

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1565 OF 2021

Naresh Bahadur Singh, aged
about 59 years, Occu: working as
Sr. Manager Personnel, WCL Hqrs.
Nagpur, R/o. 301, Samhita Apartment,
Behind IOC Petrol Pump, Utkarsh Nagar,
Post : Katol Road, Nagpur – 440 013.

.... **PETITIONER.**

// VERSUS //

1. Western Coalfields Limited,
Through its Chairman cum Managing
Director & the Disciplinary Authority,
Coal Estate, Civil Lines, Nagpur-440001.
2. Coal India Limited, through its
Chairman cum Managing Director &
Appellate Authority, Coal Bhawan
Premises, 04 MAR, Plot No.AF-III,
Action Areal-A, New Town, Rajarhat,
Kolkata 700 156 (West Bengal)

.... **RESPONDENTS.**

Shri M.M.Sudame, Advocate for Petitioner.

Shri D.L.Dharmadhikari, Advocate for Respondent Nos.1 & 2.

CORAM : **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **AUGUST 23, 2021**

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. This petition raises a question as to the legality and validity of the order dated 20th February 2020, imposing punishment of reduction to one stage lower in time scale of pay for a period of one year, upon the petitioner.

4. The brief facts emerged from the present petition, are as follows :

i. The petitioner was charged with the allegation that the petitioner while working as Senior Manager (Personnel) at Western Coal Fields Limited (“WCL” for short) Headquarters, Nagpur during the period 2013-14, was the dealing officer under clause 9.4.0 of NCWA-VI, relating to cases of the employees medically unfit and he has miserably failed to observe the guidelines and because of which most of the employees who crossed of 58 years of age have been declared unfit which resulted in providing employment to the dependent of such employees causing sustained financial burden on the Company for the

next 32 to 35 years.

ii. Consequently, the inquiry was conducted under Rule 29 of the Coal India Executives' Conduct, Discipline and Appeal Rules, 1978 (hereinafter referred to as "Rules of 1978") of Coal India Limited, in the above referred charge.

iii. The inquiring authority after conducting full fledged inquiry submitted its report holding that the charges have not been substantiated, against the petitioner.

iv. However, the disciplinary authority, the respondent no.1 served a show cause notice upon the petitioner alongwith his 'dissent note' and the inquiry report calling thereby an explanation, which was accordingly, submitted by the petitioner. Whereupon, the punishment of reduction to one scale lower in time scale pay for a period of one year on expiry of which it will not operate to postpone his future increments, has been imposed upon the petitioner, which is the subject matter of the present petition.

5. We have heard learned counsel for the respective parties.

6. Shri Sudame, learned counsel for the petitioner submits as

under:-

a) The alleged misconduct has not been proved in the inquiry and the dissent note of the respondent no.1 does not justify the impugned action.

b) The role of the petitioner in the matter of declaring any employee as medically unfit is very limited as the declaration to that respect needs to be made by Medical Board.

c) No material has been produced by the respondents, pointing out the role of the Senior Manager (Personnel) in such matters under clause 9.4.0 of the guidelines, to declare any employee medically unfit.

d) There is a difference in clause 9.4.0(i) and 9.4.0(ii) of the guidelines, therefore, the finding of the respondent no.1 that the petitioner has committed misconduct is not sustainable in the eyes of law.

7. Shri Dharmadhikari, learned counsel for the respondents supports the impugned order and submits that while imposing impugned punishment principals of natural justice have been strictly

followed, therefore, no interference is warranted in this case. By arguing so, he prays for dismissal of the present petition.

8. To consider the contentions raised by the respective parties, we have perused the relevant documents and gone through the record.

9. The Hon'ble Supreme Court of India in the case of *M/s. Glaxo Laboratories (I)Ltd. ..vs. Presiding Officer, Meerut*¹ has held thus:-

“....it is, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must, therefore, now in advance which act of omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct....”

