(2003) 07 JH CK 0053

In the Jharkhand High Court

Case No : CWJC No. 261 of 1997 (R)

Ram Pravesh Sharma APPELLANT

Vs

Coal Mines Provident Fund Organisation and Others RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 12, 13, 14, 2
Central Civil Services (Conduct) Rules, 1964 — Rule 20
Coal Mines Provident Fund (Staff and Conditions of Service) Regulations, 1964 — Regulation 26, 27, 6
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 438

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : V. Shivnath and S. Topno, for the Appellant; M.M. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. V. Shivnath, learned counsel for the petitioner and Mr. M.M. Prasad, learned counsel for the respondents.

2. In the instant case, the petitioner has prayed for quashing the order dated 15.6.1995 which is contained in Annexure 14 at page 108 by which the Chairman, Board of Trustee refused to interfere with the decision of the Coal Mines Provident Fund Commissioner and accordingly rejected the appeal thereby conforming the order of compulsory retirement passed on 4/11.8.1993 as contained in Annexure 12. Consequently, the petitioner has also made a prayer for quashing the aforementioned order of compulsory retirement and has further made a prayer that appropriate orders be passed directing the respondents to reinstate the petitioner with all consequential benefits including back-wages etc.

3. The facts which are necessary to be looked into for purposes of adjudicating

this writ application are that in the year 1966, the petitioner was appointed as Lower Division Clerk in the office of the Coal Mines Provident Fund Commissioner at Dhanbad whereafter he was promoted to the post of Upper Division Clerk and posted as such in August 1975. The petitioner has stated that one S.A. Moiz (respondent No. 5) who, at the relevant time, was not appointed as Commissioner of the Coal Mines Provident Fund and who was merely holding a current duty charge and who was neither the appointing authority of the petitioner nor was conferred with the powers of the disciplinary authority, issued a charge-sheet against the petitioner on 20.8.1991 vide Annexure 2. According to the petitioner, he was himself an active member of the Coal Mines Provident Fund Karamchari Sangh and had been raising his voice against actions taken by the respondent No. 5.

4. The petitioner has alleged mala fides against S.A. Moiz (respondent No. 5) and upon perusal of the note sheets of this case put up by the office, it appears that notices on respondent No. 5 were returned due to his refusal and therefore notices were accepted to be validly served on him on account of such refusal.

5. According to the petitioner, the respondent No. 5 thereafter appointed one V.S. Yadav, Regional Commissioner, Coal Mines Provident Fund Region 3, Dhanbad as Enquiry Officer and subsequently on the same day he issued yet another order appointing one A.K. Keshawa, Assistant Commissioner, Grade II, Coal Mines Provident Fund Office, Hyderabad as Presenting Officer.

6. Subsequently, the respondent No. 4, meaning thereby the Enquiry Officer, V.S. Yadav issued notice to the petitioner vide Annexure 6 whereby and whereunder the petitioner was informed about the proposed date of enquiry and was accordingly asked to attend the same on the date indicated therein.

7. One thing which is relevant to be taken note of is that upon perusal of Annexure 2 it is evident that the Coal Mines Provident Fund Commissioner, while issuing the charge-sheet, stated that action may be taken against the petitioner for violation of Rule 20 of the Central Civil Services (Conduct)"Rules, 1964 read with Regulation 27 of the Coal Mines Provident Fund (Staff and Conditions of Service) Regulation, 1964. Similarly, while issuing notice to the petitioner to attend inquiry vide Annexure 6, the Enquiry Officer made it clear that the departmental inquiry was under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. At paragraph 16, the petitioner has further stated that he requested permission for engaging of legal practitioner to defend him but when he received no positive response, he personally went to the respondent No. 5 and requested him that he should allow a legal practitioner to present his case, but the respondent No. 5 refused to do so and issued a memorandum to that effect on 11.2.1992 vide Annexure 7. From a perusal of Annexure 7, it is again apparent that the respondents have referred to the provisions of Central Civil Services (Classification, Control and Appeal) Rules 1965 alongwith the abovementioned regulations. The other facts leading to the stage of passing of the impugned order are not necessary to be recorded,

because of the short submission made by Mr. V. Shivnath, learned counsel for the petitioner. However, the only relevant factor which is to be taken note of is that upon completion of inquiry, an order was issued on 4/11.8.1993 from the office of the Coal Mines Provident Fund Commissioner, Dhanbad, whereby and whereunder the Coal Mines Provident Fund Commissioner while accepting the findings of the Enquiry Officer, awarded the "penalty of compulsory retirement from the services of the organization". Being aggrieved, the petitioner appears to have initially moved this Court vide C.W.J.C No. 2571 of 1994(R), but as because he also preferred to file an appeal which had not been disposed off till then, the Ranchi Bench of the then Patna High Court disposed off the said Writ Application with a direction upon the concerned authority to dispose off the appeal of the petitioner within three months from the date of receipt of a copy of the order. The aforementioned order is Annexure 1 appended to the Writ Application. Subsequently, by Annexure 14, the Appellate Authority passed the impugned order holding that he did not find any reason to interfere with the decision of the Coal Mines Provident Fund Commissioner and accordingly rejected the appeal, thereby confirming the order of compulsory retirement.

