
(2009) 07 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3021 of 2001

Raj Kumar Singh

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal
No. 1 and Another

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0081

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S.N. Das and A.K. Rashidi, for the Appellant; Prabhash Kumar, C.G.C for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the part of the award dated 12.3.01 passed in Reference Case No. 226/1990 by the Presiding Officer, Central Government Industrial Tribunal No. I, Dhanbad whereby though the petitioner has been reinstated, he has been denied back wages and other consequential reliefs.

2. According to the petitioner, learned Tribunal while rendering the award of his reinstatement has erroneously refused back wages and other consequential benefits. In view of the award, he is also entitled to get full back wages and other consequential benefits.

3. The brief fact of the case is that the petitioner was working in Kedla North Colliery as Motor Vehicle Driver, Category-II. He was also the Organizing Secretary of Rashtriya Colliery Mazdoor Santh (INTUC). According to the petitioner, since he had raised several demands on behalf of the workmen before the authorities, the same was taken in bad taste by the concerned authorities. The petitioner was served with a revengeful charge sheet dated 5.1.88 and he was put under suspension. The petitioner in the meanwhile, fell seriously ill. The

respondents proceeded with the departmental enquiry. A police case was also instituted against the petitioner. In spite of his illness and the request made for stay of the departmental proceeding, the departmental proceeding was not stayed and the enquiry was concluded in absence of the petitioner holding him guilty of the charges. By order dated 18.10.88 the petitioner was awarded punishment of demotion from the post of M.V Driver Category-IV to the post of Truck Khalasi in Category-II. The authorities did not stop there. They issued another charge sheet dated 29.1.88 against the petitioner with the allegation that the petitioner entered into the office of the Project Officer without taking his permission and shouted at the Superintendent of Mines, who was sitting in the office of the Project Officer. Against the said charges the petitioner filed his reply denying the same. The inquiry officer thereafter proceeded with the said enquiry. In the meanwhile, the petitioner was taken into custody in connection with a criminal case and as such he could not again participate in the enquiry. The enquiry proceeded ex parte and on conclusion of the same, the petitioner was held guilty of misconduct and was awarded punishment of stoppage of his two increments by letter dated 10.10.1988. The petitioner thereafter was served with the third charge sheet with the allegations of chasing the Dy. C.M.E, Kedla Opencast Project and abusing him and throwing big stones with intention to break the door of his office. The further allegation was that when the security personnel tried to stop him, he took out a revolver and intimidated the security personnel. Against the third charge the concerned workman (petitioner) filed his reply, but the same was not found satisfactory and again the petitioner was subjected to a domestic enquiry. The enquiry officer held him guilty of the charges. This time, by order dated 21.10.88 the petitioner was awarded punishment of dismissal from service w.e.f 24.10.88.

4. It has been submitted on behalf of the petitioner that all the domestic enquiries were perfunctory and eye wash. The enquiries were malicious and illegal. No opportunity was given to the petitioner to defend him and there was blatant violation of the prescribed rule and principle of natural justice.

5. The petitioner aggrieved by the same had protested and raised an industrial dispute which by order dated 26.9.1990 of the Ministry of Labour, Central Government, was referred for adjudication to the Industrial Tribunal No. I, Dhanbad.

6. The reference was in the following term:

Whether the two punishments both dated 18.10.88 by reverting Raj Kumar Singh an M.V. Driver to Cat.II as Truck Khalasi and forfeiture of his two consecutive annual increments respectively and the third punishment dated 21/24.10.88 dismissing the workman and forfeiting a portion of his wages other than the subsistence allowance, met out by the management of Kedla North Colliery is justified? If not, to what relief the workman entitled.

7. The Management filed written statement before learned Tribunal stating, inter

alia, that the concerned workman was found guilty of misconduct under the provisions of Section 17 of the Standing Orders applicable to the said colliery. The concerned workman was proceeded against thrice for his misconducts. The chargesheets were issued to him and he was given opportunity to defend. He filed his reply in the said proceedings which was not found satisfactory. The Management conducted a fair and proper enquiry, to enquire into the charges contained in the memorandum of charges. The concerned workman was found guilty of all the charges and on the basis of his proved misconduct the concerned workman was given different punishments. However, in the last proceeding he was awarded punishment of dismissal from service on the basis of the proved charges. The concerned workman was found incorrigible. He went on misbehaving with the senior officials. His past record was also considered in awarding the punishment of dismissal from service.