10. Thus, it is clear that it is obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. The workman must know in advance which act of omission would constitute misconduct. The statutory obligation is to prescribe with precision in the standing order all those acts or omission or commission

1 AIR 1984 SC 505

which would constitute misconduct.

11. In the teeth of above referred well settled legal position of law, we will consider the controversy involved in this petition.

12. The challenge in this petition revolves around the role of the petitioner as a Senior Manager (Personnel) while signing a note relating to cases under the NCWA guidelines i.e. cases of employees Medically Unfit. At this juncture therefore, it would be appropriate to refer to clause 9.4.0, which reads thus:

“9.4.0. Employment to one dependent of a worker who is permanently disabled in his place.

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years.

The term ‘general physical debility’ would mean deficiency of a workman due to any disease or other health reason leading to his/her disablement to perform his/her duties regularly and/or efficiently.”

13. It is clear from the clauses 9.4.0(i) and 9.4.0(ii), that both the clauses are separate. Clause 9.4.0(i) relates to disability arising out of injury or disease and clause 9.4.0(ii) relates to disabilities arising out of general physical debility which attracts age bar of 58 years, which is relevant for the case in hand.

14. We will now refer to the charge levelled against the petitioner, in this matter, which reads thus:

“ARTICLE -1

That, Shri N.B.Singh, EIS 90121039, Senior Manager (P) is functioning as dealing officer of 9.4.0 medical unfit cases WCL Nagpur from Dec., 2009 to till date.

That, Shri N.B.Singh, EIS 90121039, Senior Manager (P), WCL while functioning as dealing officer of 9.4.0 medical unfit cases in IR department WCL Nagpur during the period of NCWA-IX (which adopted the provisions of NCWA-VI under clause 9.4.0) has miserably failed to observe the guidelines while processing the proposals of following employees at HQ level for 9.4.0 medical board viz. (1) Shri Malkhan Khutiya Pal, Sr. Security Guard, Umrer Area, date of medical board 23-12-2013; (2) Shri Vimal Kumar, Asst. Transport Supervisor, Pench Area, date of medical board 26-12-2013; (3) Shri Godhe S/o. Manak, Belt Optr. Pench Area, date of medical board 25-06-2013; and (4) Shri Krishna Gulab Patil, Roof Bolt Crew/ Support, Nagpur Area, date of medical board 24-12-2014.

That, due to failure to follow the guidelines under clause 9.4.0 of National Coal Wage Board Agreement-IX, most of the employees who crossed 58 years of age have been declared unfit and thereby provided dependant employment to their wards, and undue advantage for providing appointment to the dependents causing sustained financial burden on the company for next 30/35 years.

Thus, the above said acts of omission/ commission on the part of Shri N.B.Singh, Sr. Manager (P), WCL has contravened the provisions of Rule 4.1(i), 4.1(ii); 4.1(iii); 4.2 & 4.6 which amounts to misconduct as defined under Clause 5.1; 5.5. 5.9 & 5.26 of Conduct, Discipline and Appeal Rules, 1978 (amended up to 2000) of Coal India Limited.”

15. The petitioner denied the said charge by filing his detailed written statement of defence to the memorandum issued by the respondents dated 16/10/2017. Thereupon the enquiry was conducted and the Enquiry Committee recorded his conclusions which being relevant for the purpose of this case are, therefore,

reproduced hereunder:

“CONCLUSION

The four cases for which charges are framed comes under NCWA-IX. And the agreement provides employment to the dependants of employee as per Clause-9.4.0 of NCWA-VI. The relevant portion of the provisions of NCWA-VI is as below.

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years.

The term “general physical debility” would mean deficiency of a workman due to any disease or other health reason leading to his / her disablement to perform his/ her duties regularly and/or efficiently.

