

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P.No.24014 of 2004

M.T. Jesudasan

...Petitioner

Vs.

1.The Chief General Manager, Mines-II
Neyveli Lignite Corporation Ltd., Neyveli-2

2.The Chief Manager / Shift Office / Mines-II
Neyveli Lignite Corporation Ltd., Neyveli. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of a writ calling for records relating to the 2nd respondent's order made in proc.No.7347/Disc.Action/CGM/M-II/2004 dated 28.05.2004 and as confirmed by the 1st respondent in proc.No.7347/Disc.Action/CGM-II/04 dated 24.07.2004, to quash the same and to consequently direct the respondents to extend all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.Nithanandam for R1 & R2

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of a writ calling for records relating to the 2nd respondent's order made in proc.No.7347/Disc.Action/CGM/M-II/2004 dated 28.05.2004 and as confirmed by the 1st respondent in proc.No.7347/Disc.Action/CGM-II/04 dated 24.07.2004, to quash the same and to consequently direct the respondents to extend all benefits both service and monetary.

2. The short facts which are required to be noticed for the disposal of the writ petition are as follows:

The petitioner was appointed as Industrial Worker

Grade-II on 09.04.1985 at the respondents' organisation. He was further posted as Wireless-cum-Communication Operator from 14.05.1989, which is a non technical post and at the time of filing this writ petition, he was designated as C.W.C.C Operator.

(ii) During his service, there was a disciplinary proceeding against the petitioner based on the alleged incident taken place on 04.08.2003 as according to the respondents, on that day, around 12.15 hours, he was on duty and he left unauthorisedly without making any entry in log book and without any permission from the higher authorities concerned.

(iii). Pursuant to the said alleged reason of unauthorised absence on that date, a charge memo was issued by the second respondent to the petitioner on 01.10.2003 and explanation was sought for. The petitioner had also given explanation on 10.10.2003. However, not satisfied with the same, domestic enquiry was conducted by the respondents organisation, where the petitioner participated in the enquiry and on completion, pursuant to which, the enquiry officer filed his report. On receipt of the same, the disciplinary authority/second Respondent herein, issued a show cause notice cum communication dated 12.05.2004 stating that, the respondent decided provisionally to impose a punishment against the petitioner and in this regard, show cause was sought from the petitioner.

(iv). Pursuant to the said show cause notice, a detailed reply was given by the petitioner on 22.05.2004. However, after having considered all these materials and not satisfied with the reply or defence given by the petitioner, the second respondent/disciplinary authority passed the final order on 28.05.2004 imposing the punishment of one increment cut for one year without cumulative effect. As against which, the petitioner preferred an appeal on 17.06.2004 to the first respondent, who in turn rejected his appeal by an order dated 24.07.2004, confirming the order of punishment awarded against him. Challenging these orders, the petitioner preferred this writ petition with the aforesaid prayer.

3. Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner, who would submit that, the charge itself is flimsy as it has been mentioned that after 12.15 hours on 04.08.2003 he left the work spot unauthorisedly.

4. In this regard, he pointed out that, he was, on that day, in fact, did not work in Crane Channel No. IV but was working in Channel No.III.

5. The learned counsel would further submit that, at any rate an enquiry was conducted, before the enquiry officer the witnesses were produced by the prosecution/department and that proper opportunity had not been given to have effectively cross examine all the witnesses by the petitioner and the enquiry officer concluded the enquiry.

6. However, the enquiry officer report has not been furnished to the petitioner, without which, the proceeding dated 12.05.2004 was issued stating the the second respondent/Disciplinary authority decided to impose the punishment of "Reduction of one increment with cumulative effect provisionally". However, the second respondent sought for show cause from the petitioner within 7 days. In this context, the learned counsel would submit that, once the disciplinary authority decided to impose the punishment provisionally, seeking show cause from the petitioner is only an eye wash, without taking into account the procedure contemplated, since the final order was passed, the entire proceeding gets vitiated.

7. The learned counsel for the petitioner would further submit that, these aspects, though, have been raised before the appellate authority, i.e., the first respondent, who in turn not considered those grounds raised by the petitioner in the right perspective and has passed the order, confirming the order of punishment passed by the second respondent.

