(2010) 12 CAL CK 0027

In the Calcutta High Court

Case No : A.P.O. N.O. 196 of 2009 and W.P. N.O. 1861 of 2005

Narendra Kumar Tripathi APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Coal India Executives Conduct Discipline and Appeal Rules, 1978 — Rule 5(5)

Citation : (2011) 1 CALLT 222 : (2011) 4 CHN 8 : (2011) 129 FLR 519

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Ashoke Kumar Dasadhikari, J

Bench : Division Bench

Advocate : Rudra Jyoti Bhattacharjee and Debjani Ghosal, for the Appellant; Saptansu Basu and Tapan Kumar Jana, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal raises an interesting question relating to the initiation of the disciplinary proceeding against the Appellant/writ Petitioner. It is contended on behalf of the Appellant that the disciplinary proceeding was initiated against the said Appellant/writ Petitioner on the basis of a charge sheet, which according to the said Appellant/writ Petitioner, does not disclose any misconduct.

2. The Appellant herein, at the relevant time, was posted as Deputy Chief Mining Engineer, Hasdeo, South Eastern CoalFields Ltd., a subsidiary of Coal India Ltd. On 7th February, 1997 a show cause notice was served to the Appellant under the signature of the Executive Director (Vigilance). However, subsequently by the written communication dated 19th February, 1997, the said Appellant was asked to ignore the said show cause notice. The aforesaid letter dated 19th February, 1997 issued to the Appellant herein is set out hereunder:

MAHANADI COALFIELDS LIMITED

VIGILANCE DEPARTMENT

ANAND VIHAR BURLA SAMBALPUR KOLKATA - 700 032

Ref. No. MCL/SBP/VIG/VC-16/96/155 Date: 19.02.1997

To

Shri N.K. Tripathy,

Project Manager,

MCL, SOCP, Ib Valley Area.

(Through General Manager, IBV)

Dear Sir,

Kindly refer to this office letter No. MCL/SBP/VIG/VC-16/96/114 dated 07.02.97 seeking your clarification regarding the matter of external electrification of B type quarters phase tow of Ananta OCP awarded to M/s. NK Patnaik and your visit to this office today i.e. 19.02.97. Since on perusal of the records, it is found that this matter does not pertain to you, you are requested to kindly ignore the letter under reference issued to you.

Inconvenience caused to you is sincerely regretted.

Yours faithfully,

Sd/-

(I.S.N. Murty)

Dy. Manager(Vigilance)

3. Subsequently, by Memorandum dated 21st /22nd October, 1998 the Chairman-cum-Managing Director, Mahanadi CoalFields Ltd. informed the Appellant that an enquiry would be held on the following charge:

ARTICLES OF CHARGE-1:

Being a Member of the Tender Committee which evaluated the offers of different tenderer in the Tender No. CGM (JA)/SO(E and M)/20/20289 dated 14.8.95 for dust suppression arrangement of coal stocks of Balanda Colliery, Shri Tripathi during January, 96, along with other members of the TC recommended to the competent authority for acceptance of the revised offer of M/s. SAMCO has resulted in causing huge loss to the company..........................

4. According to the Appellant, the aforesaid charge-sheet was issued in a desperate attempt with ill motive to victimize the Appellant. The Appellant participated in the departmental proceeding initiated by the Disciplinary Authority on the basis of the aforesaid charge-sheet. The enquiry officer submitted a report before the Disciplinary Authority recording the finding that the charge levelled against the Appellant had not been proved. The aforesaid findings of the enquiry officer are set out hereunder:

FINDINGS

Sri N.K. Tripathi, CO was a member of tender committee and he has accepted the revised offer of the contractor @ of 21% above the estimated rate. The revised offer made by the contractor to work on 21% of the estimated values does not seem to be reasonable and feasible also and as such the tender committee might have taken it on the spirit of the letter and not by words. Moreover Shri Tripathi has not seen or signed the revised offer of the contractor for which he cannot be made responsible. Further he is the dummy member of the T.C.R. by virtue of holding the post of Staff Offier (P and P). The actual TCR member who execute and scrutinize the documents vis-?-vis market rates etc. by the finance member and technical member (in this case E and M member). As such this charge is not proved against Shri Tripathi.

5. The Disciplinary Authority, however, disagreed with the findings of the enquiry officer and communicated his reasons for disagreement to the Appellant. The Appellant herein, on receipt of such communication from the Disciplinary Authority submitted a representation in order to persuade the Disciplinary Authority to accept the findings of the enquiry officer.

6. The Disciplinary Authority, namely, the Chairman-cum-Managing Director, Mahanadi CoalFields Ltd. on 18th November, 2001 issued the order of punishment by imposing the major penalty of reduction of pay by one stage in the existing time scale of pay, for a period of one year without cumulative effect on the Appellant herein. The aforesaid order passed by the Disciplinary Authority is set out hereunder:

NOW, THEREFORE, the undersigned in accordance with the powers conferred on him in terms of Conduct, Discipline and Appeal Rules, 1978 of CIL hereby imposes a major penalty of reduction of pay by one stage in the existing time scale of pay for a period of one year without cumulative effect on Shri N.K. Tripathi from the date of issue of this order.

