

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 19896 of 2019
Suresh Prasad Singh
VS
The Coal India Ltd. & ors.**

For the Petitioner : Mr. Srijib Chakraborty,
Mr. Pankaj Agarwal,
Mr. Champa Paladvocates

For the respondent authorities : Mr. Arunava Ghosh,
Mr. Pradipta Bose ... advocates

Reserved on : 30.06.2023

Judgment on : 05.10.2023

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for setting aside the Enquiry Report dated 15.07.2016 and the order of dismissal dated 29.06.2017 passed by the 2nd respondent.
2. Petitioner was served with a Memorandum of charges dated 21.08.2015 while he was acting as the General Manager (Production) at BCCL. The said Memorandum of charges was issued by the Chairman-cum-Managing Director being the 4th respondent. Petitioner submitted his written statement of defence on 08.09.2015. Petitioner was served with a copy of the Inquiry Report on 07.04.2017 with a direction to submit his reply within the stipulated time. Petitioner submitted his reply against the Inquiry Report before the 4th respondent. Thereafter, the Chairman-cum-Managing Director, Coal India Ltd. being the 2nd respondent passed the order of dismissal on 29.06.2017.

3. Mr. Chakraborty, learned advocate for the petitioner contended that the petitioner was out of station for his medical treatment for which he could not participate in the enquiry proceedings. Mr. Chakraborty submitted that a fresh enquiry proceedings should be conducted in order to afford an opportunity to the petitioner to participate in such inquiry. Mr. Chakraborty further contended that the procedures prescribed under Rule 28 of the Coal India Executives' Conduct, Discipline and Appeal Rule 1978 (for short "the 1978 Rules") have not been followed in the instant case and, therefore, the order of dismissal passed by the second respondent should be set aside.
4. Mr. Ghosh, learned counsel representing the respondent nos. 4 and 5 contended that Central Bureau of Investigation had initiated a proceeding against the petitioner for offence punishable under Section 120B read with Section 409 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. A non-bailable warrant of arrest was issued against the petitioner on 20.11.2015 and the petitioner remained absconding for nearly ten months. Petitioner was taken into custody on 09.09.2016 and was enlarged on bail on 01.04.2017. Mr. Ghosh further contended that since the penalty to be imposed on the petitioner falls under major penalty, the records of the enquiry were forwarded to the 2nd respondent who is competent to impose major penalty. Mr. Ghosh concluded by submitting that the procedures for conducting the enquiry were followed strictly as per the 1978 Rules.
5. Heard the learned advocates for the parties and perused the materials placed.
6. Record reveals that the Memorandum of Charges dated 21.08.2015 was issued by the Chairman-cum-Managing Director of BCCL and the Disciplinary authority thereby proposing to hold an inquiry against the petitioner. Petitioner duly replied to the said Memorandum of charges by a letter dated 08.09.2015. Petitioner, however, did not participate in the inquiry proceedings conducted by the 5th respondent.
7. In the Inquiry Report dated 15.07.2016 it is recorded that the petitioner did not appear in person or through assisting officer and, therefore, the inquiry was held against him ex parte. The Inquiry Officer ultimately observed that both the charges leveled against the petitioner are proved.

8. Petitioner submitted his reply against the Inquiry Report. In the said letter, the petitioner explained the reasons as to why he could not participate in the inquiry. Since the Inquiry Authority conducted the proceedings ex parte, petitioner prayed for conducting an inquiry afresh by providing an opportunity to the petitioner to defend himself. Such reply against the Inquiry Report was submitted by the petitioner before the 4th respondent.
9. It is evident from the records that the order of dismissal was passed by the 2nd respondent on 29.06.2017. It was recorded in the said order that the representation of the petitioner against the Inquiry Report was not received within time. The 2nd respondent observed that ends of justice shall be met if the petitioner is awarded the major penalty of dismissal.
10. Admittedly the 4th respondent being the disciplinary authority instituted the disciplinary proceedings against the petitioner. The 4th respondent caused such inquiry into the charges by the 5th respondent. The dismissal order was, however, passed by the 2nd respondent.
11. According to the writ petitioner the procedure prescribed under Rule 28 of the 1978 Rules have not been followed. For deciding such contention Rule 28 is extracted hereinbelow.

“28.0 AUTHORITY TO INSTITUTE PROCEEDINGS

28.1 The Disciplinary Authority or any Authority higher than it may institute disciplinary proceedings against any employee.

28.2 A Disciplinary Authority competent under these rules to impose any of the penalties specified in clauses (a) to (d) of rule 27.1 (ii) may institute disciplinary proceedings against any employee for imposition of any of the penalties specified in clauses (b) to (d) of rule 27.1 (ii) notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties.

