

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 779 of 2017**

Aditya Prakash Sharma S/o Late Shri Inder Chand Sharma, aged about 51 years, Posted as Company Secretary in Office of Ferro Scrap Nigam Ltd. Bhilai, R/o Flat No. 516, Block-4, Talpuri International Colony, Phase-A, Bhilai, District- Durg, Chhattisgarh

**---- Petitioner****Versus**

1. Ferro Scrap Nigam Limited (A Government of India Undertaking) through the Managing Director, F.S.N.L. Bhawan, Equipment Chowk, Central Avenue, Post Box No. 37, Bhilai, Chhattisgarh Pin -490001
2. The Deputy General Manager (P & A), Ferro Scrap Nigam Limited, F.S.N.L. Bhawan, Equipment Chowk, Central Avenue, Post Box No. 37, Bhilai, Chhattisgarh Pin 490001
3. Mr. R. Bhattacharya, presently working as the Managing Director, Ferro Scrap Nigam Limited, Bhilai, F.S.N.L. Bhawan, Equipment Chowk, Central Avenue, Post Box No. 37, Bhilai, Chhattisgarh Pin -490001

**---- Respondents**


---

|                 |   |                                                          |
|-----------------|---|----------------------------------------------------------|
| For Petitioner  | : | Shri B. P. Sharma along with Shri Hari Agrawal, Advocate |
| For Respondents | : | Shri N. K. Vyas, Advocate                                |

---

**Hon'ble Shri Justice P. Sam Koshy****Order On Board****22/02/2017**

Counsel for the petitioner at the outset submits that so far as the challenge to order dated 24.01.2017 Annexure P-1 is concerned, he does not intend to press the said relief in the present writ petition and reserves his right to prefer a duly constituted separate petition against the said order.

2. The challenge of the petitioner in the present writ petition is confined to the order dated 21.01.2017 Annexure P-2 whereby the Board of Respondent no.1 Corporation has decided the appeal of the

petitioner against an order of punishment of stoppage of increment without cumulative effect passed on 07.10.2016.

3. At this juncture it would be relevant to take note of the fact that the Conduct, Discipline & Appeal Rules 1982 which is applicable governing the service condition of the petitioner where in its Schedule it has been specifically mentioned as under:

| Sl. No. | Scale of Pay                                                                                             | Disciplinary Authority/Competent Authority | Penalty it can impose as given under the rules (including suspension) | Appellate Authority | Reviewing Authority |
|---------|----------------------------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------|---------------------|---------------------|
| 1.      | Executives whose appointment are made by the President of India                                          | President                                  | All                                                                   | -                   | President           |
| 2.      | Executives in the grades below those covered by Sl. No.1, DGM/GM/CGM/E D i.e. E7 Grade Rs.43200-3%-66000 | Managing Director                          | All                                                                   | Chairman            | Board               |
|         |                                                                                                          |                                            |                                                                       |                     |                     |

4. A perusal of the aforesaid Schedule clearly reflects that against the order of Disciplinary Authority i.e. the Managing Director, the Appellate Authority would be the Chairman and the Reviewing Authority would be the Board. In the instant case against the punishment order dated 07.10.2016 the petitioner has preferred an appeal and the Board vide impugned order dated 21.01.2017 decided the same.

5. At this juncture, counsel for the petitioner submits that the order passed by the Board deciding the appeal is technically bad in law and is not sustainable for the reason that as per the Schedule the Board is not the Appellate Authority to decide the appeal but before whom only a review against the order of the Appellate Authority could be preferred. He submits that if the Board decides the appeal then the petitioner

would lose his statutory right to prefer a review before the Board. Thus, it is constitutionally bad in law and the impugned order deserves to be set aside/quashed.

6. Counsel for the respondents submits that the impugned order dated 21.01.2017 itself envisages the reasons under which the Board had taken the decision. He submits that at the relevant point of time the post of Chairman was lying vacant and in the absence of the post of Chairman, the Board has exercised the powers of Appellate Authority by virtue of a resolution drawn in this regard. Thus, the objection of the petitioner is not sustainable.

7. Considering the rival contentions put forth by the counsel appearing on either side and on perusal of the record, it would be relevant to consider the service condition rules applicable upon the petitioner. The Schedule of the said Rules referred above clearly depicts that the Appellate Authority so far as the petitioner is concerned, would be the Chairman. The order of punishment dated 07.10.2016 was passed by the Disciplinary Authority i.e. the Managing Director. If the Disciplinary Authority is the Managing Director under the Rules, the Appellate Authority would be the Chairman. The non-availability of the Chairman at the relevant point of time by itself would not confer the power of deciding the appeal to the next Superior Authority who under the Rules has been conferred the superior power of entertaining a review of an order filed against the order of the Appellate Authority. The Supreme Court in Civil Appeal No. 1217 of 2011 decided on 20.11.2015 in the case of State of Brij Bihari Singh Vs. Bihar State Financial Corporation and Ors.<sup>1</sup> in paragraph-11 has held as under:

---

<sup>1</sup> 2015 (12) SCALE 514

“11. A right of appeal has been provided by Regulation 40 of the said Regulations against any order passed by the competent Authority. In the instant case as noticed above, the Disciplinary Authority, instead of exercising the power as Disciplinary Authority imposing punishment, referred his recommendations to the appellate authority, namely, Board of Directors for taking a decision and the Board of Directors exercised the power of Disciplinary Authority and imposed punishment of dismissal thereby deprived the Appellant from moving the appellate authority against the said order. Such exercise of power is wholly arbitrary and discriminatory.”

In the same judgment in paragraph-16 it has been held as under:

“16. After giving our anxious consideration in the matter, we are of the definite view that the procedure adopted by the Respondents in removing the Appellate from service is erroneous and suffers from serious discrimination and bias. Further, the Enquiry Officer conducted the enquiry without following the procedure and without giving sufficient opportunity to the delinquent to place his case. Enquiry is also vitiated in law.”

**8.** In view of the facts and circumstances of the case as narrated in the preceding paragraphs and also taking note of the aforesaid decision of the Supreme Court, this Court has no hesitation in reaching to the conclusion that merely because the petitioner having made an appeal before the Board which is the reviewing Authority, cannot decide the same without there being any change in the Rules to that effect. It is also not disputed that by passing a resolution the jurisdiction of an authority cannot be taken away nor can a jurisdiction be conferred with the aid of a resolution.

**9.** Counsel for the respondent submits that subsequent to the impugned order having been passed on 21.01.2017, a new Chairman has been appointed on 24.01.2017 and as on date, the Appellate Authority is available.

**10.** In view of the same, the impugned order dated 21.01.2017 passed by the Board is set aside only on the ground of the Board not having the

appellate jurisdiction and the matter is remitted back to the Appellate Authority i.e. the Chairman of the respondent no.1 Corporation who in turn shall decide the appeal of the petitioner and pass an appropriate order.

**11.** It is made clear that the Chairman i.e. the Appellate Authority shall not be prejudiced or influenced in any manner by the impugned order which has been passed by the Board and would decide the Appeal purely on its merit in accordance with law. The petitioner still would have the liberty to challenge the order of the Appellate Authority before the Reviewing Authority.

**Sd/-  
(P. Sam Koshy)  
JUDGE**