04.12.2023
Court No.13
Item No. 13
pk

WPA 9759 of 2023

Rahman Mia
Vs.
M/s. Eastern Coal Fields Limited and others

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Simran Sureka,
Mr. Debashis Das
… for the petitioner.

Mr. Manik Das
… for the ECL.

1. The writ petitioner is aggrieved by a charge sheet dated 24.02.2023 on twofold grounds. The first ground is that the charges are stale and 33 years old. The second ground is that charge sheet is vague since the name of the complainant is not mentioned and documents relied upon in support of the charge sheet have not been supplied to the petitioner.

2. The brief facts leading to the charge sheet are that the petitioner secured employment on compassionate ground on account of the death of his alleged father Charku Mia who was an employee of ECL. The employee died on 04.01.1990 and the petitioner obtained employment as his alleged son on 22.11.1990.

3. The allegations in the chargesheet are of fraud, dishonesty, false information in obtaining compassionate employment and false statement as regard the name, age,

qualification of the petitioner and the relationship with the deceased occurred 33 years ago.

4. Counsel for the petitioner would argue that initiating departmental proceeding of an incident that occurred 33 years ago is not illegal but also grossly unsustainable based on the dicta of the Supreme Court in several cases. The cases shall be discussed shortly herein after.

5. It is also argued next that the charge sheet is vague to the extent that the name of the persons who complained against the petitioner and the complaint itself is not disclosed in the charge sheet. None of the documents in issuance of the charge sheet have been furnished to the petitioner.

6. On the second argument, Ld. counsel placed two judgements i.e. **Union of India and others Vs. Gyan Chand Chattar** reported in **(2009) 12 SCC 78** and the case of **State of U. P. Vs. Shatrughan Lal and another** reported in **(1998) 6 SCC 651**.

7. It is now well settled that it is only the documents relevant for the purpose of proving the charges against the petitioner and relied upon by the Management that are required to be supplied to an employee. A preliminary enquiry report need not be supplied to a delinquent employee unless the same is relied upon in evidence by the Management and/or the enquiry authority.

8. If the charges are vague, the petitioner is at liberty to seek clarification and/or also seek documents in support of the defence from the Management and/or the enquiry authority. The enquiry authority upon consideration of the relevant documents could consider furnishing the same to the petitioner. Such stage admittedly has not arisen as the enquiry has not commenced. The enquiring authority has not yet submitted a report. The petitioner may make an appropriate application which he claims to have made for such documents.

9. It is only after completion of the enquiry and upon receipt of the enquiry report and its consideration by the disciplinary authority that the petitioner could challenge the proceedings.

10. The challenge to the proceedings at this stage would be rather premature and not permissible in law. The said two decisions relied upon by the petitioner are not applicable in the facts of the instant case.

11. Let us now consider the argument of the petitioner that the charges are stale.

12. Counsel for the Management, however, indicates to this Court that it is only upon receipt of a complaint from one Rahamat Ansari claiming to be the son of deceased Charku Mia on 15th June, 2022 that the employer came to know of the alleged misconduct by the petitioner.

13. The misconduct in the instant case is such that if proved, would question the petitioner's engagement as an employee of the ECL.

14. This Court is therefore of the view that the date of discovery and knowledge of misconduct in the question i.e. May 2022 if taken into consideration would not indicate any serious or substantial delay in issuing the charge sheet against the petitioner.

15. Let us now take a decision cited by the learned counsel for the petitioner. The first case relied upon is **P. V. Mahadevan Vs. MD., T. N. Housing Board** reported in **(2005) 6 SCC 636**. In the said case a charge sheet was issued in the year 2000, for an irregularity in the employee executing a sale deed in 1990 in favour of another employee at the verge of retirement. The act in question, was committed in course of his duties as an employee. This is essentially distinguishable fact as opposed to the facts of the instant case where the very employment was secured by falsehood or misrepresentation and fraud. The observation of the Supreme Court in the said decision **P. V. Mahadevan (supra)** therefore would not have application in the facts of the case.

