

S/L 6+7  
10.05.2023  
Court. No. 12  
*Sourav*

**WPA 6861 of 2020  
With  
CAN 1 of 2020 (Old No. CAN 5918 of 2020)  
With  
CAN 2 of 2020  
With  
CAN 3 of 2021  
With  
CAN 4 of 2021**

**Shyam Kumar Chaurasia  
Vs.  
Coal India Limited & Anr.**

*Mr. Ajay Debnath  
Mr. Sujit Saha  
Mr. Devranjan Das  
Mrs. Swagata Datta*

*...for the petitioner.*

*Mr. Debnath Ghosh  
Mr. Pranit Bag  
Mr. Saptarshi Mukherjee*

*...for the Coal India Limited.*

1. Both the petitioner and the respondents are represented by their respective learned advocates.
2. The instant writ petition is now taken up for hearing.
3. Heard learned advocates for contending parties at length.
4. The instant writ petition is now taken up for passing appropriate order.
5. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for cancellation and/or setting aside the order of dismissal dated 18.08.2020 of the present writ petitioner as issued by the respondent no. 2 authority.

6. In support of the instant writ petition, Mr. Debnath, learned advocate for the writ petitioner at the very outset submits before this Court that from September 2009 to January 2011, the present writ petitioner was posted as Mine Manager, Western Coalfields Limited which is a subsidiary company of the respondent No. 1. It is contended that while he was posted as Senior Manager of respondent No. 1 authority, he was served with a memorandum of charges dated 26.07.2012 wherein the article of charge as against him was abnormal shortage coal stock to the tune of 2891.616 mt. for which the respondent No. 1 suffered financial loss of Rs. 44,12,606/- on account of the alleged misconduct of the writ petitioner being the custodian of the said coalfield. Drawing attention to Annexure – P-5 of the writ petition, it is contended on behalf of the writ petitioner that on the basis of the aforementioned charge-sheet and followed by the charge as aforementioned, a disciplinary proceeding was started against the petitioner and on completion of such disciplinary proceeding, the disciplinary authority being the Chairman-cum-Managing Director of the respondent No. 1, i.e., respondent No. 2 herein has awarded the following punishment:-

***“reduction to one stage lower in time scale for one year on expiry of which it will not operate to postpone his future increment and he be allowed pay which they***

***would have drawn in the normal course to meet end of justice.”***

7. It is further submitted by Mr. Debnath, that the said punishment is a major penalty within the meaning of Rule 27 of ‘CIL Service Related Matter and Conduct Discipline and Appeal Rules, 1978’ (hereinafter referred to as the “said Rules of 1978”). It is further submitted by Mr. Debnath, learned Advocate for the writ petitioner that challenging the said penalty dated 10.09.2015 an appeal was preferred before the appellate authority by the present writ petitioner and during the pendency of the said appeal, the writ petitioner was served with a second show-cause notice dated 16.03.2020 in respect of the self-same alleged misconduct on the part of the present writ petitioner whereby and whereunder the respondent authorities have proposed to enhance penalty of dismissal from service on account of self-same alleged misconduct for which the writ petitioner was already imposed with a major penalty.
8. Drawing attention to Annexure – P-16 of the instant writ petition, Mr. Debnath contends that in reply to the said second show-cause notice, the present writ petitioner has raised his grounds of defence stating, *inter alia*, that in respect of self-same alleged misconduct, the present writ petitioner was already imposed with a major penalty. It is argued that the respondent authorities for the reasons best known to

them are not satisfied with the reply as given by the writ petitioner and, thus, most illegally and unlawfully issued the order of dismissal which is impugned before this Court by filing the instant writ petition. It is further argued by Mr. Debnath that the impugned order of dismissal is not justifiable in the eye of law and the same tantamounts to double jeopardy which is violative under Article 20 of the Constitution of India. It is, thus, argued that it is a fit case for allowing the instant writ petition by canceling and/or setting aside the impugned order of dismissal.

