IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(L) No. 4751 of 2011

M/s Central Coalfields Limited, a Government Company within the meaning of Section-617 of the Companies Act, having its Head Office at Darbhanga House, Ranchi, P.O. Ranchi, P.S. Kotwali, District Ranchi through AWADHESH KUMAR SINGH, General Manager (Administration), Central Coalfields Limited; Darbhanga House, Ranchi, P.O. Ranchi, P.S.-Kotwali, District-Ranchi

..... Petitioner

Versus

Their Workman Shri Parmeshwar Sahu, resident of village Datna, P.O. Kuju (Topa), P.S. Mandu, District Ramgarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner :Mr. Bhaiya Vishwajeet Kumar, Adv.
For the Respondent :Mrs. Niharika Mazumdar, Adv.

ORAL JUDGMENT IN COURT

16/06.08.2024 This writ petition has been filed on behalf of the petitioner challenging the Award dated 04.11.2010 (i.e. Annexure-7) in Ref. Case No. 106 of 1992 passed by Shri H.M. Singh, learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad, by which the Reference has been answered in favour of the concerned Workman directing the petitioner to reinstate the Respondent-Workman in service in his original job from the date of dismissal with 50% back wages.

2. Heard Mr. Bhaiya Vishwajeet Kumar, learned counsel for the petitioner and Mrs. Niharika Mazumdar , learned counsel for the respondent.

3. Learned counsel for the petitioner has submitted that the impugned Award passed by the

learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad is illegal, arbitrary and not sustainable in eye of law. It is submitted that impugned Award is perverse and vitiated and suffers from error apparent on the face of it. It is submitted that even the learned Tribunal has itself observed in Paragraph 5 of the Award dated 04.09.2010, passed in the Reference No. 106 of 1992 that the enquiry was held fairly and properly vide order dated 10.06.2010 and therefore, once a domestic enquiry is held properly and the finding of misconduct is plausible and conclusive flowing from the evidence adduced during enquiry, the learned Tribunal has got no jurisdiction to sit in judgment as an Appellate Body and set-aside the finding of the domestic enquiry, in which the Respondent-Workman has been held guilty, except in the case of perversity, victimization or unfair labour practice or malafide. It is submitted that non-submission of enquiry report and second show–cause is not fatal to the case of the Petitioner-Management as the Workman was well aware of charges levelled against him. It is submitted that the workman had taken illegal amount of Rs. 16,000/- (Rupees Sixteen thousand) on 09.11.1985 from the account of an outsider-Sri. S.M. Agarwal of Indian Overseas Bank, Dakra. It is submitted that the workman was even found guilty of leaving his work place on 12.11.1985 without any intimation or prior permission.

4. Learned counsel for the petitioner in support of his submission relied upon the judgment

in ***Employers Management West Bokaro Colliery of TISCO Ltd. Versus Concerned Workman, Ram Pravesh Singh*** reported in **(2008) Supreme (SC) 44503** and hence, the award may be set-aside and this Writ Petition may be allowed.

5. On the other hand, learned counsel for the Respondent has submitted that the impugned Award dated 04.11.2010 (i.e. Annexure-7) in Ref. Case No. 106 of 1992 passed by the learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad is fit and proper and no interference is required. It is submitted that the Workman had retired from services in the year December, 2017. It is submitted that there is no illegality and perversity in the impugned Award. It is submitted that the copy of the inquiry report and second show-cause notice were not served upon the Respondent-Workman and hence this Writ Petition may be dismissed.

6. Perused the Records of this case and considered the submission of both the sides.

7. It transpires that the Respondent–workman was working at the Petitioner-Company since 02.01.1974 and he was posted for duty either on Cash or on Magazine of the K.D. Hesalong Project as Armed Guard.

8. However on 14.12.1985, a charge-sheet was issued and served upon the Respondent Workman with the following charges:-

> ***"****It has been reported by the Area Security Officer (NK) Dakra that on 8.11.85 you had*

allegedly received illegal gratification an amount of Rs.16,000/- (Rupees sixteen thousand) only vide cheque No. 874328 dated 8.11.85 from the account of Sri S.M. Agarwal an outsider from Indian Overseas Bank, Dakra on 9.11.95 and left your work premises on 12.11.85 without any intimation or prior permission to the undersigned."

