

48 24.01.2023
RP Ct.No. 25

WPA 13906 OF 2019

Shri Kaushal Kishore Singh
vs.
The Coal India Ltd. & Ors.

Mr. Rittick Chowdhury
Mr. Roshan Sengupta

.... For Petitioner

Mr. Puspall Chakraborty
Mr. Tirthankar Nandi

.... For Respondent No.3

The petitioner has challenged the penalty order dated January 29, 2018 passed by the Disciplinary Authority and the appellate order dated May 14, 2019 in this writ petition.

The writ petitioner was served with a memorandum of charges on November 26, 2015 while he was serving as a Chief Manager (Civil)/Deputy General Manager (Admn.) of Bharat Cooking Coal Limited (for short "BCCL"). The allegation against the petitioner was that he was involved in preparation of a forged document DE-5 inasmuch as he wrote some comment and put his signature with back date. The petitioner submitted his representation and the Enquiry Officer submitted the report on June 28, 2016. The Disciplinary Authority issued a note of disagreement on the enquiry report and called for a representation from the petitioner against the enquiry report and the note of disagreement. The petitioner claims to have submitted the representation against the note of disagreement. The Disciplinary Authority passed the penalty order on January 29, 2018 holding that the petitioner is guilty of the charges

leveled against him and imposed penalty of reduction of one stage lower from the date of issue of charge sheet for a period of one year before his superannuation without cumulative effect. The petitioner preferred an appeal against the said penalty order and the Appellate Authority by an order dated May 10, 2015 affirmed the penalty order dated January 29, 2018.

The petitioner has challenged the penalty order and the order of the Appellate Authority affirming the same in this writ petition. The learned advocate for the petitioner contends that though the petitioner submitted a detailed representation against the note of disagreement of the Disciplinary Authority, such authority held the petitioner guilty by a totally non-speaking order. He further submits that though other charged officers on the selfsame charges were penalized by “censor” only but the petitioner was inflicted with the penalty of stoppage of one increment. He relies upon a decision of the Hon’ble Supreme Court of India in the case of **State of Uttar Pradesh & Ors. vs. Raj Pal Singh** reported in **(2010) 5 SCC 783** in support of his submission that when charges are same and identical in relation to one and the same incident, dealing with the delinquents differently while awarding punishment would be discriminatory.

Per contra Mr. Chakraborty, learned advocate appearing for the respondent no.3 submits that the Disciplinary Authority in its note of disagreement has set out

exhaustively the reasons for disagreeing with the findings of the Enquiry Officer. He further submits that the petitioner in his representation against the said note of disagreement could not rebut the findings of the Disciplinary Authority indicated in the note of disagreement for which the Disciplinary Authority was of the opinion that the reply submitted by the delinquent was not satisfactory. He further submits that the petitioner thereafter preferred an appeal and the Appellate Authority by its order dated May 14, 2019 after taking into consideration the materials on record held that the penalty imposed by the Disciplinary Authority is sufficiently reasonable. He further submits that the scope of interference by a writ Court in a disciplinary enquiry is very restricted inasmuch as the High Court cannot act as an appellate Court. It cannot also re-appreciate the evidence. He submits that since the petitioner was afforded opportunity at all stages of the proceedings, it does not lie in the mouth of the petitioner to contend that the principle of natural justice has been violated in the case on hand.

None appears for the Coal India Limited in spite of notice. No affidavit-in-opposition has also been filed by the said respondent.

Heard the learned advocates for the parties and perused the materials placed.

It is well settled that the scope of interference by the Writ Court in a disciplinary enquiry matter is very limited.

It is also well-settled that in case there is violation of principles of natural justice, the writ Court would be well justified in interfering with the orders passed by the authorities in matters relating to disciplinary enquiry. Though Mr. Chakraborty argues that the petitioner was afforded reasonable opportunity at all stages of the proceeding but the issue that is germane in the instant case is whether the Disciplinary Authority while dealing with the representation of the petitioner against the note on disagreement of the Disciplinary Authority has dealt with the contention of the petitioner in its penalty order as also whether such authority has assigned cogent reasons for rejecting the contentions of the petitioner against the note of disagreement.

After going through the penalty order dated January 29, 2019 this Court finds that the Disciplinary Authority held the petitioner guilty of the charges levelled against him by passing a cryptic order. The relevant portion of the said order is extracted below.

“Whereas, after careful examination of the reply of Disagreement Note and the relevant facts & circumstances of the case, the then CMD/DA was of the opinion that the reply submitted by Shri K.K. Singh was not satisfactory and Shri K.K. Singh was found to be guilty of the charges leveled against him vide Memorandum referred above;”

The Disciplinary Authority only indicated that the reply

submitted by the petitioner was not satisfactory.

After going through the representation of the petitioner dated March 6, 2016 against the note of disagreement this Court finds that the same is a detailed one. Several points were taken in the said representation including that several other charged officers who were charged with similar offence were penalized with lesser punishment. The order of the Disciplinary Authority is an unreasoned and cryptic one. The purpose behind affording an opportunity to a delinquent to submit representation against the note of disagreement is to allow such delinquent an opportunity to rebut the tentative findings of the disciplinary authority in the note of disagreement. The object behind affording opportunity to submit representation against the note of disagreement is frustrated in the instant case as the Disciplinary Authority instead of dealing with the contentions made by the petitioner against the note of disagreement rejected the same by only observing that the reply against the note of disagreement is unsatisfactory. Failure to record reasons by the Disciplinary Authority amounts to violation of the principles of natural justice.

The Appellate Authority also did not consider the points taken by the petitioner in the reply against the note on disagreement and mechanically affirmed the order passed by the Disciplinary Authority. Therefore, the order of the appellate authority suffers from infirmity. There is no quarrel to the proposition of law laid down in **Raj Pal Singh**

(Supra) that when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment would be discriminatory. However, this Court cannot decide at this stage as to whether the punishment inflicted upon the petitioner is discriminatory as neither the Disciplinary Authority nor the Appellate Authority returned any finding in that regard. Since the penalty order was passed on January 29, 2018 and the appellate order was passed on May 14, 2019 and the petitioner has since retired, this Court is of the considered view that the interest of justice would be subserved if the Appellate Authority is directed to reconsider the appeal petition dated February 14, 2018 afresh and to dispose of the same by passing a reasoned order.

For the reasons as aforesaid, the order of the appellate authority dated May 14, 2019 is set aside and quashed. The Appellate Authority is directed to consider the appeal petition dated 14th February, 2018 afresh and decide the same after taking into consideration the representation of the petitioner against the note on disagreement by the Disciplinary Authority and after giving an opportunity of hearing to the petitioner by passing a reasoned order which shall be communicated to the petitioner immediately thereafter.

Since the petitioner has already retired from service and this writ petition is pending before this Court from

2019, the entire exercise is to be completed by the appellate authority within a period of four weeks from the date of communication of this order. It is also made clear that the petitioner will be at liberty to submit materials in support of his contention that the penalty inflicted upon the petitioner is discriminatory.

The writ petition stands disposed of with the above directions and observations.

Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)