8. Mr. V. Shivnath, learned counsel for the petitioner has raised a very short point in relation to the jurisdiction of the respondent No. 5 (S.A. Moiz) in exercising his authority in relation to the petitioner. According to him, the charge-sheet was issued by One S.A. Moiz (respondent No. 5) on 20.8.1991 and according to the learned counsel for the petitioner, Moiz could not have done so as he was not the Commissioner, Coal Mines Provident Fund on that date. He then drew attention of this Court to Annexure ''F'' brought on record through the counter affidavit of the respondents and which is placed at running page 173. Upon perusal of Annexure ''F'' referred to above, it is apparent that by two subsequent notifications issued on the same day, i.e., 27.11.1992, Moiz was appointed as the Coal Mines Provident Fund Commissioner (vide S.O. No. 3098) with effect from the date he assumed regular charge of the post till superannuation. By the next ensuing subsequent notification (S.O. No. 3099), the Central Government notified S.A. Moiz as the competent authority u/s 9(2) of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 with effect from the forenoon of 27.11.1992. Thus, what Mr. V. Shivnath submits is short is, that on the date when the charge-sheet was issued by S.A. Moiz, i.e., on 20.S. 1991 vide Annexure 2 he was not even a regularly appointed Provident Fund Commissioner. Therefore, he, not being the appointing authority of the petitioner, nor being the disciplinary authority, could not have issued the charge-sheet. The other point raised by Mr. Shivnath is that this being a crucial question around which jurisdiction of the respondent No. 5 revolved, while filing the appeal, the petitioner therefore took this point before the Appellate Authority vide paragraph 2(iii) of the said memorandum of appeal, but the Appellate Authority, while passing the impugned order, did not even bother to touch this vitally important point. According to Mr. Shivnath therefore, the entire proceeding deserves to be set aside not only for want of jurisdiction, but also because even the Appellate Authority refused to

apply its mind and to deal with the point of jurisdiction, and therefore acted without application of mind. Consequently, he prays for quashing of the order passed by the Appellate Authority also Mr. V. Shivnath, learned counsel for the petitioner has drawn attention of this Court to the provisions of Rules 2(g), 11, 12 and 13 of the Central Civil Services (Classification, Control and Appeal) Rules which have been mentioned in the charge-sheet itself thereby making the same applicable alongwith the regulations, i.e.. Coal Mines Provident Fund (Staff and Condition of Service) Regulation.

9. Mr. M.M. Prasad, learned counsel appearing for the respondent Nos. 1 to 3 could not dispute the fact that S.A. Moiz was appointed as a regular Coal Mines Provident Fund Commissioner, on 27.11.1992. He however submits that although the notification was issued on 27.11.1992, yet much prior thereto, i.e., 16.10.1989 by An-nexure A/1 appended to the affidavit filed by him on 30.6.2003 the Central Government had authorized Moiz who officiate as Commissioner, Coal Mines Provident Fund Organization till such time as a regular incumbent was not appointed or until further orders.

10. The aforementioned argument of Mr: M.M. Prasad will have to be seen and examined and his submission will have to be tested because his argument is that although regular notification came in 1992, yet the Central Government way-back in the year 1989 had already authorized Moiz to officiate as a Commissioner.

11. According to Mr. M.M. Prasad, therefore, an officiating Commissioner would be deemed to be a person having all the powers of a regular Commissioner and therefore, the charge-sheet issued by him cannot be questioned.

12. Before giving any finding or coming to any conclusion in respect of this submission of Mr. Prasad, the rest of the order which is Annexure A/1 appended to the affidavit mentioned above is necessary to be quoted. It reads thus :

''This is not a case of promotion, but only an officiating arrangement and, as such, this order will not entitle Shri Moiz to draw salary of the post of Commissioner, CMPF Organization. He will continue to draw his salary in his present scale of pay of Joint Commissioner. His claim for his promotion to the post of Commissioner, CMPF Organization, is being looked into separately as per prescribed rules in this regard and Government decision in the matter will be communicated in due course of time."

13. Upon perusal of the aforementioned couple of lines of the order dated 16.10.1989, it is apparent that the Government of India, through its Director, made it clear that the authority which was being given to Moiz, was only an officiating arrangement which did not entitle him to draw salary on the higher post and that he would continue to draw salary in his present scale of pay, i.e., in the scale of pay attached to the substantive post to that scale, i.e., of Joint Commissioner, Coal Mines Provident Fund Organization. This document, therefore, clearly establishes that what happened in the life of Moiz in 1989 was the conferment of a totally and completely officiating status. It is also clear that

his substantive existing capacity on that date was that of Joint Commissioner, Coal Mines Provident Fund Organization. In this context it would now be relevant to refer to the Rules referred to by Mr. V. Shivnath. Rule 2(g) of the aforementioned Central Civil Services (Classification, Control and Appeal Rules), which defines a ''Disciplinary Authority'' reads thus :

"2(g) ''Disciplinary Authority'' means the authority competent under these rules to impose on a Government servant any of the penalties specified in Rule 11."

