
(2012) 06 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No. 13706 of 2010

Subhendu Kumar Mohanty

APPELLANT

Vs

Orissa Power Generation Corporation Ltd. and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 226, 227

Citation : (2013) 136 FLR 835 : (2013) 1 LLJ 531 : (2012) LLR 1196

Hon'ble Judges : B.P. Das, J;B.K. Nayak, J

Bench : Division Bench

Advocate : J. Sengupta, Mr. D.K. Panda, Mr. G. Sinha and Mr. A. Mishra, for the Appellant; D.P. Nanda, R.K. Kanungo, S. Rath and Mr. B.P. Panda, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner, who was working as Sr. Assistant Manager (Mechanical) in Orissa Power Generation Corporation Ltd. (in short, "O.P.G.C.L.") has filed this writ petition challenging the order dated 25.3.2008 passed by the Managing Director, O.P.G.C.L., O.P. 3 imposing upon him the major penalty of dismissal from service and the order passed by the Board of Director rejecting his appeal, which was communicated by letter dated 6.6.2009 of the Senior General Manager (P & A), confirming the findings of the disciplinary authority on the ground that there is serious violation of principles of natural justice and denial of opportunity to defend himself against the charges. The case of the petitioner is that he joined the O.P.G.C.L. as Senior Assistant Manager in the year 1993. The O.P.G.C.L. is a Company registered under the Companies Act, 1956 and the State Government has pervasive control over it with regard to finance and management. He was also selected as President of the Officers'/Executives' Association of the Corporation during the year 2006-07 and again re-elected to the said Office for the year 2007-08. According to the petitioner, the said Association raised three demands, such as, salary revision of the officers/

executives with effect from 1.4.2000, promotion of the executives and expansion of IB Thermal Power Station and pressed for implementation of the said demands through several representations to the Management of the Corporation from time-to-time since 2001. When the demands remained unfulfilled, the Association called a general body meeting to consider the matter including the matter in which the Association could register its protest against the non-responsive attitude of the Management to its demands. In the meeting several options were considered and an unanimous decision was taken that as a token step the Officers would remain on casual leave for one day, i.e., on 30.3.2007 to register their protest. The said decision was communicated to the Management on 15.3.2007 with copies to the concerned authorities. In pursuance of the unanimous decision, 127 members of the executive cadre individually submitted their casual leave applications through the Association and the petitioner being the President of the Association forwarded the same including his own to the Director (Operation), IB Thermal Power Station on 27.3.2007. But no response from the side of the Management was received. On the other hand, the Senior General Manager (P & A) in his letter dated 29.3.2007 informed the Officers that if they went on casual leave, they might face the consequences under the Essential Services (Maintenance) Act, 1988 and be proceeded against for the misconduct. Such a threat was not acceptable to the Association and the members decided to avail casual leave on 30.3.2007.

According to the petitioner, there was no overt act committed by the members of the Association on 30.3.2007 inside or outside the plant. Though the members of the Association remained absent from their duties and availed casual leave. Thereafter, the Management without addressing the long pending grievances of the officers/executives chose to initiate disciplinary proceedings against the President and some Executive Body Members of the Association alleging misconduct selectively. The petitioner was served with a charge-sheet containing 8 heads of charges of misconduct as per Clauses 4.6, 4.19, 4.20, 4.25, 4.26, 9 & 12 of the O.P.G.C.L. Conduct Rules, 1998. Then the petitioner filed his written statement of defence to the aforesaid charges after which the Senior General Manager (P & A) appointed one G. Behera as the Enquiry Officer to conduct the enquiry into the charges without communicating the same to the petitioner.

2. The gravity of the charges leveled against the petitioner was that being the President of the Association, he influenced/forced the members to go on one day casual leave, which ultimately caused huge loss to the Corporation and such act was prejudicial to the interest of the Corporation. Thereafter the Enquiry Officer found the petitioner guilty of charge Nos. 1, 2, 4, 5, 6, 7 & 8 and not guilty of charge No. 3 and submitted his report, vide Annexure-2. On 21.1.2008 the Manager (Admn.) issued the second show cause notice to the appellant informing him that the Management had concurred with the findings recorded by the Enquiry Officer and proposed to inflict upon the appellant the major penalty of dismissal from service. The petitioner in his letter dated 4.2.2008 requested the Management to supply him the order sheets maintained by the Enquiry Officer in