9. *Per contra*, Mr. Ghosh, learned Advocate for the respondents draws attention of this Court to the paragraphs 6 and 9 of the affidavit-in-opposition as filed by the respondents. It is contended by Mr. Ghosh that after conclusion of the disciplinary proceeding on 07.09.2017, a judgment of conviction dated 15.10.2018 was passed as against the present writ petitioner wherein the present writ petitioner was found guilty under Sections 409/120B of the Indian Penal Code and under Section 13(1) (c) read with Section 13(2) of the Prevention of Corruption Act, 1988 and that the factum of such conviction has come to the knowledge of the present respondents on 19.09.2019. It is further contended by Mr. Ghosh that immediately after getting knowledge of the conviction of the present writ petitioner in a serious crime involving moral turpitude, the respondent authorities

proceeded with the provisions of Rule 34 of the 'said Rule of 1978' and, accordingly, rightly passed the order of dismissal which is impugned before this Court.

10. It is contended by Mr. Ghosh that since the imposition of penalty dated 10.09.2015 and subsequent imposition of penalty, i.e., the order of dismissal dated 18.08.2020 are on two different footings, it cannot be said that the present writ petitioner had to suffer double jeopardy as wrongly alleged.
11. In support of his contention Mr. Ghosh places his reliance upon the following four reported decisions, namely, i) ***Life Insurance Corporation of India Vs. Mukesh Poonamchand Shah***, reported in ***(2020) 12 SCC 144***; ii) ***K.C. Sareen Vs. CBI Chandigarh***, reported in ***(2001) 6 SCC 584***; iii) ***Govt. of A.P. represented by its Principal Secretary to the Government, Home Department, Hyderabad Vs. B. Ashok Kumar***, reported in ***(1997) 5 SCC 478***; and iv) ***Municipal Committee, Bahadurgarh Vs. Krishnan Behari & Ors.***, reported in ***(1996) 2 SCC 714***.
12. It is submitted by Mr. Ghosh that the authorities as relied upon by him is absolutely similar to the facts and circumstances as involved in the instant writ petition.
13. This Court has meticulously gone through the entire materials as placed before this Court including the

order of dismissal as impugned before this Court. This Court has given its anxious consideration over the submissions of the learned Advocates for the contending parties. Undisputedly, the present writ petitioner had to face disciplinary proceeding in respect of this alleged misconduct for which the respondent authorities had to suffer a financial loss of more than Rs. 44 lakhs on account of shortage of 2891.616 mt. of coal for which he was imposed with a major penalty which has been described in the preceding paragraph.

14. Sufficient materials have been placed before this Court that at the time of imposition of the aforementioned major penalty dated 10.09.2015 by the disciplinary authority, the respondents were not aware of the conviction of the present writ petitioner by the Special Judge, C.B.I. Court in respect of charges under Section 120B read with Section 409 of the Indian Penal Code and under Section 13(1) (c) read with Section 13(2) of the Prevention of Corruption Act, 1988 since the said judgment was pronounced on 15.10.2018, i.e., much after the imposition of major penalty dated 10.09.2015 by the disciplinary authority of the respondent No. 1 authority.
15. At this juncture, a moot question arises for consideration before this Court is as to whether the writ petitioner has suffered double jeopardy on

account of the self-same misconduct by the order of dismissal as issued by the respondent No. 2 authority.

16. At this juncture, this Court proposes to look to the provisions of Rule 34 of the 'said Rules of 1978' and the same is reproduced hereunder in verbatim:

***“34.0 Special Procedure in Certain Cases***

***34.1 Notwithstanding anything contained in rule 29 or 30 or 31 the Disciplinary Authority may impose any of the penalties specified in rule 27 in any of the following circumstances –***

- i) where the employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial; or***
- ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or***
- iii) where the Disciplinary Authority is satisfied that in the interest of the security of the Company, it is not expedient to hold any inquiry in the manner provided in these rules.***

***Provided that the employee may be given an opportunity of making a representation to the penalty proposed to be imposed before any order is made under clause (i) above.***