16. The next decision relied upon by the petitioner in the case of **Ranabir Saha Vs. Union of India and others** reported in **2007 SCC OnLine Cal 687**. Even in the said case, a Division Bench of this Court was considering a

charge sheet issued in February, 2004 of an act that occurred of alleged misconduct on 16th December, 1981. The explanation offered by the Management that it received information from the Dock Labour Board in the year 2003 was not accepted. The charge in question was regarding incorrect submissions of LTC particulars. Once again such charge arose in course of a lawful and valid employment. The facts of the said case are equally distinguishable with the facts of the instant case. The said case was no manner of application.

17. The next decision is the case of **Dibyendu Chakraborty Vs. Union of India and others** passed by a Division Bench of this Court reported in **2022 (1) CLJ (Cal) 550**. In the said case the charge against the employee was that the employment was obtained on the basis of a fake employment certificate issued by another authority.

18. The Division Bench found that the authorities despite having the document on record did not take any step to verify the same for a period of 11 years after the petitioner entered employment. Falsehood alleged against the employee therein was based on a document which was already available with the employer. In the instant case the employer did not have any knowledge of any false, fake or incorrect documents submitted by the petitioner until the year 2022.

19. In addition to the above, the Division Bench in **Dibyendu Chakraborty (supra)** case also found serious lapses on the part of the disciplinary and appellate authority and were convinced with impropriety of the proceedings. Interference was considered and done after the enquiry was completed and the Central Administrative Tribunal had upheld the proceedings. The challenge before the Division Bench was to an order of the Central Administrative Tribunal. The said decision once again is distinguishable on the facts.

20. The last decision relied upon by the counsel for the petitioner in the case of Union of India is unreported decision of the Delhi High Court dated 7th October, 2015 being **Union of India Vs. Yuvraj Gupta and others** in W.P.(C) 3051 of 2015. This Court constrained to observe that the said decision is at best of persuasive value and not binding of this Court. The said decision also appears to be contrary to several decisions of the Supreme Court with regard to disciplinary proceedings. In the said case a Commissioner of Customs and Central Excise, who was already being investigated by the C.B.I. under the P. C. Act and provisions of the IPC was issued a charge sheet of several incidents of illegal gratification and misconduct received by him and his family members from 01.01.1987 till 01.03.2004. The charge sheet was issued in the year 2000. The enquiry was completed and there was no valid

explanation for inordinate delay of 10 years in starting the proceedings.

21. This Court is unable to apply the decision of the Delhi High Court to the facts of the instant case.

22. It is now well settled that a decision is authority for the proposition laid down in the background of the special facts of such case. Reference in this regard is made to the decision of the Supreme Court in the case of **Arasmeta Captive Power Company Pvt. Ltd. & Anr. Vs. Lafarge India Pvt. Ltd.** reported in **(2013) 15 SCC 414.**

23. Specifically on the issue at hand one must however take note of the decision of the Supreme Court in the case of **State of A.P. Vs. N. Radhakishan** reported in **(1998) 4 SCC 154**. At paragraph 19 it was held as follows:-

> "**19.** It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the

rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

24. In **Anant R. Kulkarni Vs. Y. P. Education Society and Ors.** reported in **(2013) 6 SCC 515** at paragraph 14 it was held as follows:-

"Enquiry at belated stage

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P.* v. *Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P.* v. *Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *State of Punjab* v. *Chaman Lal Goyal* [(1995) 2 SCC 570 : 1995 SCC (L&S) 541 : (1995) 29 ATC 546] , *State of A.P.* v. *N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani* v. *Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India* v. *Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304 : AIR 2007 SC 906] , *Ministry of Defence* v. *Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] and *LIC* v. *A. Masilamani* [(2013) 6 SCC 530 : JT (2012) 11 SC 533] .)"

25. It follows from the above the delay in taking out departmental proceedings cannot be ipso facto fatal. It depends on the facts of each case.

26. This Court is of the view that the charge sheet issued against the petitioner cannot be deemed illegal at this stage. The employer came to know of the misconduct of the year 1990 only in the year 2022. It is inappropriate to quash any proceeding against an employee in the facts of the instant case.

27. It is however made clear that all questions are kept open for the petitioner to agitate before an appropriate forum as regards the disciplinary proceedings and impropriety in accordance with law at an appropriate stage.

28. Any observation made in this decision should not stand in the way of such future challenge being considered by the appropriate forum in accordance with law.

29. Since no affidavit has been used by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted by this Court.

30. The writ petition is disposed of.

31. There will be no order as to costs.

32. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)