
(2019) 07 JH CK 0095

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2804 Of 2012

M/s Central Coalfields Limited

APPELLANT

Vs

Bishun Ram

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 11, 11(A)
Industrial Employment (Standing Orders) Act, 1946 — Section 10(a)

Citation : (2019) 07 JH CK 0095

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Bhaiya Vishwajeet Kumar

Final Decision : Dismissed

Judgement

Heard counsel for the petitioner.

Present writ petition has been filed for quashing the Award dated 18.01.2011 passed in Reference Case No. 293 of 1999, by Presiding Officer, Central Government Industrial Tribunal No.2 at Dhanbad.

From the pleadings and arguments, it appears that Bishun Ram was a permanent employee at Sirka Colliery of M/s. Central Coalfield Ltd., since long and has a good service record. The workman has been proceeded by imputing three charges against him, vide charge-sheet dated 28.10.1995. The charges levelled against the workman are as follows:-

1."You are posted in Project Office, Sirka and have been assigned the official job of processing LTC/LTC bills of the workers of Sirka Project. But it is found that you do not carry out this job yourself and engaged Md. Samsul, an outsider in processing the LTC./LTC. Bills on your behalf. You have admitted this fact in writing before Sri B.P Singh, P.M., Sirka and Sri I.N. Jha, Dy.C.V.O, CCL, Ranchi on 24.08.95.

2. You are in the habit of absenting of duty without submitting leave application or giving intimation to your controlling officer. This has been substantiated during the surprise check conducted at P.O. Office by Sri I.N. Jha, Dy. C.V.O. CCL, Ranchi in presence of Sri A.K. Sinha Sr. P.O., Sirka on 29.07.1995 and in presence of Sri B.P. Singh, P.M., Sirka on 24.08.95. On both the days of surprise checks, you were found physically absent from duty.

3. On scrutiny of attendance registrar of Sirka Project Officer also revealed that the attendance column against your name was blank. During the period from 18.07.95 to 29.07.95 which proved that you were absent from duty during the said period, you neither submitted any leave application nor had sent any intimation to the Controlling Officer giving the reason for absence on duty."

Against the said charges, departmental inquiry had been conducted and ultimately the workman had been found guilty of two charges.

The concerned workman had been found guilty for the charge no. 1 and 2 and accordingly, the order of dismissal dated 09.10.1998 had been passed against the concerned workman.

Against the said order of the dismissal, Industrial dispute had been raised u/s 10 (1) (d) of the Industrial Disputes Act, 1947. Upon failure of conciliation, reference had been made vide Reference No. 293 of 1999 on 04.08.1999. The reference reads as under:-

"Whether the dismissal of Shri Bishun Ram, L.D.C. by the CCL Management from service w.e.f. 09.10.1998 is justified, proper and legal? If not what relief the workman is entitled to?".

After notice and filing of the written statement and leading evidences, the Tribunal had recorded the finding that domestic inquiry was fair and proper and in accordance with the principles of natural justice. Upon such, finding the Tribunal had proceeded under Section 11 (A) of the Industrial Disputes Act, 1947. The Tribunal had found that the finding recorded, under the domestic enquiry, is not perverse and as such, finding of guilt has not been disturbed. So far as proportionate punishment is concerned, that has been considered. Relevant part of the impugned Award is quoted hereinbelow:-

"In the present case under adjudication, I find that the workman concerned has fully participated in the domestic enquiry, but the deprivation of the workman from his subsistence allowance during his suspension is admittedly a glaring example of inhuman dealing with him with him in course of domestic inquiry and his suspension period. It is apparent from the chargesheet (Ext.M.-1) and the application (Ext.M-14) made by the applicant that he was not allowed to join on transfer and also the management refused to pay his suspension allowance as admitted by M.W.-1 Bijay Swaroop the Personnel Manager as the Enquiry Officer asserted in his deposition. In the industrial employment (S.O) Central Rules, 1946 applicable to the present case, under its order 17 "with the heading

Disciplinary Action for misconduct :- (i) Mandatorily postulates as such,

"A workman may be suspended by the employer pending investigation or departmental inquiry and shall be paid subsistence allowance in accordance with the provisions of Section 10 (a) of the Act, (Industrial Employment standing orders Act, 1946.

Further paragraph nos. 10 and 11 of the said Award is, hereby, reproduced:-

"10. In view of the preceding discussed facts and laws, it is pertinent to mention that I find the punishment of dismissal of the concerned workman for his aforesaid insubordination and absentism for two dates appears to be too harsh and disappropriate, to the nature of his aforesaid two guilts. Section 11A of the I.D. Act, 1947 empowers this Tribunal with the discretionary power to set aside the order of dismissal to its satisfaction, based on the materials only. In the instant case under this circumstances I find and hold in view of the aforesaid proved two charges namely insubordination and two days absentism the workman ought to have been awarded with lesser punishment not with his dismissal from his permanent service. Hence, the dismissal of the workman from his service is set aside and the management is directed to reinstate the workman Bishun Ram, L.D.C., in his service with full back wages with stoppage of one increment for his aforesaid minor misconduct from the date of his dismissal.

11. In the result, it is held the dismissal of Shri Bishun Ram, L.D.C. by the CCL management from his service with effect from 09.10.1998 is unjustified, improper and illegal. But in view of his suffering he deserves compensation of his suffering during his suspension to the tune of Rs.10,000/- (Rupees Ten Thousand). He is entitled to reinstatement of his service with back wages in full minus one increment with effect from the aforesaid date. The management is directed to implement the award within three months from the date of its publication in the Gazette of India.

Thus, from the argument and order of the Tribunal, it is evident that the domestic inquiry has been found fair and proper and further finding of guilt so far as charge no.1 and 2 stands proved and finding of guilt has not been disturbed. So far as proportionate punishment is concerned, that has been considered. The Tribunal has taken into account the gravity of the charges and further fact that the concerned workman has not been paid the subsistence allowance during the period of suspension and the departmental proceeding.

Reference may be made to the judgment passed in the cases of Ghanshyam Das Shrivastava vs. State of Madhya Pradesh and Jagdamba Prasad Shukla vs. State of U.P. & others, reported in {(1973)1 SCC 656 and (2000) 7 SCC 90}, wherein the Hon'ble Apex Court has held that non-payment of subsistence allowance may be a ground for quashing the departmental proceeding.

In the present case, non-payment of subsistence allowance has been taken as a mitigating circumstances. This also reflects mental status of the employer, while

passing the impugned order of punishment. Mental status of the disciplinary authority has to be gathered from the facts and circumstances of the case and the conduct of the employer.

In the present case, the nature of the allegations i.e. two days absence is not proportionate to the punishment of dismissal, especially in view of non-payment of subsistence allowance.

Accordingly, I do not find any illegality in the impugned order dated 18.01.2011 passed in Reference Case No. 293 of 1999 by Presiding Officer, Central Government Industrial Tribunal No.2, Dhanbad.

Resultantly, present writ petition is dismissed.