
(2013) 04 JH CK 0049
In the Jharkhand High Court
Case No : WP (S) No. 5768 of 2003

Sefali Sinha

APPELLANT

Vs

Steel Authority of India Limited and Others

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 3 AJR 609 : (2013) 2 JLJR 549

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rohit Roy, for the Appellant; G.M. Mishra and Umesh Mishra, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—This is an application seeking substitution of the legal heirs of the deceased petitioner, who died on 12.2.2009.

For the reasons stated in the application, I.A. No. 2394 of 2012 is allowed.

W.P. (S) No. 5768 of 2003

Aggrieved by order dated 30.7.2003, the petitioner who retired from service on 30.9.2002, has approached this Court by filing the present writ petition.

The petitioner joined the Steel Authority of India Limited on 10.9.1968 and he was superannuated from service with effect from 30.9.2002. Just before his retirement the petitioner was served a charge-memo dated 24.4.2002 and an enquiry under Rule 8 of Discipline and Appeal Rules of the Company was initiated. The Article of charge against the petitioner alleged the following misconducts committed by him:--

1. He acted with a mala fide intention and in collusion with another Assistant who was responsible for physically submitting the financial instruments before the Company's Bank for encashment, in delaying the submission of local cheques of

M/s. Vikas Steel before the Company's Bank on the day these were required to be submitted as per pay-in-slips prepared through computer printout. This resulted into financial loss to the Company and gain to the Party.

2. He failed to keep the official documents safely and handed over to Vigilance Department, the tampered official documents viz. Second Copy of the pay-in-slips for the purpose of hiding his misdeeds from investigation.

2. The petitioner submitted his written statement of defence and on conclusion of the enquiry, the charges against the petitioner was found proved. The petitioner was supplied a copy of the enquiry report and the petitioner made a detailed representation before the Disciplinary Authority. By order dated 30.7.2003, a penalty of reduction in the lower grade, i.e. from the scale of Rs. 6400-200-11400 (S-10) to the scale of Rs. 5800-9471 (S-9) was imposed with effect from 24.4.2002. The basic pay of the petitioner was ordered to be fixed at lowest stage, i.e. at Rs. 5,800/- and a recovery was ordered from the amount payable to the petitioner.

3. A counter-affidavit has been filed on behalf of the respondents taking a stand that the petitioner with mala fide intention colluded with another Assistant who was responsible for physically submitting the financial instruments in the Bank for encashment. The act of the petitioner resulted into financial loss to the Company and gain to the parties. The relevant portion of paragraph No. 4 in the counter-affidavit is extracted below:--

Petitioner Shri N.N. Sinha, Ex-Asstt. Staff No. 044066 was charge-sheeted vide charge Memorandum No. MD/PSO/135 dated 24.4.2002 for his mala fide intention and in collusion with another Asstt. who was responsible for physically submitting the financial instruments before the Company's Bank for encashment. In delaying the submission of local cheques of M/s. Vikas Steel before the Company's Bank on the day these were required to be submitted as per pay-in-slips prepared through computer printout. This act of Shri Sinha resulted into financial loss to the company and gain to the party. He failed to keep the official documents safely and handed over to Vigilance Department the tampered official documents viz. second copy of the pay-in-slips for the purpose of hiding his misdeeds from investigation. His reply to the charge memorandum was not found satisfactory, therefore, an Enquiry Committee was constituted vide No. MD/PSO/208, dated 17.6.02 to enquire into the charges levelled against him.

4. Heard learned counsel appearing for the parties and perused the documents on record.

5. The learned counsel appearing for the petitioner has raised the contention that the charge framed against the petitioner is vague. The disciplinary authority has considered the materials which were not part of the charge framed against the petitioner. Nowhere it has been disclosed what was the loss suffered by the Company. Merely a statement has been made that the Company suffered loss and it had to file a suit for recovery. Neither the enquiry officer nor the

disciplinary authority or the appellate authority has dealt with the specific plea raised by the petitioner that Shri R.N. Das, Junior Executive (Cash), was the person who had to verify whether cheques deposited with the bank were credited or not. The management has examined another delinquent officer namely, Shri N.C. Gorain in the departmental proceeding against the petitioner which is not permitted in law. The enquiry officer and the appellate authorities have overlooked the statement of the said Shri N.C. Gorain who has stated that the Vigilance Officer had asked him to depose as instructed by him. The other prosecution witnesses have also admitted that the cheque was being deposited belatedly on the instruction of Shri R.N. Das, Junior Executive (Cash). On these grounds, the learned counsel for the petitioner has submitted that the enquiry was vitiated and the finding of misconduct arrived against the petitioner is not supported by the evidence on record and therefore, interference is required by the Hon"ble High Court.

6. On the other hand, learned counsel appearing for the respondents has submitted that the petitioner colluded with Shri N.C. Gorain and he is responsible for late submission of the cheques/drafts of the Company-M/s. Vikas Steel. He had tried to conceal the fact before the Vigilance and produced the tampered copy of the pay-in-slip. He has supported the impugned orders and submitted that in exercise of jurisdiction under Article 226 of the Constitution of India, no interference is required in this matter.