9. Thereafter, the petitioner filed his reply on 16.12.1985 that he has got old aged parents and two marriageable sisters and on 8.11.1985, Mr. S.M. Agarwal told him that he is very busy in his business and handed over a cheque for Rs. 16,000/- with clear instruction that out of this amount he was to take Rs.4000/- as loan and the remaining amount had to be returned to Mr. S.M. Agarwal after encashment of the cheque.

10. However, on 18.7.1988, a memo was served upon the petitioner for initiating departmental proceeding and the Management also got appointed R.N. Nandy, Deputy C.M.E., C.C.L., Ranchi as Enquiry Officer and also appointed one Mr. I.N. Jha, Assistant C.V.O-C.C.F as the Management representative.

11. It transpires that thereafter a domestic enquiry was held and the Enquiry Officer had submitted his report, i.e. Annexure-3 and who held that both the charges are proved against the petitioner.

12. Thereafter, the Disciplinary Authority, vide order dated 12.4.1991, as contained in Annexure-4, had passed order of punishment by dismissing the petitioner from the services of the

C.C.L. with effect from 13.4.1991. Thereafter, on failure of conciliation, a Reference was made for adjudication before the C.G.I.T.-I, Dhanbad and Schedule of Reference reads as follows:-

"Whether the dismissal of Shri Parmeshwar Sahu, Ex-Arm Guard Govindpur Project of M/s C.C.Ltd. is legal and justified? If not, to what relief the workman is entitled?"

13. Thereafter, the impugned Award was passed on 04.11.2010 by the learned Presiding Officer, C.G.I.T.-I, Dhanbad.

14. It transpires that the learned Presiding Officer has held in Paragraph 5 of the impugned Award that the Enquiry was held fairly and properly.

15. It transpires that the Management had produced one witness, namely A.P. Singh-M.W. 1.

16. It transpires that the Management had proved certain documents as Exhibits M-1 to M-8 respectively.

From perusal of the impugned Award, it appears that M-1 is the Chargesheet dated 14.12.1985 served upon the Respondent-Workman and M-2 is the Reply of the Respondent-Workman dated 16.12.1985 to the chargesheet served upon him and M-3 is the Memo dated 18.07.1988 appointing Enquiry Officer for conducting enquiry into the charges against the Respondent-Workman and M-5 is the Enquiry Report with regard to the charges levelled against the Respondent-Workman.

17. It transpires that the concerned workman hae been examined as W.W.1.

18. It also transpires from the impugned Award that the Workman had proved the documents as Ext.W-1 and Ext.W-2

19. Learned Presiding Officer, however, held that during the Domestic Enquiry, there was no evidence to show that S.M. Agarwal was doing business of coal and has got any connection with the business of Management.

The Tribunal also found that the employee is free to take loan from any person even by cheque as in the present case and which was returned and also admitted by Mr. S.M. Agarwal during his evidence and thus, there is no evidence to show that the workman had committed any misconduct. It was also observed by the learned Presiding Officer that the Workman was employed at K.D. Hesalong Project of C.C.L., near Govindpur and which was at a distance of 120 Kilometers from Ranchi and Enquiry was conducted at Ranchi Headquarter.

20. It was also found that neither the enquiry report was served upon the Workman nor the second show-cause was served upon the respondent-Workman. Thus, the punishment of dismissal appears to be too harsh and excessive on such an instance of taking a small loan of Rs.4,000/-.

21. Although the learned counsel for the petitioner relied upon the judgment in ***Employers Management West Bokaro Colliery of TISCO Ltd. Versus Concerned Workman, Ram Pravesh Singh*** reported in **(2008) 0 Supreme (SC) 44503** = **[2008] 0 AIR (SC) 1162**, in which it has been held that High Court should not sit as an Appellate Authority and should not interfere with the finding of the Enquiry Officer, by substituting its own finding, this Court

finds that the same is not applicable on the facts and in the circumstances of the present case.

In the above case, it is evident that neither the copy of the Enquiry Report nor the Second Show Cause Notice were served upon the petitioner, which is in complete violation of the judgment passed in ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.***, reported in **(1993) 4 SCC 727** and also followed judgment subsequently in the matter.

22. It has been held by the Hon'ble Supreme Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.***, reported in **(1993) 4 SCC 727**, at **Para 61**, **62** and **63** as follows:

> **"*Para 61:-*** *It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Government/management that the report is not evidence adduced during such inquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged*

in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.