14. Rule 11 of the said Rules refers to the ''Penalties'' and ''Compulsory Retirement'', which is listed under the heading ''Major Penalties'', Rule 12 speaks of ''Disciplinary Authorities'' and Mr. V. Shivnath submits that it is only the ''Disciplinary Authority'' who can impose penalty specified under Rule 11 and that there cannot be delegation of power to inflict punishment. He further refers to Rule 13 and submits that this is a specific Rule by which it is only the ''Disciplinary Authority'' or ''any other authority empowered by him'' who can impose penalty against a Government servant. Rule 13 reads as follows :

"13. Authority to institute proceedings.--(1) The President or any other authority empowered by him by general or special order may :

(a) institute disciplinary proceedings against any Government servant.

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties."

15. Mr. M.M. Prasad, learned counsel for the respondents No. 1 to 3, however, refers to Regulation 26 of the Coal Mines Provident Fund (Staff and Conditions of Service) Regulation, 1964, where ''control and discipline) has been mentioned. He further submitted that under the superintendence and control of the Commissioner even an officiating Commissioner could have initiated the action, he, being in control and the superintending authority of the petitioner. Regulation 26 reads thus :

"26. Control and Discipline.--All employees of the Organization shall be subject to the superintendence and control of the Commissioner and shall be governed by such rules of conduct, discipline and control as may be hereinafter be provided or such orders, not being contrary to these Regulations as the Commissioner may from time to time pass."

16. There are two basic reasons for which this Court cannot accept the argument

of Mr. M.M. Prasad. Firstly, Rules 2(g), 11 and 13 of the Central Civil Services (Classification, Control and Appeal) Rules are very, very specific and deal exclusively with the point at hand, and therefore, where a specific procedure is prescribed in relation to authorities who can institute proceedings, such express and specific provisions cannot be allowed to be whittled down or curtailed by a general power of superintendence and control as provided under Regulation 26. Moreover, this Court is also unable to accept the argument to the effect that the power of supervision or control will include all the powers to initiate disciplinary proceeding in place of the appointing/disciplinary authority and that too by a person who was totally and completely in an officiating status.

17. Mr. M.M. Prasad, learned counsel appearing for the respondent Nos. 1 to 3 then drew attention of this Court to a judgment of the Hon''ble Supreme Court passed in the case of Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, . He draws attention to paragraph 8 of the said judgment, which reads thus :

"8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal."

18. However, the aforementioned argument of Mr. M.M. Prasad cannot be accepted because in the case referred to by him, the effect of Rules 2(g). 12 and 13 were not before their Lordships and therefore, that judgment cannot be made applicable in the facts and circumstances of this case.

19. Mr. M.M. Prasad further draws attention of this Court to Section 19 of the General Clauses Act and submits that even a subordinate who was lawfully performing the duties of his superior officer, shall be valid and cannot be questioned. This argument also does not find favour with this Court in the present case in view of the existence of a specific statute, i.e., Central Civil Services (Classification, Control and Appeal) Rules, which specifically defines the ''Disciplinary Authorities'' and the authorities who are to institute proceedings and in these Rules an officiating officer has not been included.

20. Mr. M.M. Prasad could not also show any such provision in the Coal Mines Provident Fund (Staff and Condition of Service) Regulation, 1964 authorising an officiating officer to have the competence to issue charge-sheet or initiate departmental action. In another case decided by this Court in the case of Ram Chandra Prasad Vs. Damodar Valley Corporation and Others, is has been held that initiation of proceedings by an officiating and ad hoc secretary was wholly without jurisdiction and therefore the proceedings were wholly nonest and vitiated in the eye of law. In the instant case also, the proceedings were initiated by Moiz, who at the relevant point of time was not a regularly appointed

Commissioner, nor was he clothed with the powers of the disciplinary authority as required in Rule 13 which makes it explicit that it will only be the President or any other authority empowered by him to institute disciplinary proceeding and it will be only they who can impose any of the penalties specified in Rule 11. In the instant case, the word any other authority appearing in Rule 13 has to be by notification which has not been done giving authority to Moiz.

21. For the reasons stated above, therefore, this Court is satisfied that the two points canvassed by Mr. V. Shivnath, learned counsellor the petitioner must succeed and they are accordingly allowed to do so. Consequently, the writ application is allowed and the impugned orders as contained at Annexures 12 and 14 are set aside and quashed. However, there shall be no order as to costs.

22. After the aforementioned judgment had been dictated, it was stated at the bar that the petitioner has superannuated. That being the position, the petitioner will not be entitled to only monetary benefits including salary for the period from the date of compulsory retirement till the actual date of retirement. This will be in line with the judgment of the Hon''ble Supreme Court of India in the case of Dharam Dev Mehta Vs. Union of India (UOI) and Others, .