8. However, Mr.Nithanandam, learned counsel appearing for the respondents would submit that, there had been a definite charge against the petitioner, pursuant to which, show cause notice was issued seeking explanation. The petitioner having received the charge memo, had given his explanation. Since it was not satisfactory to the disciplinary authority, it was decided to proceed against the petitioner by conducting an enquiry.

9. Accordingly, domestic enquiry was conducted, before whom the petitioner appeared and he fully participated in the domestic enquiry, where the witnesses produced by the department i.e. the respondents, had been permitted to be cross examined by the petitioner and in the said enquiry report, the deposition of the witnesses in the chief examination as well as the cross examination have been recorded in detail.

10. When that being so, the question of no opportunity was given to the petitioner for cross examining all the witnesses does not arise.

11. The learned counsel appearing for the respondents would further submit that, considering his past service, the disciplinary authority has inflicted a very minimum punishment of cutting one increment for one year without cumulative effect, that would not have any bearing on his other service benefits.

12. In so far as the ground raised by the petitioner that in the second show cause notice itself provisional punishment has been incorporated is concerned, it is only the proposal on

the side of the disciplinary authority to indicate that since the charge framed against the petitioner having been proved, because of the detailed enquiry report filed in this regard by the enquiry officer, indicating the proposal, the views and defence of the petitioner sought for in the second show cause notice.

13. In this regard, the learned counsel appearing for the respondents would submit that, merely because the provisional punishment is incorporated in the second show cause notice, it cannot be said that notice itself is vitiated or lost its significance.

14. Learned counsel appearing for the respondents would also submit that, accepting the second show cause notice, without agitating the manner in which it has been issued in fact the petitioner has chosen to reply the second show cause notice, thereby, the objection, whatsoever, now raised got absolved and therefore, the question cannot be raised at this juncture.

15. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the standing counsel appearing for the respondents and also perused the materials placed before this court.

16. As has been rightly pointed out by the learned counsel appearing for the respondents, there had been a definite charge against the petitioner, pursuant to which, the procedure contemplated under the relevant service regulations, the respondents/Corporation conducted the domestic enquiry, where appropriate opportunity was given to the petitioner including the opportunity of cross examining the witnesses.

17. I have gone through the enquiry officer's report, which discloses these factors, where the evidences of the witnesses produced by the department, both in the chief examination as well as in the cross examination have been clearly recorded.

18. Therefore, the ground now raised by the petitioner that, no opportunity was given to cross examine the witnesses cannot be accepted.

19. Insofar as the further ground raised by the petitioner that in the second show cause notice, provisional punishment has been included therefore, the second show cause notice itself lost its significance and in fact it gets vitiated is concerned, the language used in the second show cause notice has clearly mentioned that it is provisionally decided to impose the punishment, however, show cause is called for from the petitioner. It means that, once the show cause is able to be given by the petitioner to the second show cause notice, there

can be a chance of changing or modifying the proposal already conceived by the disciplinary authority, i.e. the second respondent.

20. Therefore, merely because the provisional punishment has been included in the second show cause notice, it cannot be said that the second show cause notice gets vitiated. Therefore, the second ground raised by the petitioner is not impressing, hence it is rejected.

21. On the side of the proportionality of the punishment is concerned, since a very minimum punishment of withholding the increment for one year without cumulative effect alone has been imposed for the proven charge against the petitioner, this court feels that, on the proportionality side also, it is not a higher punishment as it was imposed on proven charges hence, no indulgence can be shown by this court.

For all these reasons, the writ petition fails and accordingly it is dismissed . There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

bga

To

1.The Chief General Manager, Mines-II
Neyveli Lignite Corporation Ltd., Neyveli-2

2.The Chief Manager / Shift Office / Mines-II
Neyveli Lignite Corporation Ltd., Neyveli.

+lcc to Mr.L.Chandra kumar, Advocate SR.79286

+lcc to Mr.N.Nithianandam, Advocate SR.79993

PVS (CO)
CB(20/02/2020)

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