

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 254 of 2019**

1. Arun Kumar Sharma S/o Late Shri Ram Khelawan Aged About 50 Years Clerk Grade III, MTK, Incline -6-7 Rajgamar Colliery Korba Distt. Korba Chhattisgarh

Present Address- Qr.No. M-14, Ompur Colony Rajgamar, Post, Rajgamar, Via : Balco, District-Korba, Chhattisgarh.

---- Appellant**Versus**

1. South Eastern Coalfields Limited Through The Chairman Cum Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
2. Chief General Manager South Eastern Coalfields Limited, Korba, District- Korba, Chhattisgarh.
3. Sub Area Manager South Eastern Coalfields Limited, Rajgamar Colliery, District- Korba, Chhattisgarh.
4. Assistant Labour Commissioner Torwa Naka Bilaspur, Chhattisgarh.
5. Central Government Industrial Tribunal Nagpur, Maharashtra.
6. The Area General Secretary Madhya Pradesh, Koyla Mazdoor Sabha (HMS) Qr. No. B/4, Ompur Po, Rajgamar Colliery, District- Korba, Chhattisgarh.

---- Respondents

For Appellant

Shri S.K. Kushwaha, Advocate

For Respondent/SECL

Shri Sudeep Agrawal, Advocate

Hon'ble Shri P.R. Ramachandra Menon, CJ

Hon'ble Shri Prashant Kumar Mishra, J

Judgment On Board**By**

P.R. Ramachandra Menon, CJ

10/05/2019

1. Interference declined in the writ petition filed by the appellant seeking to set aside the award passed by the Central Government Industrial Tribunal (*for short 'the Tribunal'*) dismissing the claim is under challenge in this appeal.
2. The appellant herein sponsored through the Employment Exchange concerned was appointed as Piece Rated Loader as per Annexure-P-1 appointment order. Subsequently, on the basis of some documents as to the qualification of the appellant/petitioner, his claim for further advancement in the career was considered by the Departmental Promotion Committee (*for short 'the DPC'*), who promoted him on the post of Clerk Grade-III as per Annexure-P-2. Similar exercise was pursued in respect of further advancement of career and as per Annexure-P-3 he was promoted and posted as Clerk Grade-II. Similarly his claim for further promotion and posting to the post of Clerk Grade-I was considered and the same was granted to him by the subsequent DPC vide Annexure-P-4. While continuing his appointment, the respondents came across some incriminating circumstances against the appellant/petitioner when he putforth his LTC claim showing his name as 'Arun Kumar Sharma' instead of name as contained in the service record as 'Arun Kumar'. He was also shown as a person belonging to a totally different district than the particulars

furnished earlier and also different date of birth. This led to disciplinary proceeding against him, as the same amounted to misconduct, according to the employer. Vide Annexure-P-5, charge sheet was filed/issued to the appellant, who put forth his explanation as per Annexure-P/6. The domestic enquiry was concluded and report was submitted holding the delinquent employee guilty of the charges levelled against him. Based on the findings, punishment was imposed, whereby the appellant was reduced in rank from that of Clerk Grade-I to Clerk Grade-III as per Annexure-P/9 dated 25.04.1998.

3. It was also mentioned in Annexure-P-9 that the employee under no circumstances will be entitled to have his date of birth reckoned as sought to be shown in the matriculation records, which was never part of the proceeding filed by him nor contended by him while entering into the service or getting promotion.
4. This made the employee to feel aggrieved, who raised an industrial dispute. On referring the dispute for adjudication, the matter was considered after appreciating the evidence on record, the Tribunal passed Annexure – P/12 award, whereby the claim was dismissed. This was sought to be challenged by filing writ petition before this Court with the following prayers :

10.1 This Hon'ble Court may graciously
be pleased to issue a writ of

mandamus/certiorari or of a like nature to quash the impugned order dated 28-9-2010 (Annexure – P/12) as well as order dated 25-4-1998 (Annexure – P/9) reinstating the petitioner to the post of Clerk Grade-I extending all the consequential monetary benefits including arrears of salary, from the date of reversion.

10.2 That, a command/direction may kindly be issued to call for the entire records pertaining to the case of the petitioner from the concerned authorities and the C.G.I.T.

10.3 Any other relief, which is deemed fit and proper may also be awarded to the petitioner including the cost of the petition.

5. The matter was seriously contested by the respondents stating that the proceedings pursued by the respondents were fully in conformity with the relevant provisions of law and there was no violation of any known principles of natural justice. The rival contentions were appreciated and a finding was rendered by the learned Single Judge of this Court holding that it was not a case to call for interference and in turn, dismissed the writ petition. This is sought to be challenged in this appeal.
6. Heard learned counsel appearing for the parties at length.

7. Learned counsel for the appellant submits that the crucial case projected by the appellant before the learned Single Judge as to the violation of principles of natural justice, which vitiated the enquiry, was not properly adverted to while passing the verdict under challenge. It is stated that no sufficient opportunity of hearing was afforded to him in the enquiry.
8. The discussion made by the Tribunal in Annexure-P/12 award clearly shows that adequate opportunity was given to vindicate the innocence. That apart, on considering the contents of Annexure-P-5 charge sheet, Annexure-P-6 explanation and the pleadings raised in the writ petition, it is evident that there is no much dispute with regard to sequence of events or as to the incriminating circumstances mentioned against the appellant. The point is only with regard to the explanation offered as to the circumstances under which the appellant had given the factual input at the time of procurement of employment and also later.
9. The Tribunal considered the entire materials on record and the same was answered in favour of the management observing that the enquiry was not vitiated under any circumstances. The contention raised by the appellant before the learned Single Judge with reference to violation of principle of natural justice was also looked into. Obviously, the appellant could not succeed in establishing any such violation. More so, the law

declared by the Apex Court that even if there is some violation in procedural formalities, that by itself is not sufficient and that the prejudice caused to the delinquent employee has to be established to call for interference. Even then, the enquiry, if for any reason is bad, the defect could be cured, to take the proceeding to its logical end. This is the law in the matter of **Managing Director, ECIL, Hyderabad and Others v B. Karunakar and Others**¹, as made clear by the Apex Court.

10. The case projected by the appellant as to the alleged violation of principles of natural justice and loss of opportunity of hearing has been examined by the learned Single Judge and the same has been answered in negative. We feel absolutely no reason to interfere with the said part of finding.
11. The remaining aspect is with regard to the case projected by the appellant/petitioner as to the proportionality of punishment. It is true that if the punishment is disproportionate to the proved gravity of misconduct, there could be interference by virtue of power conferred upon the Tribunal or the Labour Court, as the case may be, under Section 11A of the Industrial Disputes Act, 1947. This aspect was also considered by the Tribunal while passing the award and there is specific finding to the effect that punishment of reduction in rank from Clerk Grade-I to Clerk Grade-III is quite proportionate in relation to the proven

¹ (1993) 4 SCC 727

misconduct. No interference is warranted under this score as well.

12. We do not find any tenable ground to assail the verdict passed by the learned Single Judge upholding Annexure-P/12 award.
13. In the result, the appeal fails and it is dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Prashant Kumar Mishra)
Judge

Gowri