7. The Appellant filed an appeal before the prescribed Appellate Authority challenging the aforesaid order of punishment issued by the Disciplinary Authority. The appellate authority, however, rejected the said appeal and affirmed the decision of the Disciplinary Authority.

8. The Appellant herein, thereafter, filed a writ petition before this Court challenging the order passed by the Disciplinary Authority which was subsequently affirmed by the Appellate Authority.

9. The Learned Single Judge, however, refused to grant any relief to the Appellant herein and dismissed the writ petition filed by the said Appellant on merits. Assailing the aforesaid judgment and order passed by the Learned Single Judge, the instant appeal has been preferred.

10. Mr. Rudra Jyoti Bhattacharjee, the learned Counsel representing the Appellant/writ Petitioner submitted that the said Appellant being a member of

the tender committee made a recommendation in favour of the tenderer. It has been urged on behalf of the Appellant that the said Appellant did not commit any misconduct by being a party to the decision along with other members of the tender committee for making recommendation in favour of a tenderer who was ultimately selected as the successful tenderer by the competent authority and permitted to execute the tendered job.

11. The learned Counsel of the Appellant further submitted that the Appellant without malafide intention and/or ill motive along with other members of the tender committee made the recommendation in favour of the successful tenderer. The learned Counsel of the Appellant also submitted that the said Appellant never acted with any malafide intention and/or ill motive in order to prejudice the interests of the Respondent company in any manner whatsoever. Referring to the charge mentioned in the charge sheet, Mr. Bhattacharjee submitted that in the charge sheet it had not even been alleged that the Appellant had taken any decision as member of the tender committee with any malafide intention and/or ill motive in order to prejudice the interests of the Respondent company.

12. For the aforementioned reasons, the learned Counsel of the Appellant submitted that the disciplinary proceeding in the instant case was initiated against the Appellant in absence of any misconduct.

13. In absence of any prescribed rules, procedures or guidelines, if an employee while discharging the official duty takes a decision on good faith, the same cannot be construed afterwards as misconduct on the ground that the action of the said employee did not match the expectations of the superior authority.

14. In the present case, employee concerned was a mere member of the tender committee which was a recommending body, in respect of the tender although ultimate decision for awarding the tender in question was taken by the competent authority and not by the aforesaid tender committee which was admittedly recommended.

15. The Appellant herein being one of the members of the said tender committee, which was admittedly a recommending body, considered the offer of a particular tenderer as the best offer and made a recommendation to the competent authority for awarding the tender. While recommending a tenderer, the members of the tender committee including the Appellant/writ Petitioner, according to their own wisdom, assessed the offers of the candidates participating in the said tender. The competent authority before awarding the contract pursuant to the recommendation of the tender committee should have examined all the relevant papers and documents forwarded by the tender committee as well as the procedures adopted by the tender committee in selecting the eligible tenderer.

16. When any particular procedure has not been prescribed for selecting the eligible tenderer, the members of the tender committee had full liberty to adopt

any procedure according to their own wisdom which, in the present case, the Appellant/writ Petitioner along with other members of the tender committee did. In the event, the procedure adopted by the tender committee in selecting the eligible tenderer did not match the expectations of the competent authority then it cannot be held that the members of the tender committee committed any misconduct.

17. For the aforementioned reasons, we do not find that the Appellant/writ Petitioner herein being a member of the tender committee committed any misconduct in selecting the eligible tenderer for the tender in question by adopting the procedure according to their own wisdom specially when it has not been mentioned or alleged in the charge-sheet that the Appellant/writ Petitioner or any member of the tender committee with a malafide intention and/or ill motive made the recommendation in favour of any tenderer.

18. The Appellant herein claimed that he had a very limited role in making the recommendation and actually acted as a dummy member which has also been specifically held by the inquiring authority.

19. On examination of the report of the enquiry authority and the disciplinary authority and also considering the other relevant records we do not find that the Appellant herein had any vital role to play in finalising the tender process and awarding the tender, as he was only one of the members of the recommending body, namely, the tender committee.

20. As a matter of fact, the ultimate decision for awarding the contract in favour of the successful tenderer was taken by the competent authority and not by the recommending body, namely, the tender committee. Therefore, as a member of the said tender committee the Appellant herein had very little role to play in the matter of awarding the tender.