8. Learned Counsel for the petitioner submitted that Tribunal has rightly considered the facts and circumstances appearing on record and has come to the conclusion that the punishment of dismissal was improper and disproportionate to the charges levelled against the petitioner. Learned Tribunal also took into consideration the judgment of the petitioner's acquittal in the criminal case and has rightly come to the conclusion that the petitioner is entitled for reinstatement. He also rendered award directing the Management to reinstate the petitioner in service, but has erroneously deprived the petitioner of his back wages and other consequential benefits.

9. Mr. A.K. Das, learned Counsel appearing on behalf of the petitioner, submitted that since the punishment of the petitioner was found excessive and learned Tribunal has reinstated the petitioner, there was no justification for denial of his back wages and other consequential benefits.

10. Learned Counsel appearing on behalf of the Union of India submitted that the stand taken in this writ petition and the contentions of learned Counsel for the petitioner, in view of the facts and circumstances, noticed by the Tribunal, are wholly misconceived. Learned Tribunal has taken very liberal approach in view of the petitioner's suffering for several years. However, the petitioner has not been given a clean chit so far as the charges of his misconduct are concerned. According to learned Tribunal, the punishment was severe and disproportionate to the charges and as such it has directed for reinstatement of the petitioner. But the other punishments awarded to the petitioner have not been set aside or interfered with. That apart, the concerned workman has not taken the ground that he was not gainful employed after the order of his dismissal. Learned Counsel submitted that there is no error in the impugned award and the same does not warrant any interference by this Court.

11. I have heard learned Counsel for the parties and considered the facts and materials on record. I have also perused the impugned award. I find from the award that learned Tribunal has discussed all the relevant aspects, facts, circumstances and materials on record and has come to the conclusion that

though the petitioner was held guilty of the charges of misconduct, the ultimate punishment of dismissal is excessive and disproportionate. However, he has not held that the petitioner is not guilty of any charge and he does not deserve any punishment. In the concluding Paragraph 9 of the impugned award learned Tribunal held, thus:

Since we have come to a finding that the concerned workman has first of all misbehaved with the General Manager on 4.1.88. Thereafter, he was chargesheeted for misbehaving with the Supdt. of Mines and Project Officer and lastly he was chargesheeted for trying to stop the jeep of Dy. C.M.E in order to assault him because a day prior to that occurrence some dispute had occurred between the Dy. C.M.E and the concerned workman. But, in my opinion, the capital punishment of dismissal appears to be a bit excess punishment. The concerned workman has suffered for last 12 years and has faced the ordeal of remaining without employment and also in defending a criminal case in which he has been acquitted, the reinstatement of the concerned workman without back wages and consequential benefits will be sufficient punishment along with an undertaking by the concerned workman to properly behave with the senior officer and not to indulge in any activity subversive of maintenance, discipline and decorum in future, Therefore in my opinion, in place of all the punishments including the punishment of dismissal the reinstatement of the concerned workman without back wages and other consequential benefits on his giving an undertaking to properly behave with the senior officer and will not indulge in any subversive activities which is against the maintenance of discipline and decorum, then it will be sufficient punishment to the concerned workman.

12. On perusal of the said paragraph of the impugned award, it is manifest that the petitioner has not been exonerated from the charges, rather the punishment of dismissal has been held to be excessive and disproportionate to the charge and in place of the punishment of dismissal and other punishments, reinstatement without back wages and other consequential reliefs has been held to be appropriate punishment. I also find that the petitioner had not taken the ground that he was not gainfully employed after the order of his dismissal.

13. In view of the above, the petitioner's claim of back wages and the consequential benefits has no legal basis. I find no illegality or arbitrariness in the impugned award of learned Tribunal. The writ petition has no merit and the same is, accordingly, dismissed.

14. However, there is no order as to costs.