
(1996) 10 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 3193/94 (R)

R.P. Chourasia

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 10(4), 14, 29
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1997) 1 PLJR 422

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, for the Appellant; A.K. Mehta, for Respondent Nos. 1 to 3 and A.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The Petitioner has filed this writ application for quashing the order dated 13.9.1994, Annexure-10, whereby he has been dismissed from service, the order dated 4.10.1994, Annexure-11, directing him to Hand over charge of all the records and materials and also for issue of a writ in the nature of mandamus commanding Respondent Nos. 1 to 3 not to give effect to the order of dismissal.

2. The Petitioner was appointed as an Assistant Store Keeper under the Coal Mines Labour Welfare Organisation, a department of Central Government in the Ministry of Energy and Coal. He was working at Central Hospital, Dhanbad. A departmental proceeding was initiated against him under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules [hereinafter referred to as CCS (CCA) Rules] vide Memo No. CV-1 (19) 77 dated 5.2.1983. In the departmental proceeding he was dismissed from service vide letter dated 13.1.1987, Annexure-1. He filed appeal before the competent authority which was dismissed on 4.1.1988. He challenged the order of dismissal before the

Central Administrative Tribunal vide case No. O.A. 338/88. The Tribunal vide order dated 16.8.1989, Annexure-2, quashed the order of dismissal on the ground that copy of enquiry report was not furnished to the Petitioner and directed to reinstate him. However, it was left open to the disciplinary authority to proceed against the Petitioner on the basis of same memorandum of charges and on enquiry report, after furnishing the copy of enquiry report and after affording an opportunity of hearing. It was also left open to treat the Petitioner under deemed suspension under Sub-rule (4) of Rule 10 of CCS (CCA) Rules if they desire to proceed with the proceeding. The competent authority proceeded with disciplinary proceeding and vide order dated 3.3.1990, Annexure-3, the Petitioner was held guilty and his annual increment of pay was stopped for two years. He was allowed subsistence allowance for the period of suspension but not at the enhanced rate. He was also released from suspension. He joined the service under Respondent No. 1 and opted the service condition of Bharat Coking Coal Ltd., a subsidiary of Coal India Ltd. The Petitioner thereafter, filed a representation by way of notice before the higher authority for allowing subsistence allowance as per existing rules. On receipt of notice, Respondent No. 5 in place of allowing subsistence allowance as per existing rules, issued notice to the Petitioner vide letter dated 13.9.1993, Annexure-4 to show cause as to why punishment should not be enhanced from stoppage of increment to dismissal from service under Rule 29 of CCS (CCA) Rules. The Petitioner filed show cause on 5.11.1993, Annexure-5, raising several questions including the question of jurisdiction. Respondent No. 5, on receipt of show cause passed order of dismissal from service vide order dated 13.9.1994, Annexure-10. Respondent No. 3 on receipt of order, Annexure-10, directed the Petitioner to hand over charge of records/materials etc. to Sri J.B. Mukherjee, Senior Store Keeper immediately vide letter dated 4.10.1994, Annexure-10.

3. A counter-affidavit has been filed on behalf of Respondent Nos. 4 & 5 stating therein that Petitioner was initially employee of the Central Government. The staff and institution of ex-coal Mines Labour Welfare Organisation were transferred to different subsidiary of Coal India Ltd. in different phases. The Central Hospital, Dhanbad, where the Petitioner was posted was transferred to Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd. with effect from 1.8.1985 by administrative order of the Government. The remaining institution and staff of Ex-Coal Mines Labour Welfare Organisation were transferred to subsidiary of Coal India Ltd. after passing of the Coal Mines Labour Welfare Fund (Repealed) Act, 1986 with effect from 1.10.1986. While the Petitioner was an employee under Coal Mines Labour Welfare Organisation, departmental proceeding was initiated against him and hence he was not allowed to exercise option for absorption of his service in the subsidiary of Coal India Ltd. In the departmental proceeding he was dismissed from the service against which he preferred an appeal which was dismissed. He filed a petition before the Central Administrative Tribunal against the order of punishment. The Central Administrative Tribunal quashed the order of punishment on technical ground that copy of enquiry report was not furnished

to the Petitioner. However, it was left open to the disciplinary authority to furnish the copy of the enquiry report and proceed with the departmental enquiry vide order dated 16.8.1989, Annexure-2. The disciplinary authority, accordingly proceeded against the Petitioner and vide order dated 3.3.1990, Annexure-3, held the Petitioner guilty of the charges and his annual increment was stopped for two years. He was allowed subsistence allowance during the period of suspension but not at the enhanced rate. He was also released from suspension. Thereafter, he joined his service under Respondent No. 1, a subsidiary of Coal India Ltd. He was allowed thereafter to opt the service condition and he opted the service condition of subsidiary of Coal India Ltd. i.e. Respondent No. 1. In the year 1990 the Petitioner requested the disciplinary authority vide his application dated 19.6.1990 for payment of full pay for the period of his suspension. He also served a notice u/s 80 of the CPC for payment of full pay for the period of suspension. The matter was considered in consultation with D.O.P.P and Chief Vigilance Officer and it was decided to invoke the revisionary power of the President under Rule 29 of CCS (CCA) Rules. A show cause notice was issued to the Petitioner on 13.9.1993, Annexure-4. His show cause dated 5.11.1993, Annexure-5, was duly considered and finding his reply unsatisfactory the President of India under Rule 29 of CCS (CCA) Rules dismissed the Petitioner vide order dated 13.9.1994, Annexure-10. Since the departmental proceeding was initiated against the Petitioner while he was in service of Coal Mines Labour Welfare Organisation, the order of dismissal, Annexure-10 passed by the President of India even after transfer of the service to Coal India Ltd. is not bad in law.

4. The Petitioner filed a reply to the counter affidavit filed by Respondent Nos. 4 & 5 stating therein that since the service of the Petitioner was transferred to Bharat Coking Coal Ltd. and the Petitioner opted the service condition of Coal India Ltd. he became employee of Bharat Coking Coal Ltd. and hence neither the President nor Respondent No. 5 had authority to pass order of dismissal of the Petitioner from service. The Petitioner, on transfer of service to Bharat Coking Coal Ltd. is governed by the Certified Standing Order of Bharat Coking Coal Ltd. After transfer of service to Bharat Coking Coal Ltd. the Central Government or its officers no longer remained the employer and hence Rule 29 of CCS (CCA) Rules was not applicable in the case of the Petitioner as it is only applicable to employees of the Union of India.

5. A separate counter-affidavit has been filed on behalf of Respondent Nos. 1, 2 & 3 stating therein that on and from 1.8.1985 Central Hospital, Dhanbad stood transferred to Respondent No. 1 and all its assets and liabilities as on 1.8.1985 stood transferred to Respondent No. 1. The employees of Central Hospital, Dhanbad" were also transferred to Respondent No. 1 with effect from 1.8.1985. However, instruction regarding their absorption and options were issued separately. The Petitioner was charge-sheeted vide memo No. CV-1 (19) 77 dated 5.2.1983 prior to transfer of Central Hospital, Dhanbad from Coal Mines Labour Welfare Organisation to Bharat Coking Coal Ltd. After abolition of Coal

Mines Labour Welfare Organisation, the post of Coal Mines Welfare Commissioner was redesignated as Officer on Special Duty who was to carry the same administrative, financial and cognate powers as old post of Coal Mines Welfare Commissioner. Under CCS (CCA) Rules the Officer on Special Duty was required to attend all the post abolition work of Coal Mines Labour Welfare Organisation including finalisation of 9 Vigilance cases and 13 complaints which were pending which is evident from the letter of the Director, Department of Coal, Ministry of Energy, Government of India dated 22.9.1986, Annexure-B to the counter-affidavit. In view of the letter dated 22.9.1986 Respondent No. 4 had full disciplinary control against the Petitioner although the Central Hospital, Dhanbad stood transferred to Bharat Coking Coal Ltd. with effect from 1.8.1985. The Petitioner being fully aware of the aforementioned facts and circumstances participated in the departmental proceeding which concluded in dismissal of service of the Petitioner vide order dated 13.1.1987, Annexure-1, against which he filed an appeal which was dismissed. He filed an application before the Central Administrative Tribunal which was allowed on 16.8.1989, Annexure-2, and the order of dismissal was set aside on technical ground. The Petitioner even thereafter submitted to the jurisdiction of Respondent Nos. 4 & 5. Respondent No. 4 thereafter passed the order dated 3.3.1990, Annexure-3, awarding minor punishment. The Petitioner served notice u/s 80 of the CPC and Respondent No. 5 issued notice to the Petitioner to show cause as to why punishment of dismissal be not passed. On filing of show cause, order of dismissal dated 13.9.1994, Annexure-10 was passed.