21. The disciplinary authority while considering the report of the enquiry officer, however, held:

...It may be a fact colloquially that you were a dummy member of the Tender Committee, but in your own admission you were having full knowledge of the offer and the revised offer. You also claimed that you were knowing the site condition and had given your own reasons to justify the higher rates as brought out by the Inquiring Authority in the enquiry report at pages 33 and 34. This, therefore, fully establishes that you were not a dummy member and you fully participated in the tender, examined the documents, but failed to point out the deficiencies in the analysis prepared and the deficiency in the estimate and the revised offer...

22. From the aforementioned findings of the disciplinary authority it cannot be said that the Appellant did not apply his mind while making recommendations in favour of the successful tenderer. Therefore, it can not be said that the Appellant herein being one of the members of the tender committee did not discharge his

duty.

23. Mr. Saptansu Basu, learned Counsel of the Respondent authorities argued that the Appellant herein is guilty of dereliction of duty which, however, has not been established on the basis of the materials available on the record.

24. Mr. Basu further submitted that the Appellant herein committed misconduct in terms of Sub rule (5) of Rule 5 of Coal India Executives'' Conduct Discipline and Appeal Rules, 1978. The said Sub-rule (5) of Rule 5 of the aforesaid Rules is set out hereunder:

5.0. MISCONDUCT

(1) *** *** ***

(2) *** *** ***

(3) *** *** ***

(4) *** *** ***

(5) Acting in a manner prejudicial to the interests or image of the Company.

25. In the instant case, we do not find that the Appellant herein acted with any malafide intention and/or ill motive in order to prejudice the interests of the company. Scrutinizing the charge levelled against the Appellant it does not appear that the said Appellant ever acted in a manner prejudicial to the interests of the Respondent company with a malafide intention and/or ill motive. No such allegation was ever made against the Appellant at any point of time. The Appellant herein cannot be held guilty in terms of misconduct even under Sub-rule (5) of Rule 5 of Coal India Executives'' Conduct Discipline and Appeal Rules, 1975.

26. Mr. Basu referred to and relied on a decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, which, in our opinion, can be of no assistance to the Respondent authorities. In the aforesaid decision, definition of misconduct as mentioned in Stroud''s Judicial Dictionary has been quoted which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

27. Therefore, acts of negligence, errors of judgment or innocent mistake cannot constitute misconduct which warrants initiation of disciplinary proceedings.

28. Furthermore, in the case of Union of India and Ors. v. J. Ahmed (Supra) the Hon''ble Supreme Court held:

11...It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

29. Mr. Saptansu Basu, learned Counsel of the Respondent authorities referring to Paragraph 12 of the aforesaid decision of the Supreme Court argued that negligence in performance of duty may not involve mens rea but the same may still constitute misconduct. The said Paragraph 12 is set out hereunder:

12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehavior involving some form of guilty mind or mens rea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mens rea but may still constitute misconduct for disciplinary proceedings.

30. In the present case, however, no charge of gross or small negligence in performance of duty has been levelled against the Appellant. As a matter of fact, the enquiry officer on examination of the relevant records specifically held that the Appellant herein was the dummy member of the tender committee by virtue of holding the post of staff officer. No material has also been placed before us in order to establish gross or small negligence in performance of duty by the Appellant herein.

31. In the case of Council of the Institute of Chartered Accountants of India Vs. Somnath Basu, , a Division Bench of this Court specifically held that misconduct arises from ill motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute misconduct. Paragraph 61 of the aforesaid judgment is set out hereunder:

61. Misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute the misconduct. Even if there is any negligence in performance of duties or errors of judgment in discharging of such duties, the same cannot constitute misconduct unless ill-motive in the aforesaid acts are established.

32. In the present case, it has never been alleged that the Appellant herein failed to discharge his duties and responsibilities honestly and, therefore, it cannot be held that the said Appellant is guilty of any misconduct.

33. In view of the aforesaid decisions of the Division Bench of this Court and the Supreme Court, we hold that in the facts of this case Appellant did not commit any misconduct since we do not find that the said Appellant acted dishonestly with malafide intention and/or ill motive as a result whereof, the Respondent company had suffered any loss or prejudice.

34. Therefore, in the absence of misconduct, no disciplinary proceedings could be initiated against the Appellant/writ Petitioner herein. Accordingly, the order of punishment dated 18th November, 2001 imposing a major penalty of reduction of pay issued by the Disciplinary Authority cannot be sustained and the same is

quashed.

35. For the aforementioned reasons, we are unable to affirm the decision of the learned Single Judge and therefore, we set aside the impugned judgment and order under appeal passed by the learned Single Judge.

36. This appeal, therefore, stands allowed.

37. In the facts and circumstances of this case, there will be no order as to costs.

38. Let xerox copies of this judgment duly countersigned by the Assistant Registrar of this Court be supplied to the parties herein on undertaking to apply for the certified copy of the same immediately.

Later:

39. After pronouncement of the judgment, learned Counsel of the respondents prays for stay of the operation of the said judgment and order. We find no reason to grant such stay.

40. Accordingly, the prayer for stay is refused.