

(2022) 07 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No.1394 Of 2018

Pradip Kumar

APPELLANT

Vs

Western Coalfields Ltd

RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Conduct Discipline And Appeal Rules, 1978 — Rule 4.1(I), 4.1(II), 4.2, 4.3, 29, 34, 34.2, 34.3
Coal India Executives Leave Rules, 2010 — Rule 12.1, 12.3, 12.4, 12.4.1, 12.4.2, 12.4.3
Coal India Executives' Conduct. Discipline And Appeal Rules, 1978 — Rule 29
Coal Mines Regulations, 1957 — Regulation 31
Mines Act, 1952 — Section 2(h), ii(h), ii(j), 17, 52, 52(10)
Payment Of Gratuity Act, 1972 — Section 4(1), 4(6)

Citation : (2022) 07 BOM CK 0026

Hon'ble Judges : A.S. Chandurkar, J;Urmila Joshi Phalke, J

Bench : Division Bench

Advocate : S.P. Bhandarkar, A.M. Ghare

Final Decision : Dismissed

Judgement

Urmila Joshi Phalke, J

1. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. RULE. Rule made returnable forthwith.

3. By this petition, petitioner has challenged the action of the respondent-Company withholding the leave encashment of the petitioner.

4. The brief facts which are necessary to decide the issue are as under:

A] The petitioner was appointed as a Junior Executive

Trainee in the Central Mine Planning and Design Institute (CMPDI), Ranchi on 01/07/1981. On 06/03/2003, he was transferred in the respondent-Company. On

30/11/2016, the petitioner was retired on attaining the age of 60 years. At the time of retirement he was General Manager. As per the contention of the petitioner he worked with dedication, honesty and reached up to the post of General Manager.

B] The respondent is one of the eight Subsidiary Companies of Coal India Limited i.e. CIL. As the respondent-Company is subsidiary of the Coal India Limited, the same is governed by the Mines Act, 1952 and Coal India Executives Leave Rules, 2010. As per the contention of the petitioner on his superannuation he was entitled for encashment of Earned Leave and Half Pay leave at his credit. He was not paid the said amount for which he is entitled. He is entitled for amount of Rs.19,04,340/- (Rs. Nineteen lacs four thousand three hundred and forty) towards the Half Pay Leave and Earned Leave. The respondent has withheld the leave encashment which he is entitled, hence the action on the part of the respondent is arbitrary, illegal and liable to be set aside.

C] The respondent filed the reply in response to the notice and denied the contention of the petitioner. It is an admitted position that the petitioner was working as a Junior Executive Trainee in the Central Mine Planning and Design Institute (CMPDI), Ranchi. Subsequently, he was transferred in the respondent-Company. As per the contention of the respondent he was chargesheeted under Rule 29 of the Conduct Discipline and Appeal Rules, 1978 (hereinafter referred to as the 'CDA Rules' for short) of the Coal India Limited vide No.WCL/CMD/VIG/2016-17/2246 dated 25/11/2016 by CMD and Disciplinary Authority, WCL on the ground of Contravention of the provisions as contained in Rule 4.1(I), 4.1(II), 4.2 and 4.3 which amounts to misconduct under clause 5.9 and 5.26 of CDA Rules of the Coal India Limited. It is further the contention of the respondent that the petitioner who was a public servant had committed grave misconduct by abusing his official position. He was a tender committee member in tendering process of supply, installation and commission of secondary crusher for different areas of WCL. He had granted undue favor to some of the parties causing a huge loss of Rs.1,16,56,989/- (Rs. One crore sixteen lacs fifty six thousand nine hundred and eighty nine) to Company. Since the reply of the petitioner was not found satisfactory, the departmental enquiry was initiated against him and the same has not been completed.

Though the petitioner had retired from service the departmental enquiry is continued by virtue of clause 34.2 of the CDA Rules. It is further the contention of the respondent that leave encashment and T.A. bills are withheld on the ground that if charge-sheet for major penalty has been served and if on the conclusion of the disciplinary proceeding, service is terminated then encashment of leave can be forfeited in terms of the Coal India Limited Executives Leave Rules and T.A. Rules, however, if service is not terminated on conclusion of the disciplinary proceedings these may be released. The respondent has further taken a stand that the petitioner is not covered under Section ii(h) or ii(j) of the Mines Act, 1952. The encashment of half pay leave has to be given as per the

Executive Leave Rules. The Executive of the Coal India Limited has to perform their duties not only in mines but in other places as well and many other places do not fall under the definition of the Mines as provided under the Mines Act, 1952, hence Coal India Limited has framed its own rules related to earned leave. The earned leave credited under the rules of Coal India is not linked with attendance. It is the contention of the respondent that once the petitioner had subjected himself to the terms of the appointment letter which specifically apply to him the leave Rules of the CPSE and his petition proceeds on the basis that the Coal India Executive Leave Rules, 2010 are a complete code in itself, then it is not open to him to urge that rules of the Mines Act, 1952 are applicable to him and, therefore, petition deserves to be dismissed.