6. Learned Counsel for the Petitioner contended that it is an admitted position that service of the employees under the Coal Mines Labour Welfare Organisation was transferred to subsidiary of Coal India Ltd. The Petitioner was working at Central Hospital, Dhanbad and the services of the employees of Central Hospital, Dhanbad including the service of the Petitioner was transferred to Respondent No. 1, Bharat Coking Coal Ltd. with effect from 1.8.1985. Since the Petitioner was under suspension he did not join in Bharat Coking Coal Ltd. However, order of dismissal of the Petitioner from service was quashed by the Central Administrative Tribunal vide order dated 16.8.1989, Annexure-2, and punishment of stoppage of increment was awarded on 3.3.1990, Annexure-3. The Petitioner joined the service of Respondent No. 1 and also opted absorption in the subsidiary in Coal India Ltd. in company's pay scale and terms and conditions. He became employee of Bharat Coking Coal Ltd. and hence after joining in service of Bharat Coking Coal Ltd. on transfer of his service neither the President nor officer of the Union of India remained the disciplinary authority of the Petitioner and hence the order of dismissal passed by Respondent No. 5 vide Annexure-10 is bad in law as he had no jurisdiction to pass such order.

7. Mr. Trivedi appearing on behalf of Respondent Nos. 4 & 5 contended that enquiry was initiated against the Petitioner while he was under the service of Coal Mines Labour Welfare Organisation, a department of Government of India. Respondent Nos. 4 & 5 were very much competent to pass order, Annexure-10,

besides the order, Annexure-10 has been passed by the President of India in exercise of power under Rule 29 of CCS (CCA) Rules and hence it cannot be said to be illegal.

8. Mr. Mehta appearing on behalf of Respondent Nos. 1 to 3 contended that it is true that services of the employees of Central Hospital, Dhanbad were transferred to Respondent No. 1 with effect from 1.8.1995 but Petitioner's service was not transferred as he was under suspension. He joined in the service of Respondent No. 1, Bharat Coking Coal Ltd. in the year 1990. The Petitioner submitted to the jurisdiction of Respondent Nos. 4 & 5, hence he cannot be allowed to raise such question that they had no jurisdiction after transfer of service of the Petitioner to Respondent No. 1, Bharat Coking Coal Ltd. He also pointed out that 9 Vigilance cases and 13 complaints were pending including the Petitioner's case. After abolition of Coal Mines Labour Welfare Organisation, the post of Coal Mines Labour Welfare Commissioner was designated as Officer on Special Duty who was to carry same administrative, financial and cognate power as Coal Mines Welfare Commissioner. The Director, Department of Coal, Ministry of Energy, Government of India, vide letter dated 22.9.86, Annexure-B to the counter-affidavit, allowed the Officer on Special Duty to finalise the Vigilance cases and hence Respondent No. 4 was competent to pass order of punishment.

9. On consideration of the submission made by learned Counsel for the parties and also after going through the material available on the record, it is manifest that the Petitioner was an Assistant Store Keeper under the Coal Mines Labour Welfare Organisation, a department of the Central Government in the ministry of Energy and Department of Coal. Mines Labour Welfare Organisation was abolished by Coal Mines Labour Welfare Fund (Repealed) Act, 1986 and all the institutions of Coal Mines Labour Welfare Organisation was transferred to Coal India Ltd. The Central Hospital, Dhanbad, where the Petitioner was posted as Assistant Store Keeper stood transferred to Respondent No. 1 on 1.8.1985. The services of the employees of the Central Hospital, Dhanbad also stood transferred with effect from 1.8.1985. A departmental proceeding in the year 1983 was initiated against the Petitioner. While he was in the service of Coal Mines Labour Welfare Organisation, he was under suspension and hence he was not allowed to opt the service of Coal India Ltd. along with other employees. He was dismissed in departmental proceeding which was quashed by the Central Administrative Tribunal on technical ground that he was not furnished enquiry report vide order dated 16.8.1989. However, it was left open to the disciplinary authority to furnish copy of enquiry report and proceed against the Petitioner. It was also left open to treat the Petitioner under suspension under Sub-clause (4) of Rule 10 of CCS (CCA) Rules. The disciplinary authority, accordingly, proceeded against the Petitioner and vide order dated 3.3.1990 the Petitioner was held guilty of the charges and his annual increment for two years was stopped. He was allowed subsistence allowance for the period of suspension but not at the enhanced rate. He was also released from suspension. He accordingly, joined the service of Respondent No. 1, a subsidiary of Coal India Ltd. vide joining letter

dated 13.3.1990 which was accepted with effect from 3.3.1990. After joining he also opted the service condition of Coal India Ltd. vide Annexure-9 to the writ petition which was accepted by Respondent No. 2. The Petitioner filed a representation by way of notice u/s 80 of the CPC for allowing subsistence allowance as per existing Rules. On service of notice, Respondent No. 5 issued notice vide letter dated 13.9.1993 to show cause as to why punishment of dismissal from service be not awarded. The Petitioner filed his show cause on 5.11.1993, Annexure-5, raising the question of jurisdiction and other points. Respondent No. 5, on receipt of show cause communicated the order of dismissal to the Petitioner vide letter dated 13.9.1994, Annexure-10.

