alleged misconduct inter alia stating as follows:--

2. That the petitioner had obtained a draft of Rs. 10,000/- dated 3.10.2012 for deposit in favour of the Secretary, Jharkhand State Pollution Control Board, which he actually did not deposit neither he has informed the said office. The negligence on the part of the petitioner was likely to result in initiation of proceeding against the respondent organization. Apart from that though he had obtained several cheques issued in favour of certain persons from the Finance Department, he did not issue the same. The respondent-organization had received complaint of financial irregularity against him. It showed that he was negligent in duty, which conduct amounted to dereliction in duty. After a departmental enquiry, the aforesaid punishment has been imposed upon him,

which has been challenged by the petitioner on the ground that no copy of the enquiry report was served as per the requirement of the standing order upon the petitioner before the impugned order has been passed. It is further submitted that the petitioner has been transferred from the post of senior cashier to another post belonging to a different cadre of Pitman/Dumpman, which is impermissible in view of the standing order specially Rule 21, which relates to transfer. It is submitted that the nature of job of a senior cashier is not similar to that of a Pitman/Dumpman; while the senior cashier has to deal with accounts and the cash section in the office, a Pitman/Dumpman has to work at the mine and in three shifts unlike the senior cashier. The impugned action of the respondent would affect the petitioner's seniority in his parent cadre, therefore, such action is impermissible in view of the judgment relied upon by the petitioner such as reported in Prakash R. Borkar Vs. Union of India (UOI) and Others, rendered by the learned Single Judge in the case of Prakash R. Borkar vs. Union of India (UOI) and Ors. It is also alleged that the impugned transfer is punitive in nature, which is not sustainable in the eye of law.

3. The respondents have appeared and filed their counter affidavit. Learned counsel for the respondents submits that the petitioner was proceeded against for financial irregularity as is evident from the charge-sheet and after due enquiry it was found that the petitioner was not fit to hold a sensitive post in the accounts office/cash section. It is further submitted that the apprehension of the petitioner that his cadre has been changed is not correct as he remains in the parent cadre and his seniority/promotion would not be affected. The cadre to which he has been transferred is also a clerical cadre and it does not change the nature of the job of the petitioner.

4. Having heard learned counsel for the parties and having gone through the relevant materials on record, so far as first part of the punishment relating to stoppage of one annual increment with cumulative effect alongwith a direction that the petitioner would not be posted at sensitive post during his service career is concerned, this Court is inclined to relegate the petitioner to the remedy of appeal where he can raise all such questions in law as well as on facts as the standing order provides for such an Appellate Forum under Rule 30 thereof. So far as 2nd part of the punishment is concerned, the provisions of Rule 21 of the Standing Order is reproduced hereinbelow:--

21. TRANSFER

21.1. Workmen may be transferred due to the exigencies of work from one station to another, from one coal mine to another or from one establishment/department/section to another, within the same company or same holding company provided that the pay, grade and other conditions of service including continuity of service of the workmen are not adversely affected by such transfer and provided further that, if a workmen is transferred from one job to another, the job should be of similar nature and such as he is capable of doing and provided further that--(i) Except in case of emergency minimum notice of two

weeks is given of such transfers, and (ii) reasonable joining time is allowed in case of transfers from one station to another.

21.2. The workman concerned shall be paid the actual charges for transporting his personal effects (by rail or by bus or by truck) as well as one fare of the appropriate class in terms of the National Coal Wage Agreement in relation to leave travel concession for himself and for each of his dependant parents, wife and children if they do not avail of the conveyance of the Management. The workman shall also be paid one extra fare towards the incidental charges even if he has used the management's transport.

21.3. The personal effects of a workman shall be limited to the ceilings applicable to the Central Govt. servants within the pay ranges laid down by the National Coal Wage Agreement for purposes of transfer traveling allowance.

21.4. In case of inter-company transfer, it should be made in consultation with the Trade Unions/Workman concerned.

5. This Court is of the opinion that transfer of the petitioner from the post of senior cashier to the post of Pitman/Dumpman is not permissible under the said rule of the standing order. The job of a senior cashier is confined to the accounts department and the cash section and it is a day shift job alone. The job of a Pitman/Dumpman though is said to be clerical in nature, but he has to remain at the mines where he has to record the movement of Trucks/Dumpers, which are engaged in the transportation of the excavated coal. Moreover, the work of Pitman/Dumpman is distributed in three shifts of eight hours and that itself is a material change in the nature of the job which the petitioner was not performing in his parent cadre on the post of senior cashier. Provisions of Rule 21 of the Standing Order indicate that in exigency of work from one station to another, from one coal mine to another or from one establishment/department/section to another, the workmen may be transferred provided the conditions of service including pay, grade and continuity of service are not adversely affected. Apart from that, job should be of similar nature and employee should be capable of doing that. The punishment, which is conceived under the same Standing Order at Rule 27, though provide for a punishment of stoppage of increment with cumulative effect, but no such punishment in the nature of change of the job altogether unconnected with the responsibilities of the employee in his parent cadre of a workman is conceived therein. Rule 27 of the Standing order is quoted hereinbelow:--

27. Penalties for misconduct.--

27.1. The following punishment/penalties may be imposed for misconduct:

- (a) Warning, reprimand, censure,
- (b) Fine,
- (c) Suspension with wages for a period not exceeding ten days,

- (d) Stoppage of increment without cumulative effect,
- (e) Stoppage of increment with cumulative effect,
- (f) Demotion to a lower stage or a lower grade in a time scale,
- (g) Removal/discharge from service, (h) Dismissal from service.

6. Therefore, the second part of the order deserves to be interfered with being impermissible in law as well as on facts. The writ petition is partly allowed as indicated hereinabove. The respondents are, however, at liberty to transfer the petitioner on any post within his cadre. The petitioner is at liberty to appeal against that part of the punishment order as aforesaid before the Appellate Authority within a period of three weeks, which may be considered in accordance with law.