

Amended Petition

BEFORE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No. 5091 / 1998

Petitioner : Gurdeep Singh Sehmi,
S/O Mohan Singh Sehmi,
NC-117, CSEB Colony (East),
PO: Korba (TS)-495 681,
Distt: Korba (C.G.).

Versus

- Respondents :
1. M.P. Power Generating Co. Ltd.,
Through: The Company Secretary,
Shakti Bhawan, Nayagaon, Rampur,
Jabalpur (M.P.) - 482 008.
 2. Addl. Secretary (P)-II,
M.P. Power Generating Co. Ltd.,
Nayagaon, Rampur,
Jabalpur (M.P.) - 482 008.
 3. Chief Engineer (Gen.),
Amarkantak Thermal Power Station,
M.P. Power Generating Co. Ltd.,
PO : Chachai - 464 220,
Distt: Shahdol (M.P.).
 4. Chief Engineer (Gen.),
Chhattisgarh State Power Generation Co. Ltd. (East),
PO: Korba - 495 677,
Distt: Korba (C.G.).
 5. Addl. Chief Engineer (Gen.),
Sanjay Gandhi Thermal Power Station,
M.P. Power Generating Co. Ltd.,
PO: Birsinghpur - 484 551,
Distt: Umaria (M.P.).
 6. Superintending Engineer (O&M),
Power House No.2,
Amarkantak Thermal Power Station,
M.P. Power Generating Co. Ltd.,
PO: Chachai - 484 220,
Distt: Shahdol (M.P.).
 7. Senior Medical Officer,
Chhattisgarh State Power Generation Co. Ltd.(East)
Hospital,
PO: Korba - 495 677,
Distt: Korba (C.G.).
 8. Welfare Officer,
O/O The Chief Engineer (Gen.),
Chhattisgarh State Power Generation Co. Ltd. (East),
PO : Korba - 495 677, Distt : Korba (C.G.).

WRIT PETITION UNDER ARTICLE 226 / 227
OF THE CONSTITUTION OF INDIA

**HIGH COURT OF CHHATTISGARH AT BILASPUR
SINGLE BENCH**

HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE

Writ Petition No. 5091 of 1998

PETITIONER : Gurdeep Singh Sehmi

VERSUS

RESPONDENTS : M.P. Power Generating Company Ltd.

& Others.

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF
INDIA**

Appearance: Ms. Apurva Thakur and Shri Malay Shrivastava,
Advocates for the Petitioner.
Shri Adhiraj Surana, Advocate for the Respondent No.
4, 7 and 8.

ORDER
(24th of December, 2014)

1. Heard Counsel for the Petitioner and the Respondent No. 4, 7 & 8.
2. Learned counsel for the Petitioner submits that the order of dismissal dated 19.11.1999 is arbitrary and illegal as the Petitioner was not absent without reason. He had sent medical certificates. There is no finding that he was not sick. If an explanation had been furnished unless the explanation is rejected for reasons disclosed as not acceptable, the dismissal is not sustainable. The Petitioner filed an appeal which has also been rejected by a cryptic and non-speaking order. The Petitioner was therefore entitled to continue in service till his scheduled date of superannuation i.e. 02.02.1998. He is thus entitled to arrears of salary alongwith other service benefits and retiral dues.
3. Learned Counsel for the Respondent No. 4, 7 and 8 has opposed the application submitting that no infirmity in the departmental enquiry has been pointed out. Full opportunity has been given to the Petitioner. The

finding is of unauthorised absence for an inordinate long period of approximately two years and three months. It cannot be said that the punishment of dismissal is shocking to the conscience of the Court to warrant any interference.

4. The facts of the case reveal that the Petitioner proceeded on casual leave for three days from 01.02.1995 to 03.02.1995. Thereafter, he sent leave application on grounds of illness. He never reported for duty and did not submit any medical certificate with regard to the prolonged absence. The contention on behalf of the Petitioner was that he had submitted a medical certificate. Charges were framed on 08.05.1997. The Petitioner filed his reply on 09.06.1997 after which the departmental proceedings commenced. Having filed his reply to the charges, he did not participate in the departmental proceedings opining that it was illegal. The Enquiry Officer returned a finding of guilt on 14.05.1999. The Petitioner submitted his response to the findings of the Enquiry Officer on 26.06.1999. Dismissal thus followed with a finding of unauthorised absence from 06.02.1995 to 08.05.1997. The Petitioner preferred an appeal on 10.12.1999 which has been dismissed on 30.06.2000.

5. The jurisdiction of this Court under Article 226 of the Constitution with regard to an order of punishment passed in pursuance of the departmental proceeding is to be restricted to procedural irregularities and if the punishment is shocking to the conscience of the Court in the sense that no prudent person would have arrived at such conclusion on the basis of materials on record, the Court may for reasons discussed, interfere with the quantum of punishment only. If there is no procedural irregularity in the conduct of the departmental proceedings, the Court cannot in exercise of judicial review re-examine the facts and evidence to

arrive at its own conclusion at variance with that of the Enquiry Officer or the Disciplinary Authority. 837

6. The Petitioner on his own shouring did not participate in the departmental enquiry even though he had filed reply. It is not his case that no Presenting Officer was appointed or that evidence in support of charges was not led. The fact that the Enquiry Officer may have opined that the departmental witnesses were not of much help does not lead to a conclusion that the charges were not proved. In a departmental proceeding, findings have to be arrived at on preponderance of probabilities and are not to be proved beyond reasonable doubt. The Petitioner has not placed a copy of the enquiry report on record. Even in his reply to the enquiry report, he has not taken any ground of any procedural irregularity or impropriety. There is no occasion for this Court to interfere with the order of dismissal pursuant to the departmental proceedings.

7. An appeal provided under the service rules is a substantive right. The appellate order is not required to be as reasoned as the original order, सत्यमेव जयते nonetheless, it is a second opportunity for the delinquent to convince the authorities either to impose a lesser punishment or even exonerate him completely. Therefore, the right to appeal cannot be frustrated by a non-speaking order. The appellate order must contain a brief discussion with regard to the findings of the Enquiry Officer, grounds urged in the appeal and a brief conclusion with reasons displaying application of mind for the conclusion arrived at. These factors are completely missing in the appellate order dated 30.06.2000. But in view of the passage of time, absence of the Petitioner for two years and three months having been proved, the scheduled date of superannuation of the Petitioner being

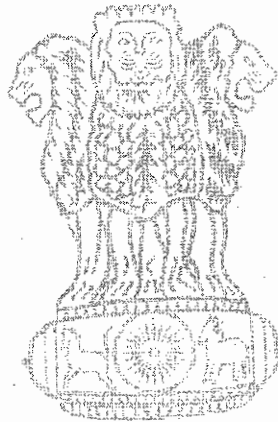
02.02.1998, the Court is not inclined to remand the matter to the Appellate Authority. 338

8. In conclusion, the writ application is dismissed.

Sd/-
Acting Chief Justice

Amit

CHHATTISGARH HIGH COURT



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