10. It is thus obvious from the facts stated above that the Coal Mines Labour Welfare Organisation was abolished by Coal Mines Labour Welfare Fund (Repealed) Act, 1986 and the Central Hospital, Dhanbad, where the Petitioner was posted, stood transferred to Coal India Ltd. with effect from 1.8.1985. The Petitioner joined the service of Bharat Coking Coal Ltd. in the year 1990 and he opted the service condition of Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd. On 13.9.1994, the date on which the order of dismissal, Annexure-10 was passed, the Petitioner was employee of Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd. It is true that order, Annexure-10, was issued by Respondent No. 5 in the name of President of India but on that day the Petitioner was not in the service of Union of India, rather he was in service of Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd. Rule 29 of CCS (CCA) Rules is applicable only to the employees of Union of India. Since the Petitioner on the day of passing of order, Annexure-10, was employee of Bharat Coking Coal Ltd. Rule 29 of CCS (CCA) Rules cannot be held to be applicable in the case of Petitioner on the day the order, Annexure-10, was passed.

11. The question raised by Mr. Mehta, learned Counsel for Respondent Nos. 1 to 3, that since the Petitioner submitted to the jurisdiction of Respondent Nos. 4 & 5, he cannot be allowed to raise the question of jurisdiction, has also no substance. As it is a question of jurisdiction of the authority concerned, the principle of estoppel does not apply against the statute. Such question of jurisdiction can be raised at any stage of the proceeding. It is well established rule of law that the consent cannot create the jurisdiction. It is also pertinent to mention herein that the principle of waiver would not cure the defect of jurisdiction where the authority lacks inherent jurisdiction in the matter. Besides the question of jurisdiction was raised in the show cause filed by the Petitioner before passing of order of dismissal.

12. Mr. Mehta, learned Counsel for Respondent Nos. 1 to 3 also pointed out that after abolition of Coal Mines Labour Welfare Organisation the post of Coal Mines Welfare Commissioner was redesignated as Officer on Special Duty who was to carry the same administrative, financial and cognate power as Coal Mines Welfare Commissioner. The Officer on Special Duty was vested with the power to finalise the pending case complaints by Director, Department of Coal, Ministry of

Energy, Government of India vide letter dated 22.9.86, Annexure-B and hence the Officer on Special Duty had jurisdiction to pass order in disciplinary proceeding. In this regard, it is pertinent to mention herein that Coal Mines Labour Welfare Organisation was abolished by Coal Mines Welfare Fund (Repealed) Act, 1986 and services of employees in Coal Mines Labour Welfare Organisation was transferred to Coal India Ltd. In such a situation, the Director of Department of Coal, Ministry of Energy cannot vest power to any authority with regard to finalisation of Vigilance cases after transfer of services of employees to Coal India Ltd. as only employer can issue instruction with regard to its employee. Besides the order of Director cannot override the law. Thus the contention of learned Counsel for Respondent Nos. 1 to 3 cannot be accepted in such circumstances.

13. The contention of Mr. Trivedi, learned Counsel for Respondent Nos. 4 & 5, that since the proceeding was initiated against the Petitioner while he was in service under Coal Mines Labour Welfare Organisation the Respondent Nos. 4 & 5 had jurisdiction to pass order of punishment, is also without any substance as after transfer of service of the Petitioner to Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd. neither the Officer of Union of India nor the President of India has any jurisdiction to pass order of punishment as the Petitioner was not an employee of Union of India on the day the order of punishment, Annexure-10, was passed. Rule 29 of CCS (CCA) Rules is applicable only to the employees of Union of India and not the employees of Bharat Coking Coal Ltd. a subsidiary of Coal India Ltd.

14. Thus on consideration of the entire facts and circumstances of the case as discussed above, in my opinion, the Order, Annexures-10 and 11 cannot be held to be legal. Accordingly this application is allowed and orders, Annexures-10 & 11 are hereby quashed but without cost.