Further the NCWA-IX also provides as below-

(i) The Clauses 9.3.0, 9.4.0 & 9.5.0 of NCWA-VI will be operative in NCWA-IX till a revised scheme is jointly prepared keeping in view the various verdict of Hon’ble Supreme Court at the earliest.

(ii) A Sub-Committee of JBCCI will formulate a scheme keeping in view various directives of Supreme Court on the subject within three months of signing of the Agreement.

From the above it is clear that in Clause (i) disablement of the worker concerned should arise from injury or disease be of a permanent nature resulting into a loss of employment and it should be certified by the Coal Company concerned. This clause is applicable only for persons who has become a disable because of injury or disease.

Clause-(ii) is applicable for disablement out of General Physical Debility due to any disease or health reason.

These two clause are different and restriction of age limit of 58 years is applicable in case of general physical debility.

So far the judgment of Hon’ble High Court of Madhya Pradesh is concerned, no sufficient background papers of arguments submitted before the Hon’ble High Court was produced during the course of inquiry, neither by PO nor by CO. There are also no evidence produced before the inquiry regarding instructions from the Coal India for applicability of the judgment of Hon’ble High Court of Jabalpur, across all the Subsidiaries of CIL.

In the entire case the involment of Shri N.B.Singh is that he was the officer to whom all the cases from Areas are forwarded for placing before Medical Board of the Company for medical examination and for their recommendation or rejection to the Competent Authority for necessary approval and further

provision of employment.

Main charge against the CO that Shri N.B. Singh he has placed the four employment cases in which the employee has crossed the age limit of 58 years. In my concluding para itself I made it clear that age limit as mentioned in NCWA-VI is for the cases those who comes under the clause of debility. It is also be made clear that whether the case comes under debility or permanent disability because of injury or disease has to be decided by the Medical Board and not an officer who merely places the papers before the Medical Board Shri N.B.Singh has well highlighted the age of employee in all the four cases in the application itself. Further during the course of inquiry, a statement indicating age of each employee which was submitted to the Medical Board indicating age of each employee was also produced during the course of inquiry.

Taking into account the above facts, evidences and circumstances the charges including the imputations of misconducts in support of the article of charges in respect of Shri N.B.Singh, Sr.Manager (P)/IR, WCL (HQ), Nagpur, vide Memorandum No. WCL/CMD/VIG /17/1663 dated 16.10.2017, have not been substantiated.”

16. The respondent No.1 thereafter on 10/10/2019 issued a memorandum, providing an opportunity to the petitioner to submit his final representation in defence against the dissent note, within 10 days from the receipt of the said memorandum.

17. In the said memorandum the respondent No.1 has observed that the respondent No.1 after careful examination of the enquiry, is of the considered opinion that the Article of Charges is proved against the petitioner. The respondent No.1 provided enquiry report as well as ‘dissent note’ along with memorandum to the petitioner for his reply. The points of dissent, are as under :-

