

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 354 of 2013**

1. Balkrishna S/o Late Shri Appa Rao Aged About 36 Years
R/o Qr. No. M 532, Dipika Colony, Post SECL Gevra
Project, PS Dipika, Distt Korba (CG)

---- Petitioner**Versus**

1. South Eastern Coalfields Ltd, Seepat Road, Bilaspur,
Seepat Road, Thana Sarkanda, District Bilaspur (CG)
Through its Chairman Cum Managing Director
2. Director (Personnel) South Eastern Coalfields Ltd, Seepat
Road, Thana Sarkanda, Distt Bilaspur (CG)
3. Dy. Chief Personnel Manager (Labour) South Eastern
Coalfields Ltd, Seepat Road, Thana Sarkanda, Distt
Bilaspur (CG)
4. Chief Personnel Manager SECL Dipika Area, PO Pragati
Nagar, Dipika Thana Dipika, District Korba (CG)
5. Chief Personnel Manager, SECL, , Dipika Area, Thana
Dipika, District Korba, CG
6. The Personnel Manager/ Enquiry Officer SECL, Dipika &
Dipika Expansion Manager, Thana Dipika, Distt Korba, CG

---- Respondent

For Petitioner	Mr. Balakrishna, petitioner in person.
For Respondents	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C. A. V. Order**

22/03/2016

1. Petitioner has assailed the legality and validity of the appellate order dated 06/13.07.2012 and the order dated 03.07.2008 by which he has been terminated from services after holding a regular department enquiry under the Certified Standing Orders (for short "the CSO") of the respondent – South Eastern Coalfields Limited (for short "the SECL").
2. Facts of the case, briefly stated, are that the petitioner was appointed as General Mazdoor Category-I on 30.10.1998 as a land oustee for acquisition of his land bearing Khasra No.347/4 admeasuring 0.17 acres situated in village Junadih belonging to Smt. Dropati and Rajan Singh. In due course, the petitioner was promoted as EPGH on 01.12.2003. The police station Dipka District Korba informed the SECL on 21.11.2006 that the petitioner has fraudulently obtained the employment on the basis of forged revenue papers for the land belonging to Rajan Singh Son of Chamaru Singh Kanwar Resident of Nawapara Hardi Bazar, for which the Crime No.49 of 2000 was registered for commission of offence punishable under Sections 294, 323 and 506 of the Indian Penal Code (for short "the IPC"), Crime No.53 of 2005 for offence under Sections 294 & 506 of the IPC; Crime No.39/2002 offence under Sections 294, 323, 506,

326, 307 & 394 of the IPC and Crime No.267 of 2006 for offence under Sections 294 & 506 of the IPC have also been registered against the petitioner.

3. On receipt of the information, the management of SECL served notice to the petitioner for presenting owner of the land, however, the petitioner failed to present the owner/holder of the land, therefore, a charge sheet was issued to the petitioner on 25.11.2006 for constitution of enquiry on the following charges :

- (i) Submitting wrong information to the SECL about his name, age, father's name and qualification, thus, violating clause 26.9 of the CSO.
- (ii) Deliberately doing such acts which violates the discipline and acting contrary to the interest of the company, thereby, violating clause 26.22 of the CSO.

4. The petitioner submitted his reply mentioning that except in one false criminal case bearing crime No.276/2006 for offences under Sections 294 and 506 of the IPC were registered which is pending consideration, the other criminal cases have already ended in acquittal. The petitioner also stated that his appointment has been made after verifying all the facts and completing the formalities. In this case also, the police has not yet filed the charge sheet and he has

already been released on bail. Therefore, for all these reasons, the charge sheet deserves to be withdrawn.

5. In the Departmental Enquiry, the petitioner appeared before the Enquiry Officer and cross examined the witnesses produced by the SECL. He also recorded his own statement and was duly examined by the SECL.
6. The management brought evidence on record that the petitioner's father is Appa Rao and his mother is Dropadi (द्रोपदी), however, the holder of the acquired land in lieu of which the petitioner was offered employment, belonged to Dropati (द्रोपती) D/o Rajan Singh. The Revenue Inspector produced the record of the concerned land, wherein, Rajan Singh was mentioned as minor through Chamaru Singh. The Revenue papers submitted by the petitioner at the time of appointment mentioned the holder of the land as Dropadi, daughter of Rajan Singh, on the basis of which Dropadi nominated her son Balkrishna son of Appa Rao, the present petitioner for appointment. In his evidence, the petitioner has submitted his mark sheet of Class-V and Class-VIII issued by the Tribal Departments School, Junadih. He categorically stated that the police has never filed any charge sheet against him for allegation that he has committed fraud and impersonation.

