

Item 17.12.2020
No. Ct. No. 22
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SB

W.P.A. 10520 of 2020

In Re: Sankalpa Baran Hari & Anr.

(Through Video Conference)

Mr. Susanta Paul
Ms. Kalpita Paul

..... For the petitioners

Mr. Subir Sanyal
Mr. Janardan Mandal

... For respondent no.1

The learned counsel for the petitioners submits that as they allegedly held one agitation inside their office premises, charge-sheet was issued to them. The petitioners are all working in Group-D post. Subsequently, they wanted to be represented by one representative of a different unit which initially not allowed. Then they preferred an appeal before the Chairman-cum-Managing Director who referred the matter to the Executive Director, Aviation for taking a decision on appeal. The appeal was decided in favour of the petitioners and they were allowed to take assistance from one representative who is from a different unit.

From this fact, I find that the appeal of the petitioners have been allowed.

Even then the petitioners are aggrieved on the point that the Chairman-cum-Managing Director does not have any power to delegate his power to hear the appeal to any other authority as has been done in this case.

Mr. Sanyal, learned advocate appearing on behalf

of the respondent no. 1 has drawn my attention to the standing orders for all establishments of Bharat Petroleum Corporation Limited which is at page 69 at 'Annexure-15' of the writ application. He has particularly drawn my attention to paragraph 34.1 of the said standing orders which is as follows:-

"Final Decision

The 'decision' of the Functional Manager or Departmental Head, upon any question arising out of, in connection with or incidental to these standing orders shall be final, subject, however to an appeal to the Chairman and Managing Director and without prejudice to any right of a workman aggrieved by his decision to resort to legal proceedings."

From the said paragraph it is found that an appeal may be preferred to the Managing Director by any person aggrieved by the decision of the functional manager which is without prejudice to the right of the workman aggrieved by the decision of the Chairman-cum-Managing Director to resort to legal proceedings.

The entire clause does not speak about any delegation of power of the Chairman-cum-Managing Director. There is no mentioning that this power cannot be delegated also. The substantial fact is this, the appeal of the petitioners has been allowed by such deligatee. It is not shown how the petitioners have been prejudiced by this action of delegation by the Chairman-cum-Managing Director to decide the appeal to the Executive Director, Aviation. The Executive Director's decision in actuality is wholly in favour of the petitioners and they have been given the advantage of

taking defence counsel from a different unit.

In such circumstances, as it has not been shown, how the delegation of power, if there is any, has prejudiced the petitioners, I do not find any merit in the matter. The grievance is hyper-technical in nature.

The learned advocate for the petitioners submits in respect of this point that even if an order is correct which is passed by an authority which has no jurisdiction to pass the order is illegal. In this respect, I am of the view that the intricate questions of legal principles which are applicable in civil or criminal proceedings cannot be made applicable fully in the industrial disputes of this nature which shows the facts and circumstances of the matter in dispute. The fact is, what the petitioners demanded by way of appeal, have got it. Further, in absence of any prejudice to them caused due to allowing their appeal, I do not find any merit.

The matter is without any merit and is dismissed.

There will be no order as to costs.

(Abhijit Gangopadhyay, J)