
(2014) 03 JH CK 0110
In the Jharkhand High Court
Case No : W.P. (S) No. 6391 of 2013

Mainak Dutta

APPELLANT

Vs

The Coal India Limited

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2014) 03 JH CK 0110

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sr. Advocate and Saurav Arun, Advocate for the Appellant; M.M. Khan, A.S.G.I. and Amit Kumar Das, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.

I.A. No. 8528 of 2013

1. By way of instant interlocutory application, petitioner has sought to incorporate the proposed amendments in the writ petition stating that by way of counter affidavit filed in the instant case it has come to his notice that the respondents have now proposed to scrap the panel for the post of Director(Technical), C.C.L. it is submitted that petitioner has made a prayer in the main writ application for quashing of the order dated 8.8.2013 (Annexure-18) inviting application for the post of Director(Technical), C.C.L. which is in teeth of the judgments passed in the petitioner's case in W.P.S. No. 5099 of 2009 and W.P.S. No. 283 of 2010 dated 22.2.2012, which was also affirmed in L.P.A. No. 255 of 2012.

2. In the counter affidavit the respondents have brought on record that the petitioner faced a departmental proceeding initiated on 8.12.2010 in relation to certain allegation while he was working as Chief General Manager, N.K. Area,

C.C.L. in the year 2008, which relates to gross irregularities in the matter of contractual coal transportation. It has been stated on their behalf that the said proceeding ended in censure of petitioner vide order dated 13.7.2011 annexed as Annexure-A to the said supplementary counter affidavit filed by the respondent No. 3 on 4.12.2013. It is further stated that in view of the Office Memo dated 14.12.2007 (Annexure-B), if such a minor punishment has been imposed upon any employee, no vigilance clearance can be given in his favour for the period of 3 years. Apart from that it has been stated that petitioner was implicated in a C.B.I. case being R.C. Case No. 4(A)/2012-D in which final form was submitted in favour of the petitioner but C.B.I. has recommended initiation of Departmental proceeding against him. It is further submitted on behalf of the respondent - Union of India and C.C.L. that thereafter, petitioner has been implicated in a C.B.I. case in relation to offences u/s 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 for amassing disproportionate asset. The instant punishment order dated 13.7.2011 was not subject matter of the writ petitions decided by this Court on 22.2.2012 in the petitioner's case. It is therefore submitted that the requirement for appointment on such post is that the employee should not have faced any punishment minor or major over a period of 3 years and 5 years respectively. In the instant case, since the petitioner had faced minor punishment in the year 2011 and also criminal case has been lodged against him, therefore, vigilance clearance has been denied.

3. However, it is submitted by learned senior counsel appearing on behalf of the petitioner that the vigilance clearance was denied, on account of earlier departmental proceeding. The said denial of vigilance clearance cannot be made basis for refusal to consider the case of the petitioner for appointment from the same panel as per the directions issued in the writ petitions preferred by the petitioner earlier.

4. Learned counsel for the respondents submitted that in the wake of aforesaid facts, since the post of Director (Technical), CCL is vacant from 1.8.2008 and there has been denial of vigilance clearance to both the candidates recommended by the P.E.S.B., therefore it has been proposed to scrap the panel for the post of Director (Technical), CCL under communication dated 5.8.2013, which is now being sought to be challenged by the petitioner. Thereafter, the impugned advertisement was issued on 08.08.2013 inviting application for appointment of Director Technical, CCL.

5. I have heard counsel for the parties. It appears that on the last date on 31.10.2013 it was submitted on behalf of the petitioner that respondents are undertaking a fresh selection process for appointment to the post of Director (Technical) C.C.L. by issuing advertisement on 8.8.2013, which was challenged in the instant writ petition alleging that they are in teeth of the judgment rendered in the petitioner's case in W.P.S. No. 5099 of 2009 and W.P.S. No. 283 of 2010 dated 22.2.2012. In the judgment dated 22.2.2012 the departmental proceeding initiated against the petitioner vide letter dated 7.9.2009 and subsequently by

another memo dated 15.1.2010 were quashed. The allegation apparently related to the year 1997-98 and 2000-01. A further direction was issued to the respondents to complete the selection process of empaneled candidates for the post of Director (Technical), CCL as per the recommendation dated 20.3.2009. In that view of the matter an interim order was passed that no final order regarding appointment to the post of Director Technical, CCL be passed under the Advertisement Dated 08.08.2013 (Annexure-18), while granting time to the respondents, Union of India and the Coal India Ltd. to file their response.

6. However, it appears that the petitioner had failed to disclose in the writ petition that there was another disciplinary proceeding initiated against him on 8.10.2010 as aforesaid for the period of his posting as Chief General Manager, N.K. Area, CCL in the year 2008 for certain irregularities in coal transportation in which he faced punishment of censure on 13.7.2011. The aforesaid facts were later brought on record by the respondents, who have sought to justify their action on the ground that in view of the Office Memo of 2007, on account of minor punishment, no vigilance clearance can be given for the period of 3 years in favour of the incumbent for appointment on a public post in Central Government or any Public Sector Undertaking owned and/or controlled by it. Respondents have therefore proposed to cancel the panel which was prepared earlier since both the candidates including the petitioner who were recommended earlier have been denied vigilance clearance. The aforesaid proposal of cancellation of panel has been brought on record by way of counter affidavit, which is now being sought to be challenged by the petitioner stating that it is connected to his main relief.

7. In that view of the matter, the proposed amendments are allowed to be incorporated in the main writ petition. However, on the other hand, since the petitioner had already faced punishment of censure on 13.7.2011, this Court, therefore is satisfied that the respondents have justified reasons to refuse the vigilance clearance to the petitioner in considering his case for appointment under the panel, which was prepared in the year 2009 in view of the punishment of censure imposed upon him on 13.7.2011. Therefore, in that view of the matter, the interim order 31.10.2013 stands vacated.

8. Let an amended writ petition be filed by the petitioner within a period of two weeks incorporating the proposed amendments.

Accordingly, I.A. No. 8528 of 2013 stands disposed of.