
(2016) 09 JH CK 0015
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4146 of 2016

Mainak Dutta

APPELLANT

Vs

Central Coalfields Limited

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Citation : (2016) 4 JCR 732 : (2016) 4 JLJR 158

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

Bench : Single Bench

Advocate : Mr. Amit Kumar Das, Advocate, for the Respondents; Mr. Pandey Neeraj Rai, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Pramath Patnaik, J. - In the accompanied writ application, the petitioner calls in question, the legality and propriety of the order and the decision of the Enquiry Officer dated 20.07.2016, turning down the request of the petitioner for calling for documents and for quashing of the said order. The petitioner has further prayed for issuance of direction upon the respondents-inquiring authority to allow the request of the petitioner as made vide application/letter dated 20.6.2016 (Annexure-21) and dated 15.07.2016 (Annexure-23) of the writ application.

2. Bereft of unnecessary details, the relevant facts as disclosed in the writ application, in a nutshell, is that, on 4.10.2013, the CBI, Dhanbad registered an FIR before the Special Judge, CBI, Dhanbad vide RC11 (A)/2013-D alleging amassing of assets beyond the known sources of income. I.A. No. 7991 of 20103 has been filed in W.P. (S) No. 6391 of 2013 seeking stay of the process of selection as interview stood held on 14.10.2013 and also for implementation of earlier orders of this Court and vide order dated 31.10.2013 this Court stayed the process of selection till further hearing. It has been further averred in the writ application that on the same day i.e. 31.10.2013, a team of CBI officials reached at the petitioner's residence with a search warrant to search on the basis of FIR, RC11(A)/2013-D, dated 4.10.2013. It has been further submitted in

the writ application that the petitioner received a departmental memo from the disciplinary authority pertaining to payment of service tax, as stated above, along with the statement of imputation of misconduct and the office memorandum dated 21.10.2013 and, thus, minor penalty proceedings were initiated against him, although the learned Special Judge, CBI, Dhanbad had set him free from the criminality and also did not recommend for any departmental proceeding. Thereafter, the petitioner submitted his reply dated 2.12.2013 with a request to quash the same. It has been further averred in the writ application that all along the petitioner has been subjected to unfair treatment aimed at jeopardising his career prospects and thereby to benefit others who have been in peer-competition. By filing supplementary affidavit, dated 5.8.2016, the petitioner has brought on record, copies of the charge-sheet dated 30.09.2015 filed in RC 11(A)/2013-D and the CBI's search list dated 24.2.2012 and 31.10.2013.

3. It has been submitted that founded upon the lodgment of criminal case by the CBI (DA Case) and allegations levelled by the CBI as to acquisition of assets disproportionate to the known sources of income, a departmental proceeding got initiated against the petitioner, in which, the petitioner wrote a request letter dated 05.04.2016 to the CMD-cum-Disciplinary Authority for supply of all documents seized by the CBI on 24.02.2012 and 31.10.2013 besides documents enlisted in Annexure III based on which Articles of Charges were framed. But in the 13th sitting of the proceeding held on 20.07.2016, the Inquiring Authority gave his decision denying to call for each and every document.

4. Being aggrieved, the petitioner has been constrained to approach this Court invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India for redressal of his grievances.

5. Heard Mr. Pandey Neeraj Rai, learned counsel for the petitioner and Mr. Amit Kumar Das, learned counsel for the respondents.

6. Mr. Pandey Neeraj Rai, learned counsel for the petitioner has vehemently submitted that the documents demanded to be called for are most important in the sense that they would help the delinquent understand and trace the evidences to show and establish that he is innocent. Learned counsel for the petitioner has submitted that in a criminal trial as an accused one could ask for calling for the documents under relevant provision of Cr.P.C. at the stage of entering into one's defence in the trial and the same facility is provided in the Rules governing the present departmental proceedings, which is to be invoked at the present stage, i.e. under Rules 29.9 and 29.10 of the Coal India Executives' Conduct Discipline and Appeal Rules, 1978.

7. Learned counsel for the petitioner has further submitted that such provisions, be it in the Criminal Procedure Law or Departmental Rules, are designed to ensure fairness and afford adequate opportunity to the person charged to defend himself and they flow from the principles of natural justice. Learned counsel for

the petitioner has submitted that the grant or denial of a request made invoking such provisions have to be founded on the touchstone of strict test leaning in favour of the delinquent and if two views are possible, the decision should be in favour of grant of request.

