

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

WRIT PETITION NO.3242 OF 2015

(Shri Lomesh Khartad vs. The Sub-Area Manager, Pauni Open Cast Mine and another)

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

Shri A. Pathak, Advocate for the petitioner.

CORAM : SMT. VASANTI A NAIK, J.

DATED : OCTOBER 10, 2016

By this writ petition, the petitioner challenges the orders of the Central Government Industrial Tribunal, dated 26/11/2013 and 15/9/2014, answering the reference against the petitioner and in favour of the respondent – Management. By the impugned orders, the Tribunal held that the petitioner was granted a fair opportunity in the enquiry and the order of the respondent Western Coalfields Limited terminating the service of the petitioner was legal and justified.

On hearing the learned Counsel for the petitioner and on a perusal of the impugned orders, it appears that there is no scope for interference with the same in exercise of the writ jurisdiction. It was found by the Tribunal that the enquiry was conducted by the respondent W.C.L. against the petitioner in accordance with the principles of natural justice. The Tribunal found that the fair opportunity was granted to the petitioner to defend the charges in the enquiry. The

Tribunal held that the charge against the petitioner that he was negligent in his duties and absented for long without leave was proved. The Tribunal found that the petitioner had attended the duties only for the period of 24 days in the year 2001 and 2 days in the year 2002 and the absence of the petitioner was continuous and unauthorised. Though the petitioner was asked to perform his duties even during the pendency of the enquiry, he did not attend the duties. The petitioner was granted a fair opportunity to participate in the enquiry, but he did not participate in the same. The Tribunal held that there was no justification for the unauthorized absence of the petitioner and the certificates tendered by the petitioner before the Enquiry Officer did not indicate that he was unfit for duties and was entitled to leave. Since the petitioner remained absent unauthorisedly on most of the days in the years 2001 and 2002, the Tribunal found that there was no illegality in the action on the part of the respondent W.C.L. in terminating the service of the petitioner. The Tribunal held that the misconduct of unauthorised and habitual absentism was enough for terminating the service of the petitioner and the punishment could not be said to be disproportionate in the circumstances of the case.

In holding so, the Tribunal rightly considered that though a copy of the enquiry report was sought to be served upon the petitioner by registered post acknowledgment due, the same could not be served as the petitioner was not available on his address. The Tribunal found that the petitioner had also not pointed

out as to what prejudice was caused to him in view of absence of service of the copy of the enquiry report on him. The findings recorded by the Tribunal are just and proper.

The only submission made on behalf of the petitioner that the impugned orders are liable to be set aside as a copy of the enquiry report and a second show cause notice were not served on the petitioner is liable to be rejected in the circumstances of the case, specially when the petitioner has not pointed out the prejudice caused to him. The impugned order of termination of the service of the petitioner cannot be faulted merely because a copy of the enquiry report and the second show cause notice were not served on the petitioner in view of his non-availability on his address.

Since the impugned orders of the Tribunal are just and proper, the writ petition is dismissed with no order as to costs.

JUDGE

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