5. Heard Shri Bhandarkar, learned Counsel for the petitioner. He submitted that the petitioner is entitled for the leave encashment. He is already retired from the service. The leave encashment is towards the work or services rendered by him during his tenure. In support of his contention, he relied upon the decision of this Court in the case of Pramod Kumar Battad Vs. Western Coalfields Ltd. and anr. (W.P. No.3866 of 2017) decided on 19/03/2018, wherein it is held that the petitioner is entitled to leave encashment benefits as the petitioner has retired on attaining the age of superannuation but the same are wrongfully denied to the petitioner. He is also relied upon the decision of this Court in the case of Sharda Nandlal Das s/o Late Mahabir Lal Das Vs. Coal India Ltd. and anr. (W.P. No.2163 of 2012) decided on 10/08/2012, wherein it is held that the petitioner is entitled for the encashment of Earned Leave and Half Pay Leave. He further relied upon the decision of the Hon'ble Apex Court in the case of Jaswant Singh Gill Vs. Bharat Coking Coal Limited and others (2007) 1 SCC 663.

6. On the basis of the decisions referred by him, he submitted that as the petitioner was working in the mines the provisions of Section 52(10) of the Mines Act, 1952, the petitioner is entitled to leave encashment dues.

7. He submitted that in view of the judgment of this Court in the case of Pramod s/o Gulabchand Baid Vs. Coal India Limited and another (W.P. No.3430/2010) decided on 26/11/2010, the petitioner is entitled for the claims.

8. He also invited our attention towards the rules of the Coal India Executives Leave Rules, 2010 and submitted that clause 7.3 states about Earned Leave on full pay as per clause 7.3.4(a) the credit for the half year in which an executive is due to retire or resigns from the service, shall be afforded only at the rate of two and half days per completed calendar month in that half year up to date of retirement/resignation. In view of clause 7.3.5 Earned leave can be accumulated upto 300 days. He submitted that the petitioner is entitled for the leave encashment in accordance with the Rule 12.1 of the Coal India Services Rules. Hence, the action of the respondent is arbitrary and illegal.

9. On the other hand, Shri Ghare, learned Counsel for the respondent submitted that the petitioner has not come before the Court with clean hand. He has

suppressed the fact that he was charge sheeted under Rule 29 of the Coal India Executives CDA Rules, 1978 on an allegation that he had misused his official position as a General Manager and as a tender committee member in tendering process of supply, installation and commission of secondary crusher. He gave undue favor while working as a member of Tender Committee. As the reply given by him was unsatisfactory, the departmental enquiry was ordered against him and the same has not been completed. If he is exonerated from the said enquiry he is entitled for the said encashment. He invited the attention towards CDA Rules 34.2 which specifically states that disciplinary proceeding, if instituted while an employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. He submitted that the provisions of the Mines Act, 1972 are not at all applicable to the petitioner as he was working as an Executive. As the petitioner was charge sheeted his leave encashment is withheld. The petitioner is very well aware about the said fact which is specifically mentioned in the memorandum which was issued to him. The memorandum bearing No. CIL/VIG/2015 dated 08/09/2015 specifically states that it laid down vide CIL/VIG/05057/Part-I/2600 dated 22/02/2006 that in case of final settlement of dues on superannuation or voluntary retirement/resignation, Vigilance Status shall be withheld only if a major penalty proceeding memorandum has been served on the employee and till the issue of final order in the case. Despite such clear stipulation, it has come to notice that the gratuity/leave salary etc. is being withheld merely because any investigation by Vigilance or CBI is going on or any report is under consideration of CVO/DA/ MOC/CVC etc. at the time of superannuation. The said memorandum specifically states that the leave encashment and T.A. bill can be withheld if charge-sheet for major penalty has been served till its finalisation. He submitted that in accordance with the specific policy of the Company and as charge-sheet is served upon the petitioner the leave encashment is withheld. Hence the action of the respondent is legal and proper one and the petition deserves to be dismissed.

10. After hearing of both the sides and on perusal of the record it is an admitted position that the petitioner was appointed as a Junior Executive Trainee (E and M) under the Central Mine Planning and Design Institute (CMPDI), Ranchi. On 06/07/2003, the petitioner was transferred in respondent-Company. On 30/11/2016, the petitioner retired from the respondent/Company on attaining the age of 60 years from the post of General Manager. Thus it is clear from the record that the petitioner entered in the service of the respondent as an Executive and he retired from the service as an Executive on 30/11/2016. When he was in service, on 25/11/2016 the charge-sheet was served upon him vide reference No.WCL/CMD/VIG/2016-17/2246. As per the charge-sheet, he was charged with an allegation that while functioning as a General Manger (E and M) at WCL headquarters, being a public servant, he has committed grave misconduct by abusing his official position. As General Manager and a tender

committee member in tendering process of supply, installation and commissioning of secondary crushers for different areas of WCL he granted undue favor to M/s. Larsen and Toubro Ltd. by qualifying the firm in Part-I of bid in deviation to the provisions of NIT (Tender Document) experience criteria. He was further charged on an allegation that being a member of tender committee he granted undue favor to M/s. Black Diamond Equipment Pvt. Ltd. by qualifying the firm in Part-II of bid in deviation to the provisions of NIT (Tender Document). He was further charged on an allegation that he illegally disqualified M/s. Karam Chand Thappar & Sons in Tender No.15, although the firm submitted its bid as per the laid down norms of NIT. It is further alleged in the charge-sheet that being a Member of Tender Committee, he had not considered the preparation of justified cost with price index of material handling equipment and order price of M/s Adani Power placed on M/s Larsen and Tourbo Company Ltd. for same model quoted to the Company and accepted by the tender Committee. Thus as per the charge he had committed grave misconduct by abusing his official position and caused a huge loss to the tune of Rs.1,16,56,989/- (Rs. One crore sixteen lacs fifty six thousand nine hundred and eighty nine). Said charge-sheet was served upon him when he was in service on 25/11/2016 and thereafter he retired from service on 30/11/2016. The respondent on 08/09/2015 vide reference No. CIL/VIG/2015/1243 issued a memorandum to all the Executives regarding the subject final settlement of dues on superannuation. The memorandum states that it is laid down in OM No.CIL/VIG/05057/Part-I/2600 dated 22/02/2006 that in case of final settlement of dues on superannuation or voluntary retirement/resignation, Vigilance Status shall be withheld only if a major penalty proceeding memorandum has been served on the employee and till the issue of final order in the case. Despite such clear stipulation, it has come to notice that gratuity/leave salary etc. was being withheld merely because any investigation by Vigilance or CBI is going on or any report is under consideration of CVO/DA/MOC/CVC etc. at the time of superannuation. This memorandum further clarifies that under the existing provisions, if no charge-sheet is issued till his retirement, no charge-sheet can be issued after retirement and his service cannot be terminated even on deemed basis. In such a situation, there is no scope for forfeiting gratuity or leave salary or Travelling Allowance.

11. It further states in paragraph No.3 that however, if charge-sheet for major penalty has been served before superannuation, the decision for gratuity may be taken in terms of clarification issued vide office order No.CIL/C-5A(PC)/CDA/58 dated 08/09/2011. It further clarifies that leave encashment and T.A. bills can be withheld if charge-sheet for major penalty has been served till its finalisation. If on conclusion of the Disciplinary Proceeding, service is terminated through deemed dismissal/ deemed removal/deemed compulsory retirement, encashment of leave can be forfeited in terms of note. However, if service is not terminated on conclusion of disciplinary proceeding the same may be released. Thus it appears from the memorandum dated 08/09/2015 that specific policy is accepted by the respondent in respect of final settlement of dues on superannuation. This

policy clarifies that if there is a charge-sheet for major penalty then leave encashment and T.A. bills can be withheld.

12. The petitioner has relied upon the Coal India Executives Leave Rules, 2010. Rule No.12.3 speaks about the extent of encashment of earned leave. Rule No.12.4 states about encashment of earned leave on termination of service/retirement. Rule 12.4.1 says that leave at credit shall not be granted for encashment if an executive resigns from the service. However an executive who has resigned from the service can avail the benefit for the encashable portion of earned leave prior to the date of his actual quitting/release from service. Rule 12.4.2 speaks about the termination which states that an executive governed under the Coal India Service Rules, whose services are terminated, otherwise than on disciplinary grounds, or who retires on superannuation, may be allowed to encash the earned leave at his credit, subject to a maximum of 300 days. This rule specifically states that a person who is terminated otherwise than on disciplinary ground may be allowed to encash the earned leave at his credit and Rule No.12.4.3 speaks about the contingency in case of death. Admittedly in the present case, the petitioner served with the charge-sheet it means disciplinary action has been taken and the enquiry is pending.

13. It is submitted by the petitioner that in view of Section 52 of the Mines Act, 1952, he is entitled for the said leave encashment. Admittedly the Mines Act, 1952 was passed with a view to amend and consolidating the law relating to the regulation of labour and safety in mines. The statement and objects as per the Mines (Amendment) Act No.42 of 1983 speaks about regulating the working condition in mines by providing for measures to be taken for safety of the workers employed therein and certain amenities for them. Section 52 of the Mines Act, 1952 states about annual leave wages. Wages are a sum of money paid under the contract by an employers to a worker for services rendered. Wages are payments for labour services rendered in hourly rates while a salary is a similar payment expressed in weekly, monthly or annual rates. Section 52(10) specifically states about the wages to a persons employed in mines. The petitioner was working with the Company as a Junior Executive Trainee. At no point of time he worked as a worker. As he was working as an Executive he had to perform his duty not in the mines and, therefore, the provisions of Mines Act, 1952 are not applicable to him.

14. The aspects whether the provisions of the Mines Act, 1952 are applicable to the Executives is dealt by this Court in W.P. No.4104/2017 (Shri Gurjit Singh s/o Late Gopal Singh Vs. Coal India Ltd. and anr.) and W.P. No.4318/2017 (Mrs. Anjana Mehta wd/o Deceased Dr. Surendraprasad Mehta Vs. Coal India Ltd. and ors.) wherein it is held by this Court that in view of the provisions contained in Section 2(h) and Section 17 of the Act read with Section 52(10) thereof as well as the provisions contained in the Coal Mines Regulations 1957 (hereinafter referred to as 'the Regulations' for short) the legal position was clear that the Act provides the benefits for those who are actually employed in mines and similar

such benefits cannot be extended to Officers/Executives of the WCL. It is observed by this Court that in view of the marginal note given under Section 52 says "Annual Leave with Wages", it was primarily relatable to entitlement to and release of wages to any person employed in a mine. The word 'wages' has not been defined in the Act, but is defined in the Industrial Disputes Act, 1947. Wages are ordinarily paid to workmen/labourers. Officers/executives are not paid wages in the sense the term is used with reference to workmen/labourers. It is further clarified by this Court in the said writ petitions that the term Manager in Section 2(h) read with Section 17 read with Regulation 31 of the Regulations would mean only those Managers, who have the requisite qualifications to work in mine and are comprehended within the meaning of the words "a person is said to be employed in a mine". It is observed by this Court that the said petitioners had no right in law to claim leave encashment benefits, which otherwise were due to them but for the orders of removal on disciplinary ground and dismissal consequent to conviction recorded by the Special Court, in view of clear provision in Rule 7.2 of the Service Rules.

15. In the present case, admittedly the petitioner was served with the charge-sheet. The charges levelled against him are serious in nature. Learned Counsel for the petitioner relied upon the decision in Jaswant Singh (supra) but the said judgment is overruled by Chairman-Cum-Managing Director, Mahanadi Coalfields Ltd. Vs. Rabindranath Choubey (2020) 18 SCC 71. The Hon'ble Apex Court in the case of Chairman-Cum-Managing Director, Mahanadi Coalfields Ltd. (supra) specifically observed that when the Rule 34 of the CDA Rules permits continuance of the departmental enquiry even after the retirement of an employee and such a retired employee is deemed to be in service and on conclusion of the departmental enquiry initiated while the employee was in service, penalty of dismissal was permissible. The employer would get the right to forfeit the payment of gratuity of such an employee as provided under Section 4(1) and 4(6) of the Payment of Gratuity Act, 1972 and even under Rule 34.3 of the CDA Rules.

16. In view of the ratio laid down by the Hon'ble Apex Court and in the light of specific policy i.e. memorandum issued by the Company, the specific provision states when the charge-sheet for major penalty has been served, leave encashment and T.A. bills can be withheld. Admittedly, the present petitioner was served with the charge-sheet with serious charges wherein monetary consideration is involved. In the light of specific provision petitioner's leave encashment is withheld by the respondent. We hold that the action of the respondent is as per the Services Rules and the petitioner is not entitled to any relief. The writ petition is devoid of any merit and deserves to be dismissed.

17. Hence, the writ petition is dismissed. No costs.

18. Rule stands discharged.