

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 383/2014

(Rakesh s/o Ramkishor Khurana vs. Coal India Limited and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr. A.M. Sudame, Advocate for petitioner
Mr. S.C. Mehadia, Advocate for respondents

CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.

DATED : 21st April, 2015.

By this petition, the petitioner challenges the order of the respondents, dated 17.3.2010, dismissing the petitioner from service as also the appellate order dated 26.9.2011, issued by the Board of Directors, upholding the order of dismissal.

Inter alia, the impugned appellate order of the Board of Directors dated 26.9.2011 is challenged by the petitioner, on the ground that the Board of Directors had not heard the petitioner before deciding the Appeal. It is stated that the provisions of Rule 36.1 of the Coal India Executives Conduct, Discipline & Appeal Rules, 1978 are akin to Rule 23 (2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and Rule 23(2) was considered by the Full Bench of this Court and by following the judgment of the Hon'ble Supreme Court in the case of **Ram Chander vs. Union of India and others** reported in **AIR 1986 SC 1173**, the Full Bench had held that the expression "consider" would include within its sweep the application of mind, personal hearing

and recording of reasons. It is stated that the provisions of Rule 23(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 that are interpreted by this Court in the Full Bench judgment in the case of Anil Atre vs. District & Sessions Judge, Aurangabad, reported in 2002 (3) Mh.L.J. 750 are akin to the provisions of Rule 36.1 of the Coal India Executives Conduct, Discipline & Appeal Rules, 1978. It is stated that the appellate authority ought to have heard the petitioner.

On hearing the learned counsel for the parties and on a perusal of the judgment of the Full Bench reported in 2002 (3) Mh.L.J. 750 (*supra*) as also Rule 36.1 of the Coal India Executives Conduct, Discipline & Appeal Rules, 1979, it appears that the provisions of Rule 23(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 are similar to Rule 36.1 of the Coal India Executives Conduct, Discipline and Appeal Rules, 1978. The Full Bench of this Court has held in the reported judgment that the expression “consider” in Rule 23 (2) of the Rules of 1979 would include within its sweep, the application of mind, personal hearing and recording of reasons. The Full Bench went on to add that it is obligatory for the appellate authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent. Since Rule 36.1 of the Coal India Executives Conduct, Discipline and Appeal Rules, 1978 is couched with the language similar to the language used in Rule 23 (2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, it was obligatory on the part of the appellate authority, in this case, to afford an opportunity of hearing to the petitioner. Since an opportunity of hearing

was not granted to the petitioner, the impugned order of the appellate authority is liable to be quashed and set aside and the matter is liable to be remanded to the appellate authority for a fresh decision, in accordance with law.

Hence, for the reasons aforesaid, the Writ Petition is partly allowed. The impugned order of the Board of Directors, dated 26.9.2011, is quashed and set aside. The matter is remanded to the appellate authority-Board of Directors (CIL), for deciding the appeal of the petitioner after granting an opportunity to the petitioner of being heard. The appellate authority is directed to decide the Appeal of the petitioner as early as possible and, positively within a period of six months.

Order accordingly. No order as to costs.

JUDGE

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