8. In support of his contentions, learned counsel for the petitioner has referred to and relied upon the decision of the Hon"ble Apex Court rendered in the case of Hindustan Petroleum Corporation Limited v. Sarvesh Berry reported in (2005) 10 SCC 471, wherein the Hon"ble Apex Court has been pleased to inter alia, hold as under : -

"13. in cases involving Section 13 (1) (e) of the P.C. Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression "known sources of income" is related to the sources known to the authorities and not the accused. The Explanation to Section 13 (1) of the P.C. Act provides that for the purposes of the Section, "known sources of income" means incomes derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what source of income is within the special knowledge of the accused. ?.."

9. Learned counsel for the petitioner by referring to the aforesaid judgment of the Hon"ble Apex Court, has submitted that therefore, the burden is upon the delinquent to explain that there is no dis-proportionality in the assets acquired by him during the check period.

10. During course of hearing, Mr. Amit Kumar Das, learned counsel for the respondents has drawn the attention of the Court to Annexure-24, from which, it appears that the petitioner has been given permission to inspect the documents and so far as documents, as asked for by the petitioner is concerned, since the documents are in the custody of the CBI authorities, the petitioner being a charge-sheeted employee, can ask for the documents from the concerned CBI authorities. In this respect learned counsel for the respondents has referred to and relied upon the decision in the case of D.P. Maheshwari v. Delhi Administration and others reported in (1983) 4 SCC 293. Besides, interpreting the Note of relevant Rule 29.9, learned counsel for the respondents submitted that it is upon the satisfaction of the inquiring authority to summon any witness or documents, which have relevance to the charges and in the case at hand, the inquiring officer had elaborately dealt with the reason for denial for calling for certain documents. It has further been submitted that it is nothing but a delaying tactic adopted by the petitioner in the departmental proceeding.

11. Having heard the learned counsel for the respective parties at length and after bestowing my thoughtful consideration to the issues involved in the instant writ application, I am of the considered view that it is exclusive domain of the enquiry officer to supply documents, on which the charges have been framed.

But any documents extraneous to the charges has to be ascertained by the enquiry officer as to whether the documents asked for by the petitioner-delinquent is extraneous to the charges. In such view of the matter, this Court refrains from examining the relevance of the documents in question and does not intend to interfere with the impugned order. In this regard, it would be apposite to refer the relevant Rule 29.9 and 29.10 of the Coal India Executives' Conduct Discipline and Appeal Rules, 1978:

"29.9 If the employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defences -

(i).....

(ii)submit a list of additional documents and witnesses that he wants to examine; and

(iii).....

Note.- Relevancy of the additional documents and the witnesses referred to in sub-rule 29.9 above will have to be given by the employee concerned and the documents and the witnesses shall be summoned if the Inquiring Authority is satisfied about their relevance to the charges under inquiry.

(Emphasis supplied)

12. From perusal of the Rules above-referred, it appears that it is exclusive domain of the inquiring officer to call for documents, which are relevant to the charges under inquiry and other documents extraneous to the charges under inquiry. In the case at hand, the inquiry officer, after various sittings, has passed the impugned order denying to call for certain documents.

13. This Court has no jurisdiction to sit in appeal over the decision of the inquiry officer as to which documents are relevant for the purpose of adjudication of the case nor this Court under the guise of examining the evidence to ascertain if the petitioner by virtue of supply of documents is being prejudiced. Furthermore, this Court cannot assume or presume that due to non-supply of the documents, asked for by the petitioner, being turned down by the respondents vide Annexure-25, would result in miscarriage of justice.

14. In view of the discussions made herein above and reasons stated in the foregoing paragraphs, the impugned decision of the Enquiry Officer dated 20.07.2016, turning down the request of the petitioner for calling for documents, does not warrant any interference by this Court.

15. Hence, the writ petition, being devoid of any merit, is dismissed. It is made clear that dismissal of this writ petition would not have any impact and effect on the disciplinary proceeding going on against the petitioner as this Court has not delved into the merit of the disciplinary proceeding.