

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3501 of 2010

Gopal Yadav, S/o. Shri Gajadhar Yadav, Aged about 53 years, Posted Senior Overmen in S.E.C.L. Churha Colliery, District Korea, Chhattisgarh

---- Petitioner

Versus

1. Chief General Manager, S.E.C.L. Baikunthpur Area, District Korea, Chhattisgarh
2. Deputy Chief Personal Manager, S.E.C.L. Baikunthpur Area, District Korea, Chhattisgarh

---Respondents

For Petitioner	:	Ms. Anju Ahuja, Advocate
For Respondents	:	Mr. H.B. Agrawal, Sr. Advocate along with Ms. Prabha Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/08/2019

1. The challenge in the present writ petition is to the order Annexure P/15 dated 02.04.2008 and also the order Annexure P/19 dated 4/7.07.2009.
2. Vide Annexure P/15 the petitioner was inflicted with a punishment of demotion from the post of Senior Overmen Grade A-1 to Overmen Grade-B and was ordered to be fixed at the initial stage of pay-scale of the post of Overmen Grade-B.
3. Vide the Annexure P/19, the Appellate Authority partly allowed the appeal to the extent that the demotion part was modified and the petitioner was ordered to be demoted from Senior Overmen Grade A-1 to Overman Grade-A and it was ordered that the petitioner be given the maximum of the pay-scale payable to a Overman Grade-A. It is these two orders, which are under challenge in the present writ petition.

4. The primary contention of the petitioner is that the charge-sheet which was issued to the petitioner itself was ab-initio void for the reason that the wrong provisions have been quoted while framing of the charge leveled against the petitioner. The further ground of challenge by the petitioner is that the entire departmental enquiry has been conducted in an illegal and irregular manner, in as much as the petitioner was never granted a fair and reasonable opportunity of defence.
5. According to the petitioner though the Department had conducted a preliminary enquiry, but the copy of the preliminary enquiry report was not provided to the petitioner. Similarly, in the course of the departmental enquiry also the petitioner was not permitted to cross-examine the management witness neither was the petitioner permitted to lead evidence to substantiate his defence.
6. The further challenge to the punishment order by the petitioner is that even after the inquiry report was submitted by the Inquiry Officer, the inquiry report was not furnished to the petitioner nor was the petitioner served with a second show cause notice before the punishment order was issued. Thus, according to the petitioner, the entire charge-sheet as well as the departmental enquiry stands vitiated on these illegalities and irregularities committed by the Department as well as the Inquiry Officer.
7. Mr. H.B. Agrawal, Sr. Advocate appearing for the respondents submitted that the translated Hindi version of the charge-sheet was erroneously got typed, so far as the misconduct part was concerned. The original charge-sheet which was in English does not have any discrepancies and it is in accordance with the certified standing order.

8. So far as the technical flow that arose and as challenged by the petitioner in the course of departmental enquiry, the contention of the counsel of the respondent is that the petitioner in fact had participated in the departmental enquiry from the beginning till the last, it cannot be said that the petitioner was denied any opportunity of hearing. Senior counsel also submitted that the petitioner had also participated in the departmental enquiry through a representative, which would further substantiate the fact that the petitioner has been granted reasonable opportunity to defence himself.
9. The counsel for the respondents/Coal Mines on the previous date was directed to keep available the records of the inquiry proceedings. The respondents have produced the copy of the entire inquiry proceedings before this Court. Perusal of the inquiry proceedings would show that there is no entry made by the Inquiry Officer in the course of recording of the evidenced permitting the petitioner/the delinquent employee or the defence assistant or the representative representing the delinquent employee to cross examine the management witnesses.
10. Similarly, the inquiry proceedings also does not reflect any entry made by the Inquiry Officer after the management closed their evidence of fixing the inquiry proceedings for the evidence of the petitioner/the delinquent employee. These two factors i.e. the non-granting the delinquent employee or defence assistant the opportunity to cross examine the management witnesses and at the same time not fixing the departmental proceedings for the evidence of the worker, itself is a prima facie evidence of the Department inquiry to have been conducted in violation of the basic principles of natural justice.

11. It is always the procedure required of the Inquiry Officer of offering the management witnesses for cross examine after the examination in chief is done. Likewise, it is also the duty casted upon the Inquiry Officer to fix the case for the evidence of the defence after the management evidence is closed. This again is not reflected from the inquiry proceedings made available to this Court. To further damage the right of the petitioner, what is also reflected that the inquiry report which the Inquiry Officer had submitted also was not made available to the petitioner, nor was he issued with a show cause notice by the Disciplinary Authority before the impugned order of punishment was passed. This again is as of now a matter of right which has been created in favour of a delinquent employee. In the absence of such proceedings being initiated by the Disciplinary Authority on receiving of the inquiry report again the petitioner's right to defence gets adversely affected. Hence, it is a clear case where it can be brought within the ambit of denial of a reasonable and fair opportunity of defence before the punishment order was issued.
12. Though the senior counsel submits that in the English version of the charge-sheet, the provision quoted so far as reflecting the misconduct part is concerned, there is no error, but what cannot be lost sight of is that the petitioner had made a request to the authority that he is ignorant so far as the English language is concerned and therefore he had asked for a translated version of the charge-sheet. The management acceded to the request of the worker by providing a translated version and in the translated version which was in Hindi, the rule provision has been wrongly quoted.
13. The petitioner as such would be under the bonafide impression that the petitioner has been prosecuted for the said provisions as is reflected in the Hindi version of the charge-sheet, though such provision is not available in

the certified standing order. This again might have caused some prejudice to the interest of the petitioner.

14. For all the aforesaid reasons, this Court is of the opinion that the inquiry and the inquiry proceedings stand vitiated for these reasons and the impugned order of punishment Annexure P/15 dated 02.04.2008 and the order of the Appellate Authority Annexure P/19 dated 4/7.07.2009 deserve to be and are accordingly set-aside.
15. It has been informed by the counsel appearing for the parties that pending the present writ petition before this Court, the respondents have further granted the petitioner promotion on 25.11.2016 and later on the petitioner has superannuated from service on December, 2017. Since the two impugned orders have been set-aside by this Court, the effect of which means that these two orders never existed and the petitioner would therefore be entitled for all consequential benefits attached to the said post. The petitioner however would be entitled for only the notional benefits for the said period. The actual benefits would be given to the petitioner only on post retiral benefits.
16. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge