



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

WRIT PETITION NO. 3823 OF 2019
WITH
WRIT PETITION NO. 2180 OF 2023

W.P. NO.3823/2019

Kishor S/o. Jairam Chakole,
Aged about 51 years, Occupation :
unemployed, R/o. Plot No.136,
Ayurvedic Layout, Umred Road,
Sakkardara, Nagpur – 440 001.

.... PETITIONER.

// VERSUS //

1. Central Government Industrial Tribunal,
Through its Presiding Officer, New Secretariat
Building, First Floor, Civil Lines, Opposite
VCA Ground, Nagpur – 440 001.
2. Western Coalfields Ltd., Nagpur Area,
Through its Area General Manager,
At Post Jaripatka, Nagpur – 440 014.

.... RESPONDENTS.

Shri S.P. Bhandarkar, Advocate for Petitioner.
Ms Gauri Venkatraman, Advocate for Respondent No.2.

AND

W.P. NO.2180/2023

Western Coalfields Ltd., Nagpur Area,
Through its Area General Manager,
At Post Jaripatka, Nagpur – 440 014.

.... **PETITIONER.**

// **VERSUS** //

Kishore s/o. Jairam Chakole,
Aged about 51 years, Occupation :
unemployed, R/o. Plot No.136,
Ayurvedic Layout, Umred Road,
Sakkardara, Nagpur – 440 001.

.... **RESPONDENT.**

Ms Gauri Venkatraman, Advocate for Petitioner.
Shri S.P. Bhandarkar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 22/08/2023

DATE OF PRONOUNCING THE JUDGMENT : 05/10/2023

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. In these writ petitions a challenge is raised to the award, dated 05/02/2018, passed by the Presiding Officer, Central Government

Industrial Tribunal cum Labour Court, Nagpur (CGIT), whereby the punishment of dismissal of the workman (Petitioner in W.P. No.3823 of 2019) held to be fair, just and legal and further due to lack of procedure in departmental enquiry lump sum compensation of Rs.50,000/- was granted in lieu of reinstatement.

4. The Writ Petition No.3823 of 2019 is filed by the workman seeking reinstatement with continuity of service and full back wages.

5. Whereas, the Writ Petition No.2180 of 2023 is filed at the instance of the employer who is seeking setting aside the award to the extent it holds that due to lack of procedure in departmental enquiry the workman is entitled to lump sum compensation of Rs.50,000/-.

6. As both the writ petitions are arising out of the same award, they are heard and decided together.

The brief facts of the present case are as under:

7. It is the case of the workman that he came to be appointed as General Mazdoor in 1984 and then promoted as Electric Fitter

Helper. The workman was served with a charge sheet on 15/10/2004 and put under suspension. In the charge-sheet two charges were levelled against him namely (1) that he was in the habit of remaining absent from duty without any sufficient reason or he was habitual in attending his duties late, (2) remaining absent without any sanctioned leave or without any reasonable cause or remaining absent for more than 10 days beyond sanctioned leave.

8. The said charges were denied by the workman stating that he met with an accident on duty in 1989 and his treatment undergone in Mayo General Hospital, Nagpur from 13/08/2004 to 06/03/2005. He was advised bed-rest from 13/08/2004 to 18/10/2004.

9. Thereupon, the enquiry was conducted and on 19/11/2005 the enquiry report was submitted. Thereafter he was dismissed from the services vide order dated 12/02/2006.

10. Accordingly, the reference was made under Section 10 of the Industrial Disputes Act, 1947 to the CGIT cum Labour Court, Nagpur with the following schedule :

“Whether the action of the management of the Western Coalfields Ltd., Nagpur area in imposing the

punishment of dismissal on Shri Kishore Jairam Chakole, Electrical Fitter Helper, is fair, just and legal? If not, to what relief is entitled to the concerned workman to?”

11. The learned Tribunal vide impugned award dated 05/02/2018 held the dismissal as just and fair. However, at the same time, due to lack of procedure in departmental enquiry, the workman is held to be entitled for lump sum compensation of Rs.50,000/- in lieu of the reinstatement. The said award and order is under challenge in this writ petition.

12. I have heard the learned counsel for the respective parties.

13. Shri Bhandarkar, learned counsel for the workman argues that once the Court has arrived at a conclusion that the proper procedure was not followed in the departmental enquiry, the Tribunal ought not to have granted compensation in lieu of reinstatement, but the Tribunal ought to have granted reinstatement with continuity of service and back wages. He, therefore, submits that the learned Tribunal has committed error in not granting reinstatement to the workman.

14. He further argues that the punishment is shockingly disproportionate. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Jagdish Singh ..vs.. Punjab Engg. College*, reported in (2009)7 SCC 301 and a judgment of Division Bench of this Court in the case of *Shakuntala sd/o Yuvraj Patil ..vs.. The State of Maharashtra* in W.P.No.145 of 2013, decided on 24/02/2018.

15. On the other hand, Ms Venkatraman, learned counsel for the employer has argued that once the Tribunal, while passing order on validity of departmental enquiry, has held that the departmental enquiry is legal, proper and in accordance with the principles of natural justice, subsequently by recording the contrary findings while passing the award cannot grant compensation in lieu of reinstatement. It is therefore, prayed that the award impugned may be quashed and set aside.

16. Ms Venkatraman further argues that the scope of judicial interference is limited in the matter of departmental enquiry and the Tribunal cannot interfere with the findings of fact recorded in the enquiry, unless such findings are perverse and without evidence.

17. She further argues that absenteeism is a major misconduct and in such matters the punishment of dismissal from service is permissible. For this purpose she has placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of *State of Odisha ..vs.. Ganesh Chandra Sahoo*, reported in **2020(2) SCC 588**, in the case of *Union of India ..vs.. Ghulam Mohd. Bhat*, reported in **2005(13) SCC 228** and in the case of *North-Eastern Karnataka Rt. Corpn. ..vs.. Ashappa*, reported in **(2006) 5 SCC 137**.

18. In light of rival contentions, I have gone through the record and the impugned award.

19. The learned Tribunal while observing that there was defect in departmental enquiry, has held thus :

“16. On behalf of workman, in written note of argument, it was argued that, two charge sheets were issued to the workman but, both were stereo type. He relied case laws, Kantilal Bera Vs Union of India 2007 CLR 830 and Gaya Singh Vs Chairman, Coal India Ltd., 2003 II CLR 991, in which, Lordships held that, “First charge sheet against petitioner having not been withdrawn, nor having reached its finality, second charge sheet for same allegations, not maintainable there is no explanation given by the respondent.”

17. On behalf of the management, W.S. is filed and in para 5 of the W.S., it was mentioned that, “After receiving the charge sheet ... he continued to remain

absent till 20.01.2005. Therefore the charge sheet dated 20/21.01.2005 was issued for different period of absenteeism.” In my opinion, this explanation is not proper as per principle laid down in the above case laws. So, in my view, there was defect in departmental enquiry.”

20. On the other hand, the learned Tribunal has rejected the contention of the workman that the enquiry conducted *ex parte* and the punishment imposed by the management was improper and it is held that no prejudice caused to the workman in the departmental enquiry and he got full opportunity to defend himself.

21. It is pertinent to note here that while recording the findings in the order of validity on the departmental enquiry, the Tribunal has in clear terms held that the departmental enquiry held against the workman is legal, proper and in accordance with the principles of natural justice.

22. Thus, once the departmental enquiry is held to be legal, proper and in accordance with the principles of natural justice, subsequently holding that though the punishment of dismissal is fair, just and legal but due to lack of procedure in departmental enquiry the workman is entitled for lump sum compensation in lieu of reinstatement,

is contrary to its own findings made on the order of validity of the departmental enquiry.

23. Moreover, while not accepting the explanation offered by the employer in respect of second charge sheet, the learned Tribunal has not recorded any reason and only observed that “*In my opinion, this explanation is not proper as per principles laid down in above case laws. So, in my view there was defect in departmental enquiry.*”

24. The learned Tribunal while not accepting the explanation offered by the employer for issuance of second charge sheet, failed to observe whether the charges levelled in both the charge sheets and period of absenteeism were same.

25. Thus, in light of the above referred observations, I am of the considered view that this matter needs to be remanded back to the learned CGIT cum Labour Court, Nagpur to decide the same afresh after hearing both the parties. Accordingly, I pass the following order:

- i) The writ petitions are partly allowed.

- ii) The impugned award dated 05/02/2018 passed by CGIT cum Labour Court, Nagpur in CGIT/NGP/58/2013-14, is hereby quashed and set aside.
- iii) The matter is remanded back to the learned CGIT cum Labour Court, Nagpur for deciding the same afresh after hearing both the parties on its own merits.
- iv) The learned Tribunal shall decide the reference expeditiously and in any case within four months from the date of appearance of the parties.
- v) The parties shall appear before the CGIT cum Labour Court, Nagpur on 16/10/2023 at 11:00 a.m.

Both the Writ Petitions are **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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