IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No.6634 of 2010

Krishna Deo Mahto ... ... Petitioner

Versus

1. Central Coalfields Limited.
2. Chairman-cum-Managing Director, Central Coalfields Limited, Darbhanga House, Ranchi.
3. Director (Personnel), Central Coalfields Limited, Darbhanga House, Ranchi.
4. Deputy General Manager / Project Officer, KDH Project, Central Coalfields Limited, Dakra, Khelari, Ranchi.
5. Personal Manager (Industrial Relation & Labour), Central Coalfields Limited, Darbhanga House, Ranchi. ... ... Respondents

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CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner :Mr. A.K.Sahani, Advocate.

For the Respondents : Mr. Amit Kumar Das, Advocate

:Ms. Puja Kumari, Advocate

14/14.12.2020 Heard learned counsel for the parties through V.C.

2. The instant application has been preferred by the petitioner praying for quashing the order of dismissal as contained in Memo No.127 dated 4.08.2003 and also the appellate order dated 17.03.2004, whereby the appellate authority has sustained the order of dismissal.

3. The brief facts of the case are that the petitioner was appointed in the year 1988. Subsequently, after a gap of 13 years, a charge-sheet was issued to him alleging

therein that he had procured employment on the basis of false statement with regard to his relationship with Nanki Devi and also on the basis of land which was a Gair Majurwa land.

4. Mr. A. K. Sahani, learned counsel for the petitioner submits that the land was taken by the respondent-company and they have used that land for years and are still using. However, after a gap of 13 years, they came up with a statement that the said land was Gair Majurwa land and his relation with Nanki Devi is false; as such, the petitioner has committed fraud in getting the employment. He contended that there is a huge delay in issuing the show-cause notice; as such, the impugned order deserves to be quashed. In order to buttress his argument, he relied upon the judgment passed in the case of ***UCO Bank & Ors. Vs. Rajendra Shankar Shukla***, reported in ***2018 (4) Supreme 257***. Relevant Paragraph 12 and 13 are quoted herein below:-

> *"12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and*

unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.

13. What compounds the default on the part of the Bank is that Shukla was placed in a higher category as a Manager on 19th July, 1994 while all these discussions were going on in the Bank. He was also allowed to cross the efficiency bar on 12th August, 1996 again while the discussions were going on. Surely, if the Bank was serious about proceeding against Shukla for misconduct, they would not only have taken prompt action in issuing a charge sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar."

5. Learned counsel further referred to the impugned order of termination and contended that though he had filed a detailed reply to the second show-cause notice, but the same has not been considered at all by the Disciplinary authority. He further submits that the Disciplinary authority after mentioning the details of the case had just awarded the punishment of removal from service; as such, the same is not liable to sustain in the eye of law.

He further referred to Annexure-12 which is the appellate order and submits that a proposal was made by the Personnel Manager; who is much subordinate to the Director Personnel (Appellate authority), and the Appellate authority had just signed in the said proposal and not

applied his own mind which is against the settled principle of law.

Relying upon the aforesaid contentions and judgment, learned counsel for the petitioner submits that the matter may be remitted back to the competent authority to pass a well reasoned order after giving appropriate opportunity to the petitioner.

6. Mr. Amit Kumar Das, learned counsel for the respondent-Company assisted by Ms. Puja Kumari opposed the prayer of the petitioner and submits that the petitioner had committed fraud by imposing him to be relative of land looser and also for the reason that the said land was a Gair Majurwa land which has come in the enquiry report. However, he failed to demonstrate before this Court that the appellate order has been passed by the Director Personnel with due application of mind, save and except, he had just signed the proposal. In order to buttress his argument, learned counsel for the respondent relied upon the judgment of this Court passed in LPA No.719 of 2015 and submits that in that case also there was a delay in issuing in charge-sheet but in case of fraud, such ground shall not be appreciated.

7. Having heard learned counsel for the parties and after going through the documents available on record, it clearly transpires that the order of dismissal has been passed without giving any reason and without considering the grounds taken by the petitioner in his reply to the

second show-cause notice. For better appreciation of the case, the operative portion of the impugned order is quoted herein below:-

> "*Further you were issued 2nd show cause notice vide ref. No.KDH/PD/2nd show cause notice 2002/480 dated 26/29.12.2002 to submit you explanation as to why said penalty not be imposed against you. The reply to the 2nd show cause notice submitted by you has been examined and it is found the same is devoid of any merit.*
>
> *In view of this, I have decided as I hereby do to dismiss you from the service of the Central Coalfields Limited K.D.H Project of NK area with immediate effect. Accordingly, you will cease to be in the service of Central Coalfields Limited, K.D.H Project of NK area with immediate effect.*
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> *This issues with the approval of competent authority."*

From bare perusal of the impugned order, it can be easily said that the Disciplinary authority had not given any reason and did not considered any ground taken by the petitioner in his reply to the second show-cause notice.

Further, from the Appellate order (Annexure-12), it clearly transpires that the Appellate authority (Director Personnel) had just signed the proposal given by the Personnel Manager. It is a settled proposition of law that any authority while taking any decision and/or passing any order should apply his own mind and not act on the dictates/order/proposal of his subordinate.

8. In view of the aforesaid facts and circumstances, the impugned order of termination; as contained in Memo No.127 dated 4.08.2003 and also the appellate order dated 17.03.2004, are hereby, quashed and set aside and the matter is remitted back to the Disciplinary authority to pass a fresh order taking into account the reply filed by the petitioner to the second show-cause notice issued to him. Since the matter is very old, the concerned respondent will be at liberty to hear the petitioner and ask necessary documents, if so required.

9. With the aforesaid observation and direction the instant writ application stands allowed and disposed of.

(Deepak Roshan, J.)

Fahim**/-**