the enquiry proceedings, which were not supplied to him along with copies of orders showing approval of the competent authority in the matter of framing of charges and issuance of the show cause notice. According to the petitioner, the record of the proceeding composing 72 pages contained the order sheets in respect of only four sittings. Though the petitioner had been seriously prejudiced in his defence on account of non-supply of all the documents pertaining to the enquiry, he had to submit a provisional reply to the notice. After much persuasion, the Management supplied hand written order sheets maintained for different dates comprising of eight pages to him. Those order sheets do not bear signatures of the parties or their representatives. The petitioner then submitted his additional show cause reply to the Management on 26.2.2008. While he believed that the facts and circumstances stated by him in his replies to the second show cause notice and the grounds taken by him therein would receive proper consideration, he was shocked to receive the impugned order of dismissal dated 25.3.2008 passed by the Managing Director.

3. According to the petitioner, the impugned order of dismissal dated 25.3.2008 is bad in law for the following reasons:-

(I) The specific charges framed against the petitioner are invalid in the eye of law because the same have not been framed by the disciplinary authority, namely, the Managing Director as clearly stipulated in rule 6(ii) of the Discipline and Proceeding Rules, 1998,

(II) The charge-sheet has not been signed by the disciplinary authority but by one Senior General Manager (P & A), who is not the competent authority to frame the charges of misconduct,

(III) The Enquiry Officer lacked jurisdiction to hold the enquiry, as he was appointed as Enquiry Officer by the Senior General Manager (P & A) because as per Rule 6(ii) of the Discipline and Appeal Rules, the disciplinary authority alone was competent to appoint the Enquiry Officer,

(IV) According to Rule 6(xvii) of the Discipline and Appeal Rules, it was incumbent on the Enquiry Officer to hear the Presenting Officer and the charged employee or permit them to file written arguments after production of evidence from both the sides. But without giving any such opportunity to the petitioner and without complying with the aforesaid procedure, the Enquiry Officer closed the proceeding thereby denied reasonable opportunity to the petitioner to make his submissions, which amounted to violation of principle of natural justice.

(V) The charges under head Nos. 1 and 4 to 8 are totally misconceived. The absence of the petitioner on 30.3.2007 was pursuant to the unanimous decision of the Association. There is no evidence to conclude that the petitioner acted in a collective manner in consortium with other Executives to bring the plant to a standstill and production to zero level and that the petitioner caused any financial loss to the industry and that he acted in a manner subversive of discipline and prejudicial to the interest of the industry.

4. According to the petitioner, the disciplinary authority has completely ignored the fact that for one day absence from duty on 30.3.2007, the salary of the Officers/Executives were withheld, for which the disciplinary authority was not justified to initiate disciplinary proceeding against the petitioner and last but not the least, the argument of the petitioner is that the infliction of the extreme punishment of dismissal is shockingly disproportionate as it leads to the only inference that it is an act of victimization to which the petitioner has been subjected only on account of his act of forwarding the casual leave applications pursuant to the unanimous decision taken by the Association, for which prayer has been made to quash the order dated 25.3.2008.

5. Counter affidavit has been filed by the opposite parties disputing the allegation of the petitioner that the action taken by them is illegal in the facts and circumstances of the case. They have also taken a stand that this Court is not the appellate forum before which the findings in a disciplinary enquiry can be examined in exercise of the jurisdiction under Article 226 of the Constitution of India. Law is well-settled that under Article 227, this Court is to examine if any authority has exceeded its jurisdiction or failed to exercise its jurisdiction. Further this Court can also examine if the findings of the said authority is perverse or suffers from any error of law or misconception of law or for that matter if the authorities have violated the statutory procedure resulting in denial of natural justice to the delinquent employee. According to them, as per the record, there is nothing of this sort.

According to Mr. Nanda, learned counsel for the opposite parties, the petitioner has violated the rules as prescribed under the "O.P.G.C.L. Conduct Rules, 1998", which has been provided under Clause Nos. 4.6, 4.19, 4.20, 4.25, 4.26, 9 and 12 of the O.P.G.C.L. Conduct Rules, 1998, for which the charge-sheet was framed against the petitioner. His response to the same having been found unsatisfactory, a disciplinary proceeding has been initiated and an independent enquiry officer was appointed to require into such charges. After due consideration of the pleadings, evidence, both oral and documentary, and on hearing arguments made by both the Management and the delinquent employee, the Enquiry Officer came to the finding that six charges out of seven stood proved. According to Mr. Nanda, it is unusual on the part of the Association to prefer to go on mass casual leave, as it led to total paralysing of the system of production and the petitioner being the President of the Association is responsible and he should be more careful in indulging non-trade union activities.

