

02.04.2024
Suppl. No.1
Court No.8
(gc)

**MAT 1290 of 2023
CAN 1 of 2023
CAN 2 of 2024
With
WPA 11675 of 2023**

**Mahesh Prasad
Vs.
Eastern Coalfields Ltd. & Ors.**

Mr. Debajyoti Basu,
Mr. Kunal Ganguly,
Mr. Tirupati Mukherjee,
Mr. Dibyendu Ghosh
...for the Appellant/
Writ Petitioner.

Mr. Syed Nurul Arefin,
Ms. Rashmi Binayak,
Mr. Syed Moyeenul Arefin
...for the Respondents.

1. This appeal is arising out of a judgment and order dated 13th June, 2023 in a writ petition in which the appellant has prayed for quashing of the charge-sheet dated 4th March, 2023 issued by the Chairman-cum-Managing Director & Disciplinary Authority of Eastern Coalfields Limited (ECL). The basis of the writ petition appears to be that the disciplinary proceeding and the CBI proceedings are on identical facts and charges and in view of the fact that the CBI proceedings are prior in point of time in the event the disciplinary proceeding is allowed to be continued, the petitioner would be required

to disclose all materials which might inculcate him in the CBI proceeding and, accordingly, violates its constitutional right under Article 20(3) of the Constitution of India. The further challenge to the said proceeding was that it involves complicated questions of fact and law in both the proceedings and the petitioner would be gravely prejudiced if the petitioner is required to disclose his defence in the disciplinary proceedings since the same defence will be taken by the petitioner in the CBI proceedings. The learned Single Judge on consideration of the materials on record was of the view that the charges are not same and identical as the charges framed in the disciplinary proceedings, neither the list of documents nor the list of witnesses sought to be called in both the proceedings are same and identical.

2. The judgment relied upon by Mr. Basu in a case of ***Stanzen Toyotetsu India Private Limited Vs. Girish V. and others reported at (2014) 3 SCC 636*** in support of his contention that the disciplinary proceedings should be stayed till such time the CBI proceedings are being conducted against the petitioner was distinguished by

the learned Single Judge on the ground that the charges are neither same and identical nor the evidence sought to be produced in both the proceedings are same and identical. The learned Single Judge has also relied upon a judgment of the Hon'ble Supreme Court in ***Eastern Coalfields Limited & Ors. Vs. Rabindra Kumar Bharti reported at (2022) 12 SCC 390*** to deny the relief to the writ petitioner. When this appeal was heard, Syed Nurul Arefin, learned Counsel appearing for the ECL placed before us a document dated 9th January, 2024 from the ECL regarding the disciplinary proceeding initiated against the writ petitioner. The said memorandum/document being Ref No. ECL/VIG/RC0102020A0021/IA's Report/2024/32 is a communication to the writ petitioner inviting his written representation on the report of the departmental enquiry submitted by the enquiring authority with regard to the major penalty proceedings initiated on 4th March, 2023.

3. In response to the said communication, the writ petitioner made detailed representation on 25th January, 2024. The

matter was adjourned till 29th February, 2024 in order to enable Mr. Debajyoti Basu, learned Counsel for the petitioner to obtain necessary instruction with regard to the said representation as it appeared to us that by reason of such detailed representation, the prejudice, the writ petitioner is likely to suffer in the event he is compelled to disclose the evidence in the disciplinary proceeding does not survive and in fact, in **Rabindra Kumar Bharti** (supra) this aspect of the matter was taken into consideration.

4. Mr. Basu on the adjourned date has fairly submitted that representation was submitted but he would like to urge certain points in order to show that grave prejudice would be caused to the writ petitioner in the event the disciplinary proceeding is allowed to continue. Mr. Basu has filed an affidavit disclosing certain documents that were not part of the writ petition in order to demonstrate that if the departmental enquiry is allowed to continue, he would be compelled to disclose his defence in the said proceeding to his detriment. However, we are not convinced with such disclosure being made

at this stage as a ground to stop the proceeding having regard to the fact that he had all throughout participated in the disciplinary proceeding and had delivered his defence, he was examined and cross-examined and thereafter he filed a detailed representation of the disciplinary authority with regard to the proposed punishment.

5. During the pendency of the appeal, the authorities have passed the final order which is placed before us by Mr. Arefin, learned Counsel representing the respondents. Mr. Basu at this stage submits that the disciplinary authority has proceeded on the basis that the signature of the appellant/petitioner in the CMPF claims are genuine although he had denied his signature in the enquiry proceeding and this fact has been completely overlooked and/or disregarded by the disciplinary authority.
6. The attention of this Court is drawn to Clause 7 of the findings where the contention of Sri Prasad that the signatures existing on the following documents of CMPF claims are not his own but fabricated. The same point is urged before us in order to show that he was not

given any opportunity to lead evidence with regard to the genuinity of the signature on the basis of which he is penalized.

7. It appears from the report of the disciplinary authority that the signature of Sri Prasad was duly identified by MW-3, the P.F. Clerk, and in the event Sri Prasad was aggrieved, he could have prayed for sending the signature for forensic examination to the Central Forensic Science Laboratory, Government of India, 30, Gorachand Road, Park Circus, Beniapukur, Kolkata – 700 017 for an opinion on the disputed signature.
8. We do not find any such prayer was made by the writ petitioner during enquiry. Mr. Basu would urge that this is a serious case of corruption which requires to be proved to the hilt as it brings civil and criminal consequences upon the employees concerned and, accordingly, unless such a grave charge of quasi-criminal nature was proved beyond any shadow of doubt and to the hilt, the authority concerned could not have decided the said issue.
9. However, it is not one of such issues which involve complicated questions of law and fact as was considered in the decision of

the Hon'ble Supreme Court in **Stanzen Toyotetsu** (supra). Moreover, in a disciplinary proceeding, the authority has to decide the issue on the balance of probabilities and, prima facie, it appears that MW-3 has given evidence with regard to the genuinity of the signature. However, it is always open to challenge by the writ petitioner in the appropriate proceeding. In the event the writ petitioner/appellant prays for forensic examination of the signatures forming the basis of the penalty, the appellate authority may send the admitted signature along with the disputed signature to the aforesaid authority for its opinion on the said issue before deciding the appeal.

10. The observations made in this order howsoever widely worded shall not prejudice the appellate authority in deciding the appeal in accordance with law.
11. In view thereof, we do not find any reason to interfere with the order passed by the learned Single Judge. We reiterate that in the event appeal is preferred, the appellate authority shall decide the matter dispassionately and now that the final

order has been passed, no useful purpose would be served to decide the issues raised on merits.

12. The final order dated 22nd March, 2024 is taken on record.

13. In view of the pendency of the appeal, the writ petitioner would be entitled to prefer statutory appeal within a period of fortnight from date.

14. The appeal and the connected applications are, accordingly, disposed of with the aforesaid direction.

15. By consent of the parties, the writ petition being WPA 11675 of 2023 is treated as on the days list and a supplementary list shall be published in course of the day for the purpose of completeness and convenience and to enable the Computer Section to make appropriate entry with regard to the disposal of the writ petition.

16. However, there shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)