Para 62:- *Shri P.P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need for its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity at the inquiry. In support thereof he placed strong reliance on Suresh Koshy George v. University of Kerala [(1969) 1 SCR 317 : AIR 1969 SC 198] ; Shadi Lal Gupta v. State of Punjab [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] ; Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi [(1973) 1 SCC 805 : AIR 1973 SC 1260] ; Satyavir Singh v. Union of India [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ; Secretary, Central Board of Excise & Customs v. K.S. Mahalingam [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] and Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] . I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority, he conducts the inquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice. S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] renders no assistance. It is only an inquiry against*

malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the Inquiry under Article 311 also bears little importance for the foregoing consideration in this case. It is already seen that this Court held that the inquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] is also of no avail. Therein it was pointed out that under Section 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to supply enquiry report, before taking the action, did not vitiate the ultimate decision taken. In Shadi Lal case [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules did not provide for the supply of copy of the report of an inquiry conducted by the fact finding authority before inquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principles of natural justice cannot be put into an iron cast or a strait-jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principles of natural justice on the facts of the case on hand needs to be considered and visualised. The effect of Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] in Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio renders no assistance in the light of the above discussion. Since Mahalingam case [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] which was after the Forty-second Amendment Act, the need to supply second show-cause notice was dispensed with, regarding

punishment and therefore, that ratio renders no assistance to the case. Hira Nath Misra case [(1973) 1 SCC 805 : AIR 1973 SC 1260] also is of no avail since the inquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this Court on the fact situation upheld the action of the Medical College. Satyavir Singh [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ratio also is of no assistance as the action was taken under proviso to Article 311(2) and Rule 199 of the CCA Rules. The inquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Article 311(2) and unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.

Para 63: *The emerging effect of our holding that the delinquent is entitled to the supply of the copy of the report would generate yearning for hearing before deciding on proof of charge or penalty which Forty-second Amendment Act had advisedly avoided. So while interpreting Article 311(2) or relevant rule the court/tribunal should make no attempt to bring on the rail by back track the opportunity of hearing as was portended by the Gujarat High Court. The attempt must be nailed squarely. Prior to the Forty-second Amendment Act the delinquent had no right of hearing before disciplinary authority either on proof of charge or penalty. So after Forty-second Amendment Act it would not be put on higher pedestal. The Gujarat High Court's decision is,*

therefore, not good law. However, the disciplinary authority has an objective duty and adjudicatory responsibility to consider and impose proper penalty consistent with the magnitude or the gravity of the misconduct. The statute or statutory rules gave graded power and authority to the disciplinary authority to impose either of the penalties enumerated in the relevant provisions. It is not necessarily the maximum or the minimum. Based on the facts, circumstances, the nature of imputation, the gravity of misconduct, the indelible effect or impact on the discipline or morale of the employees, the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to, may be some of the factors to be considered. They cannot be eulogised but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and cons, consider the case and impose appropriate punishment. In a given case if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the court/the tribunal to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief. But this would not be a ground to extend hearing at the stage of consideration by the disciplinary authority either on proof of the charge or on imposition of the penalty. I respectfully agree with my brother Sawant, J. in other respects in the draft judgment proposed by him."

23. It is well settled from the judgment of the Hon'ble Supreme Court in the case of ***V. Ramana Versus A.P. SRTC*** reported in **(2005) 7 SCC 338** and in the case of ***S.R. Tewari vs. Union of India and Another*** reported in **(2013) 6 SCC 602** that the High Court can also interfere in the quantum of punishment if it is found that it is not commensurate with the gravity of charges and the

punishment awarded is disproportionate to the gravity of the charges. However, the learned Presiding Officer has already set aside the punishment order of the Respondent-Workman

24. It is also informed that the Respondent-Workman has already retired and hence, there is no question of reinstatement in service and as such remand for review on the quantum of punishment is also not required to be done of at this stage as it will cause hardship to the Respondent.

25. In view of the discussions made above, this Court finds that there is no illegality and perversity in the impugned Award at this stage and thus, accordingly this Writ Petition is dismissed.

26. However, the Petitioner-Management is directed to pay 50% of the back wages to the Workman forthwith in the light of the Award dated 04.11.2010 (i.e. Annexure-7) in Ref. Case No. 106 of 1992 passed by Shri H.M. Singh, learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad within Six weeks from the date of receipt/production of this order, after deducting the amount already paid under Section 17-B of the I.D. Act, if any.

27. Thus, this writ petition is dismissed with the aforesaid observation and direction.

(Sanjay Prasad, J.)

Jharkhand High Court, Ranchi
Dated 06.08.2024,
N.A.F.R./s.m.