7. I find that the charges framed against the petitioner are vague. On the one hand, it has been alleged that the petitioner has failed to keep the official documents safely and on the other hand, it has been alleged that he handed over the tampered official documents to the Vigilance Department for the purpose of hiding his misdeeds from investigation. I further find that the statement of imputation of misconduct states as under--

Cash Section of Accounts Department, besides other activities, is required to encash various financial instruments like cheques, drafts etc., received by various departments of the Company. For this purpose, Cash Section prepares, on daily basis, two copies of pay-in slip through computer, giving bank-wise details of the instruments. The same is checked by an assistant for its correctness and completeness and the assistant arranges for submission of the instruments, alongwith the pay-in-slip, to our Bank which is State Bank of India, Sector-IV Branch, B.S. City. After submission of the instruments with Company's Bank, the second copy of the pay-in-slip is returned to the assistant who checked the same, earlier, for its correctness and completeness, and the matter is reported to the concerned officer if any instrument is not accepted by the Bank. Moreover, the assistant which goes to the Bank for submitting the instruments, alongwith pay-in-slip, also collects instruments from the Bank, which were submitted earlier and which are returned by the Bank for any deficiency.

8. The petitioner in his defence has stated that while working as an Assistant in the Cash Section of Accounts Department, his duty was to receive financial

instruments together with the forwarding from different departments of the Company. On receipt of the instruments he was required to verify the dates of the instruments for validity purposes and after verification of the instruments he had to give Control numbers over the receipt with which the instruments were to be forwarded. After the pay-in-slip together with the list of deposits in two copies were prepared by the computer operator and handed over to the petitioner for checking the details as regards the instruments mentioned in pay-in-slips and if the list of deposits and pay-in-slips found correct, the petitioner was to forward the said two copies of the list of deposits and pay-in-slips together with the cheques/instruments to the Junior Executive (Cash) for forwarding the same to the Bank of the Company for crediting in Company's account and, thereafter, his duty was over. The petitioner has further taken a plea that it was not his responsibility to give the second copy of pay-in-slips and list of deposits and as such, he could not have tampered the same. The petitioner has specifically submitted his defence as under--

3. In the instant case of Vikas Steel, I used to forward the two copies of the list of deposits with pay-in-slips and the instruments to Sri R.N. Das, Junior Executive (Cash) who after his signature on the pay-in-slips used to hand over the said two copies of the list of deposits and Pay-in-slips with all the cheques/instruments mentioned in the said pay-in-slips to another Assistant for depositing the same in the Company's Bank.

5. It was for Mr. Das, Junior Executive (Cash) to send the two copies of the list of deposits and the pay-in-slips together with cheques to the Company's Bank through Assistant namely, Sri N.C. Gorain. I was not at all required to collect the second copy of the list's of deposits from Sri Gorain and file the same after checking whether all the instruments were submitted to the Bank. I never collected and kept the second copy of the lists of deposits in my file. The second copy of the lists of deposits used to be kept by Sri R.N. Das. It is also nor correct to say that in case of non-submission/non-acceptance of any instrument the same was required to be collected and kept by me for further action.

9. A perusal of the enquiry report makes it clear that another assistant namely, Mr. N.C. Gorain admitted during the enquiry that he was depositing the cheques/drafts on the instruction of Sri R.N. Das, Junior Executive (Cash). He has further admitted that he was receiving the documents from Sri R.N. Das, Junior Executive (Cash) before going to Bank for depositing the cheques/drafts and he was submitting the second copy of deposits (received from Bank) to Sri R.N. Das. It is also a matter of record that the petitioner had submitted a photocopy of office order dated 13.1.1997 in support of his plea that Sri R.N. Das, Junior Executive (Cash) was the person responsible to ensure that the cheques were deposited and credited in the Bank. From the impugned order dated 30.7.2003, I find that the disciplinary authority has recorded that the petitioner has not given any substantive point in his written submission, in addition to the point discussed in the enquiry report. This is clearly an error. The enquiry officer as well as the

disciplinary authority have failed to consider the specific plea and the materials brought on record by the petitioner. I further find that the disciplinary authority has taken into account the alleged financial implication, loss to the Company, money suit filed for recovery of the amount, fund availed by the Company at high interest rate etc. which were not brought to the notice of the petitioner and which do not form part of the evidence before the enquiry officer. Therefore, extraneous materials have been taken into consideration by the disciplinary authority for imposing the penalty upon the petitioner which is not permissible in law. The impugned order dated 30.7.2003 is liable to be quashed.

10. In *Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others*, , the Hon''ble Supreme Court has held that the evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be substitute of evidence.

11. It has also been consistently held by the Hon''ble Supreme Court that the High Court while exercising jurisdiction-under Article 226 of the Constitution of India, has power to interfere with the finding recorded in domestic enquiry when such finding is based on "no evidence" and it has also power to interfere with the orders of penalty if the order of penalty is excessive or shockingly disproportionate or such that no reasonable employer would have imposed on the employee. It has also been held that if the order of sentence is an outrageous defiance of logic, then the sentence would not be immune for correction. In "*Council of Civil Service Unions vs. Minister for the Civil Service*", reported in (1984)3 All ER 935, Lord Diplock observed:--

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community;...

12. In the case of *Om Kumar and Others Vs. Union of India*, , the Hon''ble Supreme Court has observed:--

The quantum of punishment in disciplinary matters is primary for the disciplinary authority to decide and the jurisdiction of the High Courts under Article 226 of the Constitution of India or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as *Wednesbury* principles.

13. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme

Court has held:--

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

14. In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , the Hon''ble Supreme Court has held that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. In view of what has been stated above, the writ petition is allowed.