- i. If IR unit has only role to forward the proposals received from field units to medical board in respect of these cases as per defense submission, arguments and also agreed by IA as the article of charges have not been substantiated by him, then what is the role of IR unit w.r.t these cases. Argument of mere forwarding role from a senior officer from IR unit cannot be accepted as IR unit has been issuing instructions, clarification, w.r.t. such cases and has also the responsibility of getting the schemes implemented in its true spirit, which did not happen in this case.
- ii. After implementation of NCWA-IV, a moratorium on operation of 9.4.3 of NCWA-IV was given by the Director (P) CIL for six diseases issued vide letter No.3207 dated 13th Sept. 1994, where age bar was withdrawn. Subsequently, this circular was superseded by another circular issued by Director (P), CIL on 10th May 1996 vide letter No. 4084. This clearly states that the withdrawal of age bar that too for 6 diseases was exclusively for this period i.e. 13th Sept. 1994 to 10th May 1996 only.
- iii. IA further agreed that the CO has mentioned the age of all the four employees in the medical unfit application under 9.4.0 of NCWA - VI. The age criteria has been crucial part of the whole case, as no where it has been found stated while declaring one medically unfit or in any proposal submitted by the IR unit through GM, to the medical board, as this is disablement of permanent nature amount to loss of employment or of general physical debility. This responsibility lies on the unit submitting the proposal for consideration by medical board and the medical board to certify on behalf of Coal Company as stated in clause 9.4.0. in absence of any cogent guidelines w.r.t. which disease would fall in the category of 9.4.0(i) and which in 9.4.0(ii). Although workmen's compensation act, though referred to be followed in NCWA for compensation i.e. clause 9.2.0 and not actually refers to clause 9.4.0, it broadly would have clarified for permanent disability etc. in case of ambiguity. But the clause 9.4.0 (i) and (ii) refers for consideration of disablement as so certified by Coal Company concerned and the IR unit sending proposal to medical board and the medical board which finally recommends the case, have responsibility considering the employment to be given against it and by mere stating that IR job is to forward the case to medical board does not hold good.
- iv. Further IA did not appreciate the attendance particulars of the workmen, whose cases have been forwarded to Medical Board. The attendance particulars of workmen do not show that due to disease or other health reason has lead to disablement and has affected his

performance in the work place.

- v. IA is of opinion that no evidence was produced to make the applicability of High Court decision across all the subsidiaries of CIL. It is apparently correct that no instructions based on the judgment of Hon'ble High Court of M.P. has been found issued by any authority. But that does not mean that it would not have any applicability for similar case? Hon'ble High Court of M.P. in its judgment on 12th Nov. 2013 in Virendra Chand Vs. Northern Coalfield Ltd. (Writ Petition No.9018/2011(s) in a similar case of seeking employment by employee against 9.4.3 of NCWA-IV for his son (petitioner) has dismissed its plea which was turn down by NCL based on petitioner's father had crossed 58 years and not entitled to seek companionate appointment as per provisions in NCWA-VII. Hon'ble Court while considering relevant provisions under NCWA-IV, VI and VIII in its order, stated as "Fair reading of this provision no way establishes that an employee crossing 58 years of age retiring on medical ground would entitle him to seek appointment of his dependent on compassionate ground and relief as sought by petitioner seeking appointment on compassionate ground cannot be granted.

18. The respondent No.1 after going through the memorandum, the enquiry report and the response submitted by the petitioner to the second show cause notice, issued the impugned order dated 20th February, 2020, holding that the petitioner has not taken cognizance of the Madhya Pradesh High Court order and also did not take cognizance of attendance of employees, whose case has been forwarded by him to General Manager (P)/IR for onward submission to Medical Board under Clause 9.4.0, despite knowing that this is for "employment to one dependent of a worker who is permanently disabled in his place", and imposed major penalty of reduction to one

stage lower in time scale of pay for a period of one year, on expiry of which it will not operate to postpone his future increments, upon the petitioner.

19. At page 209 of the paper book, a letter written by General Manager to the Member of Parliament on 12/09/2013 depicts the process to be followed as regards cases under clause 9.4.0. The relevant portion of the said letter is reproduced hereunder, which reads thus:

“The process is that when an employee gives in writing to the unit where he is posted and on receipt of the application, the WO/PO of the concerned unit forward the application with details in the prescribed proforma to Area Medical Officer through Colliery Manager. The Area Medical Officer/examine/ screen the application through Area Medical Committee constituted for the purpose and give its recommendation to Area Personnel Head with intimation to Colliery Manager. Xxxx Personnel Head forward the proposal to GM(P/IR) for getting xxxxx medical examination of the employee concerned under 9.4.0 xxx Board at HQ level. The applications so received at IR Department, are sent to Chief of Medical Services for further action. Subsequently, CMS constitute a Committee comprising of a Doctor Specialist and a Surgeon for the purpose with the approval of Competent Authority. CMS arrange to prepare list of employees and send to Area Personnel Head of concerned Areas with an advice to send the employees to WCL HQ for appearing before the 9.4.0 Medical Board on the scheduled date and time along with ID proof and medical treatment papers. The list so prepared is also uploaded in the website of the company. Further, the Medical Board meets on the scheduled date and examine each employee medically and physically and submit its recommendation to the CMS. CMS after obtaining the approval of competent authority, the list of employees declared medically unfit and fit are sent the concerned Area for further action. The same list is also uploaded in website of the company.”