6. Let us examine charge No. 3, i.e., preventing the willing executives from performing their duties and the findings of the Enquiry Officer read as follows:-

From the circumstances and evidences as discussed as Charge No. 2 that Sri. S.K. Mohanty as a leader of the team had influenced and instigated the executives to go on mass casual leave and stay away from performing the duties. There is no credible evidence from the management side that the willing executives were prevented from performing their duties. On the other hand, the

management witness during cross-examination by Sri. S.K. Mohanty confirmed that there was no road blockage leading to the plant and no FIR relating to obstruction of executive by anybody was lodged in regard to prevention/obstruction of any willing executives.

Hence, the charge is not proved and Sri. S.K. Mohanty is not found guilty of the charge.

It is felt appropriate to deal with the charge No. 8 before examining other charges.

As this charge has not been proved against the petitioner, that cuts the route of charge No. 2, i.e., influencing and instigating other executives to go on mass casual leave on 30.3.2007. The allegation that there was prevention on the part of the petitioner being the President of the Association to the willing workers to work remained disproved. Then the question of instigating and forcing other Executives by the petitioner to go on casual leave cannot stand.

Be that as it may, it is not disputed that similarly situated employees have been charge sheeted and have been dealt with leniently. The petitioner being the President of the Association has been imposed with the drastic punishment of dismissal from service.

7. So far as giving certain statements in the Press regarding the demands of the Executives is concerned, it cannot be construed as misconduct, as there is nothing on record to show that there is any restriction in service rule prohibiting the petitioner from going to Press and making public their demand. There is also nothing to show as to how it affected adversely the Management of the Company. So any punishment of the petitioner for going to Press will amount to infringement of fundamental right of freedom of his speech and expression guaranteed under Article 19(1)(a) of the Constitution.

In paragraph-15 of the decision in Baldev Singh Gandhi Vs. State of Punjab and Others, , it is held that freedom of speech and expression guaranteed under Article 19(1)(a) which includes of fair criticism of law and executive actions, could not be infringed on the ground of remote or speculative ground. In the case of S. Rangarajan Vs. P. Jagjevan Ram and Others, , it is held that the commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest.

So a person going to Press on behalf of the Association cannot be denied on the flimsy ground that he was acting in a manner subversive to the disciplinary authority. The allegation that the demand of the Association was endorsed to many, agencies, like Collector & S.P. of Jharsuguda District, Collector & S.R. of

Khurda District, Press and Media, who are in no way concerned with the problems of the O.P.G.C. cannot be said to be an act or conduct subversive to the disciplinary authority. So this charge as well as charge No. 8, i.e., participation in public media, making statement with derogative words to the interest of the Company, is also vague.

8. Apart from this, if we consider the report of the Enquiry Officer as a whole, charge No. 3, i.e., preventing the willing Executives from performing their duties, being not proved, the major charge, i.e., charge No. 2 has no locus to stand. As there is no lots of evidence to suggest that the petitioner has forced and instigated any Executive to remain absent on 30.3.2007 availing casual leave, the finding of guilt under charge No. 2 is based on evidence as charge No. 3 has not been proved.

9. Considering the entire facts and circumstances of the case, we are of the opinion that the decision of the Apex Court in the case of Obettee Pvt. Ltd. Vs. Mohd. Shafiq Khan, on which the O.P's, rely, is totally different in this case though other similarly situated employees were not exonerated, they were visited with lesser punishment, as stated. So the facts of the aforesaid case are not applicable to the present case. However, looking at the entire nature of the case, we are of the opinion that the petitioner being the President of the Association has become a victim of the circumstances and he is more sinned than the sin. His punishment is shockingly disproportionate to the charges framed against him.

In the light of the decision of the Apex Court in B.C. Chaturvedi Vs. Union of India and others, we are of the view that the punishment imposed by the disciplinary authority as confirmed by the appellate authority shocks the conscience of the Court. Accordingly, we set aside the order of dismissal dated 25.3.2008 passed by the Managing Director, O.P.G.C.L., O.P. 3, and the appellate order communicated by letter dated 6.6.2009 by the Senior General Manager (P & A) and direct the opposite parties to reinstate the petitioner immediately and thereafter take a decision for imposing any lesser punishment other than dismissal, removal or compulsory retirement within a period of two months from today.

The writ petition is accordingly allowed.

B.K. Nayak, J.

I agree.