

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

**WRIT PETITION NO. 2746/2022**

(PRADEEP RAJKUMAR JAIN **VERSUS** THE UNION OF INDIA & OTHERS)

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*Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders.*

*Court's or Judge's order*

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Shri Kaustubh Deogade, counsel for the petitioner.  
 Shri C.J. Dhumane, counsel for the R-1.  
 Shri S.S. Ghate, counsel for the R-2 to 5.

**CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.**

**DATE : AUGUST 23, 2022.**

The challenge raised in this writ petition is to the appointment of an Enquiry Officer to enquire into the charges framed against the petitioner by the Disciplinary Authority. The petitioner seeks appointment of an employee of the Manganese Ore (India) Limited to act as an Enquiry Officer. A challenge is also raised to the charge-sheet issued to the petitioner in the matter of holding disciplinary enquiry against the petitioner.

The petitioner is holding the post of Chief (Finance) with the Manganese Ore (India) Limited. During the course of service, disciplinary action was proposed to be held against the petitioner. On 12.05.2022 Hon'ble Shri Justice K.J. Rohee (Retired) was appointed as an Enquiry Officer to enquire into the charges framed against the petitioner. According to the petitioner in view of the Employees (Disciplinary) Rules, 1978 (for short, 'the said Rules) and especially Rule 8(2) thereof an enquiry is required to be conducted by an Enquiry Officer who should be an employee of a Company or a Board or a Committee of such number of employees of the Company as may be nominated by the Disciplinary Authority. Since the Enquiry Officer appointed by the order dated 12.05.2022 was not an employee of the respondent no.2, the said communication has been challenged in the present writ petition.

It is submitted by the learned counsel for the petitioner that in view of the clear stipulation in Rule 8(2) of the said Rules it was only an employee of the Company who could act as an Enquiry Officer. Since the Enquiry Officer as appointed was not the employee of the Company such appointment was contrary to the provisions of Rule 8(2) of the said Rules. Attention was invited also to Rule 12 of the said Rules wherein special procedure to be followed in certain cases had been prescribed. There was no power with the Company to disregard Rule 8(2) of the said Rules while appointing the Enquiry Officer. On this count the appointment of the Enquiry Officer was liable to be set aside. The stand taken by the Company behind appointing a different Enquiry Officer was not justified. For that reason the enquiry itself was vitiated and it was liable to be set aside. The learned counsel also submitted that on 06.05.2021 the petitioner had demanded numerous documents to substantiate his defence in the enquiry proceedings. Without complying with that request the enquiry was sought to be further proceeded. It was therefore submitted that the appointment of the Enquiry Officer be set aside and another Enquiry Officer be appointed in terms of Rule 8(2) of the said Rules. The learned counsel for the petitioner placed reliance on the decisions in *Rakesh Kumar Pandey Versus State of U.P. Throu. Prin. Secy. Deptt. of Revenue Lko. & Others* [2019 SCC OnLine All 4004] and **Civil Appeal No.3490 of 2022** [*State Bank of India & Another Versus K.S. Vishwanath*] to support his contentions.

The learned counsel for the respondent nos.2 to 4 opposed aforesaid submissions. According to him under Rule 8(2) of the said Rules it was open for the Disciplinary Authority to itself enquire into the allegations against an employee or appoint an Authority to enquire into the truth thereof. It was not mandatory that the Enquiry Officer ought to be an employee of the Company. Referring to the minutes of the 339<sup>th</sup> Meeting of the Board of Directors it was submitted since the petitioner was making false and baseless allegations against the Management of the Company it had been resolved to conduct the

enquiry by appointing an outsider as an Enquiry Officer. As there was no bar to do so under Rule 8(2) of the said Rules, the challenge as raised by the petitioner was without any merit. As regards other challenges to the conduct of the enquiry it was submitted that same could be raised at the conclusion of the enquiry and not at this stage. The learned counsel for the respondent nos.2 to 4 placed reliance on the decisions in *Union of India & Others Versus Upendra Singh* [(1994) 3 SCC 357], *State Bank of Patiala & Others Versus S.K. Sharma* [(1996) 3 SCC 364] and *Crescent Dyes and Chemicals Ltd. Versus Ram Naresh Tripathi* [(1993) 2 SCC 115] to support his contentions. It was therefore submitted that the writ petition was liable to be dismissed.

We have heard the learned counsel for the parties and we have perused the documents placed on record. We find that under Rule 8(2) of the said Rules, there is no bar to appoint an outsider/non-employee as an Enquiry Officer for conducting an enquiry. Rule 8(2) of the said Rules reads thus:-

“8. *Procedure for imposing penalties:*

1) .....

2) *Whether the disciplinary authority is of the opinion that these are grounds for enquiry into the trust of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into or appoint an authority to enquire into the truth thereof. Such enquiry authority may consist of one employee of the Company or may be a Board or Committee of such number of employees of the Company as may be nominated by the Disciplinary Authority. ....”*

On a plain reading of the aforesaid Rule it is clear that the Disciplinary Authority may itself enquire into the charges or it may appoint an Authority to enquire into the truth thereof. The discretion that has been granted to appoint an employee of the Company as the Enquiry Officer is just another option to indicate as to who could be appointed as the Enquiry Officer. In the

minutes of the 339<sup>th</sup> Meeting of the Board of Directors held on 04.06.2021 it has been explained as to why an outsider was required to be appointed as an Enquiry Officer. By doing so the Company has merely acted in a manner as permissible under Rule 8(2) of the said Rules. It is therefore not possible to accept the petitioner's contention that such enquiry has to be conducted only by an employee of the Company and that no outsider can be so appointed. On this count the order dated 12.05.2022 does not deserve to be interfered with. The decisions relied upon by the learned counsel for the petitioner in this context does not further his case.

As regards the other challenge to the issuance of the charge-sheet dated 18.04.2021 is concerned, we are not inclined to go into such challenge at this stage. During the course of enquiry it is open for the petitioner to participate in the same and raise all permissible defences. At the conclusion of the enquiry if the petitioner is visited by any penalty it would be open for him to raise a challenge to such adverse order by raising all possible challenges. It is therefore not necessary at this stage to go into such challenge.

For aforesaid reasons, we are not inclined to interfere in writ jurisdiction. With liberty to challenge the outcome of the Disciplinary Enquiry after its conclusion if the occasion arises, the writ petition stands dismissed with no order as to costs.

**(URMILA JOSHI-PHALKE, J.)**

**(A. S. CHANDURKAR, J.)**

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