
(2003) 06 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 17991 of 1997

Surendranath Khuntia

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2)

Citation : (2003) 06 OHC CK 0011

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : N.K. Mishra, S.K. Mishra, D.N. Mishra and D.K. Pani, for the Appellant; D.K. Mohapatra, L. Kabi, N.K. Sahoo and A.K. Mohapatra for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—The Petitioner in this writ petition seeks quashing of order dated 12.11.1997 of the Industrial Tribunal, Orissa, Bhubaneswar (Annexure-3) according approval under the proviso to Sub-section (2) of Section 33 of the Industrial Disputes Act, 1947(hereinafter referred to as "the Act") to the action of the management in dismissing him from service.

2. I.D. Case No. 42 of 1991 was subjudice before the Industrial Tribunal, Bhubaneswar wherein the issue was whether the refusal of employment to all the workmen in the garb of lock out declared by the management was justified. While the said reference was pending, the Petitioner was placed under suspension for his alleged misconduct whereafter charge was framed against him. A domestic enquiry was held wherein he was found guilty of the charges. After considering the enquiry report, the management decided to dismiss the Petitioner from service, as provided in the Certified Standing Orders. Accordingly, the order of dismissal was communicated to him on 4.11.1992 which was required to be approved by the Industrial Tribunal as provided in the proviso to Sub-section (2) of Section 33 of the Act.

3. The case of the Petitioner before the Tribunal was that the domestic enquiry was vitiated because of non-payment of subsistence allowance to him. It was also contended that the enquiry report was not supplied to him because of which he could not effectively make representation.

4. The Tribunal recorded the following findings:

(i) The Petitioner did not furnish non-engagement certificate for the relevant period and he himself being a defaulting party cannot be allowed to make grievance of non-payment of subsistence allowance;

(ii) As there is no provision in the Standing Order for supply of copy of the enquiry report to the delinquent workman, the Petitioner was to ask for it. The Petitioner has failed to prove that he made any such demand and the management refused to accede to such demand; and

(iii) There is no provision in the Standing Order that a second show cause notice was to be served on the workman and, therefore, non-service of the second show cause notice along with the enquiry report did not cause any prejudice to him.

5. The aforesaid findings recorded by the Tribunal are essentially based on appreciation of evidence. It is not the contention of the learned Counsel for the Petitioner that any material piece of evidence was omitted to be considered by the Tribunal. The findings recorded as such being findings of fact, there is little scope for interference by this Court in exercise of writ jurisdiction.

6. Shri Mishra, learned Counsel for the Petitioner, however, contended that because of non-payment of subsistence allowance, the Petitioner was prejudiced, and, as such, the domestic enquiry was vitiated.

Order No. 35 of the Standing Order reads as follows:

...The suspended employee shall be entitled to subsistence allowance " 50% of his wages if the period of suspension exceeds 15 days, subject to the condition that he does not leave the headquarters without permission and does not take up any other employment during the period....

The aforesaid clearly indicates that the suspended workman would be entitled to admissible subsistence allowance provided he does not leave the headquarters without permission and does not take up any other employment during the period. The case of the management is that in order to get subsistence allowance the suspended workman has to furnish a non-employment certificate which the Petitioner failed to do and, therefore, he was not paid his subsistence allowance. There is force in the above stand taken by the management. Admittedly the Petitioner had not furnished any non-employment certificate during the relevant period. Furnishing of certificate being a condition precedent to the grant of subsistence allowance and the same having been not done, the Petitioner cannot make a grievance on that score. Besides this, the Petitioner had been attending

the domestic enquiry for some days and thereafter remained ex parte. He had never raised any grievance that non-payment of subsistence allowance had disabled him from attending the enquiry.

7. The next question that arises for consideration is whether the finding of the Tribunal that the domestic enquiry was fair and proper can be upset because of non-supply of enquiry report. No revision of the Standing Order was brought to our notice that a second show cause notice was required to be served on the delinquent workman before the proposed penalty was imposed. Shri Mishra relying on the judgments of the Supreme Court in *Union of India and others Vs. Mohd. Ramzan Khan*, as well as *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, submitted that the Petitioner had a right to a copy of the enquiry report and the same having been not given the order of dismissal is vitiated. It may be stated that no order of dismissal can be mechanically set aside merely because the delinquent was not furnished with a copy of the enquiry report. In the case at hand, nothing has been brought to our notice to show that the Standing Orders contemplate issuance of second show cause notice before the punishment proposed is inflicted. Had there been any such provision, then the question of furnishing a copy of the enquiry report would have assumed importance. In absence of any such provision, we are inclined to hold that non-furnishing of enquiry report to the Petitioner has not affected the final order of dismissal.

8. No other point worth-mentioning was urged to show that the domestic enquiry conducted against the Petitioner was not fair and proper.

9. In the result, we do not find any merit in this writ petition which is accordingly dismissed.

M. Papanna, J.

10. I agree.