28.3 Where a Disciplinary Authority competent to impose any of the penalties specified in clause (a) to (d) of rule 27.1 (i) and clause (a) of rule 27.1 (ii) but not competent to impose any of the penalties specified in the clauses (b) to (d) of rule 27.1 (ii), has itself inquired into or caused to be inquired into any charge and that Authority, having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that any of the penalties specified in clauses (b) to (d) of rule 27.1 (ii) should be imposed

on the employee, that Authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.”

12. In terms of Rule 28.3, if the disciplinary authority who caused an inquiry into the charges by an Inquiry Authority and that Authority having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that any of the penalties specified in clauses (b) to (d) of Rule 27.1 (ii) should be imposed on the employee, that Authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.
13. As per Rule 28.3, in case the disciplinary authority described in first part of the sub-rule itself makes an inquiry, the opinion that any of the penalties specified in Rule 27.1 (ii)(b) to (d) should be imposed on the employee should be formed having regard to its own findings in the inquiry. If, however, such disciplinary authority caused an inquiry to be made, then such opinion should be formed having regard to its decision on any of the findings of the Inquiry Authority. It follows therefrom that in cases falling under the later category, such Disciplinary Authority has to first take a decision on the findings of the Inquiry Authority and having regard to such decision has to form an opinion that any of the penalties under Rule 27.1 (ii) (b) to (d) should be imposed and only after formation of such opinion, the records of the inquiry is to be forwarded to the Disciplinary Authority competent to impose such punishments.
14. Such being the procedure prescribed under Rule 28.3, this Court is of the considered view that a reasoned decision of the disciplinary authority on the findings of the inquiry forms the basis of such opinion. This Court, therefore, holds that the “opinion” referred to in Rule 28.3 shall be in writing.
15. Since formation of opinion is a prerequisite for forwarding the records of inquiry from one authority to the other, to the mind of this Court, such opinion should also form part of the proceedings.
16. In the affidavit-in-opposition, it was stated that under Serial No. 3 of Schedule under Rule 27, the Chairman-cum-Managing Director of a subsidiary company is eligible to impose all penalties except those under Rule 27.1 (ii) (b), (c) and (d). It was further stated that in the instant case since the penalty to be imposed on the petitioner falls under major

penalty and as such under Clause 28.3 the records of the enquiry were forwarded to the Chairman-cum-Managing Director of Coal India Limited, who is competent to impose major penalty.

17. The said affidavit of the respondent authority is also silent as to formation of opinion as contemplated under Rule 28.3.
18. The order of dismissal dated 29.06.2017 passed by the 2nd respondent also do not refer to formation of such opinion by the 4th respondent. This Court, therefore, holds that there was no formation of opinion as required under Rule 28.3. It is further held that forwarding the records of inquiry mechanically by the 4th respondent to the 2nd respondent cannot be said to be in compliance with Rule 28.3. The decision making process, therefore, suffers from infirmity. For such reason, the order of dismissal is liable to be set aside and quashed.
19. That apart, the 2nd respondent in the order dated 29.06.2017 recorded that the representation of the petitioner was not received within time. It is, evident from the records that the representation was received prior to passing the order of dismissal. No decision on such representation appears to have been taken by the authorities.
20. Mr. Chakraborty, would vehemently contend that the reasons for not participating in the inquiry proceedings were beyond the control of the petitioner. Mr. Ghosh disputed such contention of Mr. Chakraborty by submitting that in spite of being afforded adequate opportunity, the petitioner did not participate in the inquiry proceedings. The issue whether the petitioner deliberately avoided to participate in the inquiry proceedings or not is entirely factual and a writ court cannot decide such disputed question of fact. Such issue should be best left for the authorities to consider and decide.
21. In the said representation, petitioner prayed for conducting an inquiry afresh for the reasons as stated therein. This Court is therefore, of the considered view that such representation is required to be decided by the concerned authority. Depending on the fate of such representation, the 4th respondent shall proceed in accordance with Rule 28.3.
22. For all the reasons as aforesaid the order of dismissal dated 29.06.2017 passed by the respondent no. 2 is set aside and quashed. The 4th respondent is directed to first consider and decide the prayer of the petitioner contained in the representation dated 22.04.2017 for conducting a fresh inquiry and depending upon the fate of such representation the 4th respondent shall proceed strictly in terms of Rule

28.3 in the light of the observations made hereinbefore. Petitioner shall be obliged to supply a copy of the said representation along with a server copy of this order within a period of two weeks from the receipt of the server copy of this order. The entire exercise shall be completed by the respondent authorities in terms of this order within a period of twelve weeks from the date of communication of this order along with the copy of the representation by the petitioner.

23. The writ petition stands allowed with the aforesaid directions. There shall be, however, no order as to costs.
24. It is, however, made clear that this court has not gone into the claim of the petitioner for release of retiral benefits in view of the aforesaid observations and directions passed by this Court. Such issue is accordingly left open.
25. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)