20. After reading this letter coupled with clause 9.4.0 of the NCWA Guidelines it is clear that clause 9.4.0 (i) relates to disability arising out of injury or disease and clause 9.4.0 (ii) relates to disabilities arising out of general physical debility which attracts age bar of 58 years. Furthermore, it is also clear that the claim for disablement arising out of injury or disease or out of general physical debility, it has to be determined only after medical examination by Medical Board. Such disability can be declared whether it relates to clauses 9.4.0(i) or 9.4.0(ii), only after medical examination.

21. Thus, there is no doubt that the issue of providing employment to eligible dependent of the medically declared disabled employee, arises only after medical examination.

22. Admittedly, in this matter the petitioner is a Senior Manager and not the Member of Medical Board. The words 'then what is the role of IR unit with respect to these cases', used in first charge mentioned in 'dissent note', are sufficient to say that the respondents are also not clear about the role of the petitioner in alleged misconduct and raising mere questions. Whereas, it is a settled law that the charge must be definite and not based on assumption and presumptions.

23. Thus, without explaining the role of the petitioner while forwarding the proposal received from the field units to Medical Board, for declaring any employee as medically unfit, it has been held that the petitioner is guilty of misconduct. Equally other points mentioned in the 'dissent note' which is reproduced herein above, nowhere it speaks about the specific role of the petitioner in the whole process.

24. Further, nothing has been brought on record to show that mere forwarding of a note, constitutes misconduct. In this case the petitioner has forwarded the note for consideration and examination by the Medical Board, without commenting anything on disability of employee or eligibility of dependent of employee to provide employment.

25. Furthermore, it is not the case of the respondent that the judgment of High Court of Madhya Pradesh, which is referred in the charge, was supplied to the petitioner alongwith the necessary instruction.

26. Thus, without specifying the role of the petitioner in the whole process of forwarding the proposal received from the field unit to Medical Board under Clause 9.4.0 and without specifying the powers

of the petitioner in such matters, the penalty has been imposed by recording dissent to the findings recorded by the Inquiring Authority.

27. On a specific query put to the learned counsel for the respondents to show the relevant rules or instructions as regards the procedure to be followed by the petitioner as a Senior Manager (Personnel) while forwarding the proposals received from the field units to Medical Board, Shri Dharmadhikari, learned counsel for the respondents fairly submits that there is no such instruction or Rules filed on record. Shri Dharmadhikari further failed to point out how the judgment of Madhya Pradesh High Court, which is referred in the dissent note, is applicable to the case of the petitioner for holding him guilty.

28. In the above referred facts and circumstances and having considered all the relevant aspects of the matter, we have reached to a conclusion that the imposition of punishment in this matter on the petitioner is contrary to the well settled principles of law as there is no instructions or Rules issued by the respondents for the knowledge of the employees who are involved in the process of Clause 9.4.0, to make known to the employees, which act or omission would constitute misconduct as to be visited with penalty. In absence of the same, we

are of the considered view that the complete action against the petitioner is unwarranted and the report submitted by the Inquiring Authority, after considering the complete evidence available on record and after appreciation of all the relevant aspects of the matter, is just and proper.

29. In these circumstances, we pass the following order:

I. The petition is **allowed**.

II. The impugned order dated 20th February, 2020, is hereby quashed and set aside.

Rule is made absolute accordingly. No costs.

(ANIL S. KILOR, J)

(SUNIL B. SHUKRE, J.)