7. The enquiry officer concluded that since the petitioner failed to produce the holder/khatedar and the persons who verified his identity in the nomination paper, pursuant to management's letter dated 17.10.2006, therefore, it is proved that the petitioner has obtained employment in SECL by submitting wrong information. It has also been found that at the time of seeking employment the petitioner was aged about 41 years, whereas, age of his mother Dropati was mentioned as 42 years, therefore, it is not possible that the petitioner is the son of Dropati. Contrary to this, the petitioner has submitted his mark sheet of High School Certificate Examination, 1993, wherein, his date of birth has been mentioned as 03.06.1975. The petitioner was appointed as General Mazdoori Category-I on 30.10.1998. Thus, on the date of appointment, the petitioner was aged about 23 years and not 41 years. Similarly Rajan Singh was mentioned as minor in the revenue record but the age of petitioner's mother as on 05.09.1997 when she submitted the affidavit was mentioned as 42 years which is not possible.
8. It appears that the management was suspicious about the petitioner's relationship with Dropati, however, even as per the finding recorded by the enquiry officer there is no direct proof that the petitioner is not the son of Dropati. Moreover, an FIR on the same issue has been lodged against the

petitioner at the instance of the SECL, however, on the date of recording of the statement of the petitioner, the charge sheet was not filed.

9. The petitioner was eventually terminated from service vide order date 3-7-2008. Challenging the order of termination the petitioner preferred WPS No.5761 of 2009 which was not decided on merits, but was disposed of by this Court on 22-9-2011 reserving liberty in favour of the petitioner to prefer appeal before the appellate authority. Thereagainst, the petitioner preferred WA No.506 of 2011, which came to be disposed of on 9-3-2012. Since during pendency of the writ appeal the appellate authority of SECL had also dismissed the petitioner's appeal by order dated 7-12-2011 the Division Bench of this Court quashed the said order on the ground that the petitioner was not afforded adequate opportunity of hearing by the appellate authority and the matter was remitted back to the appellate authority to pass reasoned order after providing adequate opportunity of hearing to the petitioner. The appellate authority issued several notices to the petitioner seeking his appearance, however, the petitioner did not appear before the appellate authority and eventually the present impugned order dated 6/13-7-2012 was passed by the appellate authority of the SECL dismissing the petitioner's appeal against the order of termination.

10. The present writ petition was heard and closed for orders on 29.09.2015, however, subsequently, it was felt necessary that the record of the departmental enquiry proceedings as well as the appellate proceedings require to be perused for appropriate consideration of the issue concerning obtainment of appointment by fraudulent means and, as such, the matter was re-listed before the Court and on the directions of the Court, learned counsel appearing for the SECL has produced the relevant records. Thereafter the matter was again closed for orders on 07.01.2016.

11. Despite the law laid down by the Supreme Court in '*n*' number of decisions, the latest one being **General Manager (Operations) State Bank of India and another v. Periyasamy**¹ that the findings recorded by the enquiry officer cannot be interfered unless the findings are based on no evidence or where they are clearly perverse, this Court perused the enquiry proceedings only to appreciate as to whether the finding recorded by the enquiry officer suffers from any perversity, as the scope of judicial review under Article 226 of the Constitution of India permits this in view of the law laid down by the Supreme Court in **Kuldeep Singh v. Commissioner of Police and Others**², **M.V. Bijlani v.**