***34.2 .....***

**34.3 .....”**

17. On perusal of the aforesaid bye-laws, it appears to this Court that Rule 34 of the ‘said Rules of 1978’ starts with a ‘notwithstanding Clause’ with regard to anything contained in Rule 29, 30 and 31 of the ‘said Rules of 1978’ and that Rule 29 deals with ‘procedure for imposing penalties’, Rule 30 deals with ‘action on the enquiry report’ and Rule 31 deals with ‘procedure for imposing minor penalties’. Since Rule 34 of the ‘said Rules of 1978’ has been placed after Rules 29, 30 and 31 of the ‘said Rules of 1978’, interpretation of statute prescribes that Rule 34 is to be construed keeping in mind the provisions Rules of 29, 30 and 31. Admittedly, Rule 27 of ‘said Rules of 1978’ deals with nature of penalties and the subsequent Rules, i.e., Rules 30 and 31 have dealt with as to how and when such penalties are to be imposed.
18. On perusal of Rule 34 of the ‘said Rules of 1978’, it reveals to this Court that Rule 34 of the ‘said Rules of 1978’ is an independent provision for which the disciplinary authority can take appropriate action notwithstanding the provisions contained in Rules 29, 30 and 31. In further considered view of this Court since by an order dated 10.09.2015, the present writ petitioner was imposed with a major penalty that does not preclude the respondent No. 1 and its officials to proceed with Rule 34 independently and, therefore, if a penalty is imposed under Rule 34 subsequent to the

imposition of penalty under Rule 27, it cannot be said that the imposition of penalty under Rule 34 causes double jeopardy to the present writ petitioner.

19. This Court is in respectful disagreement with the argument of Mr. Debnath, learned advocate for the writ petitioner that the impugned order of dismissal dated 18.08.2020 was passed on account of self same misconduct of the present writ petitioner for which he was already imposed with major penalty on 10.09.2015.
20. On the contrary, sufficient materials have been placed to substantiate that after conviction of the present writ petitioner, the respondents rightly proceeded as per provision of Rule 34 of the 'said Rules of 1978' and passed the impugned order of dismissal dated 18.08.2020.
21. In considered view of this Court, the same view was taken by the Hon'ble Supreme Court of India in the reported decision of ***Life Insurance Corporation of India vs. Mukesh Poonamchand Shah*** reported in **(2020) 12 SCC 144** though under the provisions of Regulations of LIC but in considered view of this Court the Regulation 39 (1) of the 1960 Regulations of LIC of India is almost similar to Rule 34 of the 'said Rules of 1978'.
22. In the light of the discussion made hereinabove and in view of the fact that the present writ petitioner was convicted on a subsequent date, i.e., on 15.12.2018

after imposition of major penalty dated 10.09.2015 by the respondent no.2, there cannot be any bar upon the respondents to impose further penalty under the Rule 34 of the 'said Rules of 1978'.

23. In view of the discussion made hereinabove, this Court thus finds that the instant writ petition is devoid of any merit and thus, there cannot be any justification to interfere with the impugned order of dismissal dated 18.08.2020 as prayed for.
24. In view of such, the instant writ petition being **WPA 6861 of 2020** is hereby dismissed on contest.
25. All the interim applications are hereby disposed of.
26. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(Partha Sarathi Sen, J.)**

**WPA 5769 of 2020  
With  
CAN 1 of 2020 (Old No. CAN 3751 of 2020)**

**Shyam Kumar Chaurasia  
Vs.  
Coal India Limited & Anr.**

*Mr. Ajay Debnath  
Mr. Sujit Saha  
Mr. Devranjan Das  
Mrs. Swagata Datta*

*...for the petitioner.*

*Mr. Debnath Ghosh  
Mr. Pranit Bag  
Mr. Saptarshi Mukherjee*

*...for the Coal India Limited.*

1. In view of the dismissal of the writ petition being WPA 6861 of 2020 there remains nothing to be decided in **WPA 5769 of 2020** and the same is thus also dismissed on contest.
2. All the interim applications are hereby disposed of.
3. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

**(Partha Sarathi Sen, J.)**