

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 25-07-2019Order delivered on 12-12-2019WP No. 22 of 2002

1. Tularam @ Khamman Sai, S/o Shri Dev Sai, aged about 35-36 years, LDC Grade II, Balgi Pariyojana, SECL, Banki Mongri, Dist. Bilaspur (now Korba).

----- Petitioner

Versus

1. South Eastern Coalfields Limited, through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (CG).
2. South Eastern Coalfields Limited, through its Dy. General Manager/Sub-Area Manager, Balgi Project, SECL Banki Mongra, Dist. Bilaspur (now Korba) (CG).
3. Chief General Manager, SECL, Balgi Project, Bank Mongra, Dist. Bilaspur (now Korba) (CG).

----- Respondents

For Appellant	Shri Gary Mukhopadhyay, Advocate
For Respondent/SECL	Shri Vivek Verma, Advocate

Hon'ble Shri Prashant Kumar Mishra, JC A V Judgment

1. By the instant writ petition, the petitioner would assail the legality and validity of the order of his dismissal from service dated 28-12-2001 (Annexure – P/10).
2. Petitioner was appointed as General Mazdoor/Casual Piece Rated Loader on 10-5-1984 mentioning him as ‘Tularam, S/o Deosai’ (*name of the petitioner and his father is as per the contents of*

the impugned order Annexure – P/10). He was promoted as Clerk Grade III on 13-9-1985 and thereafter as Clerk Grade II on 20-2-1987 (Annexure – P/1). Vide notice dated 13-12-2000 the petitioner was directed to produce the matriculation certificate as the said qualification was the requisite qualification for appointment as Clerk Grade III or Clerk Grade II. The petitioner informed the management of SECL on 29-12-2000 that his certificate is misplaced, therefore, he may be allowed time to obtain diploma certificate.

3. Under the above circumstances, a charge sheet was issued to the petitioner vide Annexure – P/5 alleging that he has obtained service in the SECL by committing fraud and is misleading the management, which amounts to serious misconduct. The charge sheet referred to clauses 26.1, 26.9 and 26.22 of the Certified Standing Orders of the SECL under which committing fraud, misrepresentation with the management and submitting false information about the name, age, father's name and qualification to the management is treated as misconduct.
4. By his reply (Annexure – P/6) the petitioner stated before the management that while promoting him to the post of Clerk Grade III & Clerk Grade II the officers had seen the

marksheet before offering appointment, therefore, there is no question of committing fraud or misrepresentation. The petitioner again sought time to file duplicate certificate.

5. In the departmental enquiry, the charges were found proved, therefore, the petitioner was served with show cause notice along with the enquiry report (Annexure – P/13) to which the petitioner replied vide Annexure – P/9 admitting that he failed to produce the matriculation certificate before the Enquiry Officer. He further admitted that in the original certificate his second name (उपनाम) ‘Tularam, S/o Deosai’ is not mentioned and he was not successful in getting his second name (उपनाम) added in the certificate. It was further mentioned in the reply that he is known by ‘Khamman Sai, S/o Deosai’ as well as ‘Tularam, S/o Deosai’ for which he submitted his birth certificate, his affidavit and the certificate issued by the Councilor.
6. Accepting the enquiry report, the petitioner has been dismissed from service vide order dated 28-12-2001 (Anneuxre – P/10).
7. Assailing the order of dismissal from service, learned counsel appearing for the petitioner would argue that consideration of past record while imposing punishment is not permissible and

further that the Enquiry Officer as well as the Disciplinary Officer have not applied their mind to the facts of the case in proper perspective while holding that the charge is proved. Learned counsel would further argue that the enquiry report is not supported with the reasons. Petitioner would next contend that there is no allegation of impersonation in the charge leveled against the petitioner and lastly, learned counsel would argue that, at best, the petitioner could have been reverted to the post of General Mazdoor/Casual Piece Rated Loader, but could not have been dismissed from service.

8. Learned counsel appearing for the respondents/SECL, *per contra*, would argue that reading the entire charge sheet it is manifest that the petitioner has been alleged to obtain service by committing fraud and misrepresentation, therefore, the charge as well as the enquiry report is very clear being without any ambiguity. Learned counsel would further argue that once an employee is found to have committed fraud dismissal from service is never considered to be disproportionate to the gravity of misconduct.
9. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

10. Record made available to this Court would clearly discern that the petitioner did not submit his matriculation certificate despite having been directed by the management of SECL. Petitioner undertook to submit duplicate certificate but neither before issuance of the charge sheet nor before the Enquiry Officer the petitioner could submit the certificate or marksheet carrying his name as 'Tularam, S/o Deosai', which is the name under which he was offered appointment and is working with the SECL. In reply to the show cause notice the petitioner admits that he was not able to get the matriculation certificate and further that his effort to add his second name (उपनाम) i.e. 'Tularam, S/o Deosai' in the matriculation certificate has not yielded positive result. Thus, the petitioner admits that he does not possess any matriculation certificate under the name of 'Tularam, S/o Deosai' albeit he is in employment with SECL under the said name.
11. This is a full proof case of obtaining employment in the name of a person in whose favour there is no certificate of having passed matriculation examination, which is the requisite qualification for appointment as Clerk. If that be so, the petitioner has committed fraud and misrepresentation with the management of SECL while acquiring appointment as Clerk.

12. The submission that, at best, the petitioner could have been reverted to the post of General Mazdoor/Casual Piece Rated Loader, but could not have been dismissed from service fails to impress this Court for the simple reason that any employee who is found to commit fraud and misrepresentation with the management of SECL while obtaining and continuing in the service is a serious misconduct under clause 26.9 of the Certified Standing Order, which is clearly mentioned in the charge sheet.
13. Once the facts constitute the charge, as mentioned in the charge sheet (Annexure – P/5), is found proved during enquiry on the basis of evidence and on the basis of petitioner's averment in his reply, the management had no option but to impose punishment of dismissal from service, which is never considered to be disproportionate to the gravity of misconduct as held by the Supreme Court in ***Ram Saran v IG of Police, CRPF and Others***¹.
14. For the reasons stated hereinabove, the writ petition, being bereft of merit, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

¹ (2006) 2 SCC 541