1 (2015) 3 SCC 101

2 (1999) 2 SCC 10

**Union of India and Others³ and Krushnakant B. Parmar
v. Union of India and Another⁴.**

12. The record of the enquiry proceedings would reveal that Crime No.430/99 was registered at Police Station Dipka against the petitioner for offence under Sections 420, 467, 468 & 471 read with Section 34 of the IPC. In this crime, 27 accused persons were arrayed, however, there is nothing in the record about the outcome of the investigation or the trial against the petitioner. The charge sheet of the criminal case is also not part of the departmental enquiry proceedings. The petitioner was appointed upon nomination by his mother namely, Dropati, D/o Rajan Singh and W/o Appa Rao. It appears, Rajan Singh is the maternal grand father of the petitioner. After his death, the subject land bearing Holding No.263, Khasra No.347/4, area 0.17 acre/0.069 Hectare were succeeded by Dropati, therefore, at the time of issuance of nomination by Dropati in petitioner's favour, the land carried the name of Dropati as owner/co-sharer. Material would also suggest that when the crime was registered by Police Station Dipka, the petitioner was directed to produce the land holder and on his failure, the management of SECL was informed. When the enquiry officer expected from the petitioner that the land holder be produced, the petitioner stated that the land holder shall be

³ (2006) 5 SCC 88

⁴ (2012) 3 SCC 178

produced before the Court of Judicial Magistrate First Class, where the trial is pending.

13. Only on this suspicion that petitioner's failure to produce the land holder is suggestive of the fact that the employment has been obtained by fraudulent means, the enquiry officer concluded that the petitioner deserves to be removed from service.
14. The record of the enquiry proceeding does not contain any independent evidence that Dropati is not the mother of the petitioner. It was possible for the management of SECL to have traced and produced Dropati, D/o Rajan Singh to prove that she has never nominated the petitioner for obtaining employment in lieu of acquisition of her land, however, but for the fact that the petitioner did not produce the holder of the land, there is absolutely no material by way of direct evidence that the petitioner has no relationship with Dropati, D/o Rajan Singh or that someone else was produced as Dropati before the management of SECL or before the Selection Committee or before the Enquiry Committee at the time when the appointment was finalized in the year 1997-98. The present is a case of absolute lack of evidence to prove the petitioner's guilt, therefore, the finding recorded by the disciplinary authority and the appellate authority suffers from perversity. It is a case, where after going through the

material available in the record of the enquiry proceedings, no prudent person can reach to the conclusion that the petitioner has obtained employment by playing fraud.

15. In **Kuldeep Singh** (supra) the Supreme Court had an occasion to deal with the issue concerning the scope of judicial review of the High Court under Article 226 or of the Supreme Court under Article 32 of the Constitution of India to interfere with the findings recorded at the departmental enquiry. It was held thus in paras 6 to 10 :

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In **Nand Kishore Prasad v. State of Bihar** it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of

definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of A.P. v. Rama Rao* in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. v. Prakash Chand Jain and Bharat Iron Works v. Bhagubhai Balubhai Patel*. In *Rajinder Kumar Kindra v. Delhi Admn.* it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which

are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

16. In **M.V. Bijlani** (supra) the Supreme Court again dealt with the issue concerning scope of judicial review available with the High Court under Article 226 of the Constitution to interfere with the finding recorded by the Enquiry Officer to hold thus in para 25 :

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

17. The above principle reiterated by the Supreme Court in **M.V. Bijlani** (supra) has been followed in subsequent decision rendered in **Krushnakant B. Parmar** (supra).
18. As discussed above in the preceding paragraphs, the management of SECL has not laid any evidence with certain degree of definiteness to prove that the petitioner has obtained the employment by committing fraud. The finding of guilt has been recorded only on suspicion that the petitioner having failed to produce the land holder before the enquiry officer or in the police station, he has obtained the employment by committing fraud. There is absolutely no material to support the finding of obtainment of employment by fraud. The police has also not filed any charge sheet for last about a decade after registering the crime. It is such a case where on perusal of the record of the enquiry proceeding a prudent person cannot reach to the conclusion that the petitioner obtained employment by committing fraud.
19. In view of the above facts and circumstances of the case, the order of termination dated 03.07.2008 as well as the appellate order dated 06/13.07.2012 deserve to be and are hereby quashed. The petitioner is also entitled for consequential relief of back wages and continuity of service on the post held by him at the time of termination.

20. Accordingly, it is directed that the respondents shall reinstate the petitioner in service and shall also pay the entire arrears of salary and allowances to the petitioner from the date of his termination till the date of reinstatement.
21. *Ex-consequenti*, the writ petition is allowed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri