



W.P.No.24862 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.24862 of 2009

S.Mohanraj

....Petitioner

Vs

- 1.Neyveli Lignite Corporation Limited,
Rep by its Director (Personnel),
Corporate Office,
Neyveli.
2. The General Manager/MC & Stores/
Appellate Authority,
NLC Limited,
Neyveli.
3. The Chief Manager/ Disciplinary Authority,
Permanent Central Stores/
Materials Management Department,
Neyveli Lignite Corporation Ltd.,
Chennai.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari calling for the records pertaining to the order dated 27.07.2009 in Lr.No.SM/MM/P & A/E5-DA-23/2009 passed by the 3rd respondent, imposing punishment of demotion, reduction of petitioner's scale and fixing basic pay at the initial stage of the reduced scale for 5 years and the order of the 2nd respondent dated 27.10.2009 in Lr.



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No.SM/MM/P & A/E5-DA-23/2009 confirming the order of punishment issued by the 2nd respondent and rejecting the appeal and quash the same.

For Petitioner : Mr.Ajoy Khosh
For R1 to R3 : Mr.N.A.K.Sharma

ORDER

The Writ Petition has been filed to call for the records pertaining to the order dated 27.07.2009 in Lr.No.SM/MM/P & A/E5-DA-23/2009 passed by the 3rd respondent, imposing punishment of demotion, reduction of petitioner's scale and fixing basic pay at the initial stage of the reduced scale for 5 years and the order of the 2nd respondent dated 27.10.2009 in Lr. No.SM/MM/P & A/E5-DA-23/2009 confirming the order of punishment issued by the 2nd respondent and rejecting the appeal and quash the same.

2. When the matter is taken up for hearing, the learned counsel for the respondent submitted that, petitioner was charged for manipulating the weight of Furnace Oil Tanker Truck No.TN09AE9887 in weighbridge on 20.11.2007 by showing the weighment of Furnace Oil Tanker Truck No. TN 09AE9887 as 25,120 kgs, when it actually had Furnace Oil weighing



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18,260 kgs and for showing the weight of Furnace Oil in the Furnace Oil Tanker Truck bearing No.TN09AE5189 as 25,160 kgs, when it actually had the Furnace Oil of 8, 390kgs. After proper enquiry was conducted, the Disciplinary Authority imposed punishment of reduction in rank, when there was an option available to dismiss the petition. However, taking into consideration his long service and that there was no previous misconduct reported against him, he was imposed only lesser punishment ie., reduction in rank. During the pendency of the Writ Petition, petitioner had submitted Voluntary Retirement Application and he was permitted to retire voluntarily and he was paid all the service benefits. When that be the case, it is not open to the petitioner to continue the Writ Petition.

3. In support of his submission, he produced the Judgement of the **Hon'ble Supreme Court of India in A.K.Bindal And Another Vs. Union of India and Others** reported in **(2003) 5 SCC 163**. That apart on merits, it is the submission of the learned counsel for the respondent that, petitioner had submitted his explanation and he participated in the departmental enquiry. After departmental enquiry, the Enquiry Officer found guilty of the charges. He has not challenged the conduct of the enquiry in his



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explanation offered to the 2nd Show Cause Notice. The Appeal filed by him was also dismissed by the Appellate Authority. Therefore, it is not open to the petitioner to challenge the punishment imposed against him.

4. In reply, the learned counsel for the petitioner submitted that, petitioner's duty was only to Oversee the Weight and to record the measurement shown in the Machine. There was some technical problem, Therefore, printout could not be taken about the weight and he recorded the weight in hand. He was no way responsible for the discrepancies shown in the weight of the Furnace Oil.

5. It is the further submission of the learned counsel for the petitioner that, petitioner's case was not rightly considered by the Enquiry Officer. The Enquiry Officer without furnishing the copies of the Enquiry Report had straight away imposed the punishment. Only after filing the appeal, the Appellate Authority had supplied him the copy of the Enquiry Report. Instead of remitting the matter back to the Enquiry Officer to pass appropriate orders to consider the explanation offered by the petitioner after receipt of the Enquiry Report, the Appellate Authority proceeded to



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pass orders in the appeal, whereby, the Appeal was dismissed. The Appellate Authority's order confirming the Disciplinary Authority's order is without considering the charges leveled against the petitioner, finding of the Enquiry Officer and the explanation offered by the petitioner. That is a two para order and not a reasoned order. Therefore, this order cannot be sustained.

6. In addition to this, the learned counsel for the petitioner submitted that, petitioner was imposed multiple punishment by Disciplinary Authority confirmed by the Appellate Authority and it is as follows:

- i) Reduction in Rank
- ii) Reduction in scale of Pay
- iii) Reduction of Pay to Basic Pay

7. Considered the rival submissions and perused the records. Petitioner was charged for the following charges:

Shri S.Mohanraj, S.G/CTO,CPF, No.24217 working in Permanent Central Store/MM Unit is hereby informed that it is proposed to take action against him under Rule 9 of N.L.C Employees' Control and Appeal Rules. A statement of article of



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charge and imputations of misconduct or misbehavior on which action is proposed to be taken is enclosed (Annexure -I) . A list of documents by which and a list of witness by whom the articles of charge are proposed to be sustained are also enclosed (Annexure II and III)

2. Shri.S.Mohanraj, S.G/CTO, CPF No.24217 is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defense through proper channel. He should also state whether he desires to be heard in person.

3. He is informed that an enquiry will be held only in respect of such article of charge are not admitted. He should, therefore, specifically admit or deny each article of charge

4. Shri.S.Mohanraj, S.G/CTO, CPF No.24217 is further informed that if he does not submit his written statement of defense on or before the date specified in Para-2 above, further action will be taken on the merits of the case, with reference to points available and enquiry officer may hold the enquiry against him ex-parte.

5. Attention of Shri.S.Mohanraj, S.G/CTO, CPF No.24217 is invited to Rule 21 of the N.L.C Employees' (Conduct) Rules under which no Company Employee shall



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bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Company. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri.S.Mohanraj, S.G/CTO, CPF No.24217 is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 21 of the N.L.C Employees' (Conduct) Rules.

8. Petitioner had participated in the oral enquiry. It is not in dispute that, copy of the enquiry report was not supplied to the petitioner. Petitioner filed the appeal. Only after filing the appeal, the Appellate Authority had sent him the copy of the enquiry report. As rightly pointed out by the learned counsel for the petitioner, the Appellate Authority instead of proceeding to dispose the appeal, ought to have remitted the matter back to the Disciplinary Authority to consider the petitioner's explanation to be submitted for the basis of the enquiry report, for taking a decision. That was not done in this case. The Appellate Authority proceeded to dispose the appeal straight away.



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9. The Appellate Authority's order reads as follows:

Hence, I hereby confirm the punishment of "Demotion from the present category of Selection Grade Chief Transport Overseer in the scale of pay 8600-250-14000 to the next lower category of Chief Transport Overseer, in the scale of pay Rs.6395-180-10715 (W8) for a period of five years" imposed by the Disciplinary Authority.

10. The Appellate Authority is expected to narrate the charges against the delinquent, his explanation, Enquiry Officer's finding and Disciplinary Authority's order. However, none of this is mentioned in the Appellate Authority's order. The Appellate Authority had just confirmed the order of Disciplinary Authority without giving any independent reason. It is not proper way of disposal of the departmental appeal, where the career of a person is involved. Therefore, the order of the Appellate Authority cannot be sustained and has to be set aside. Accordingly, Lr.No.SM/MM/P&A/E5-DA-23-2/2009 is set aside.

11. This Court also found substance in the submission of the learned counsel for the petitioner that as per the service rules governing Neyveli



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Lignite Corporation, punishment of reduction to a lower rank and reduction of scale of pay are two different punishment. In the case before hand, petitioner was imposed punishment of demotion from the post of Selection Grade Chief Transport (Overseer) in the scale of pay of Rs.8600-250-14000 to the next lower category to Chief Transport (Overseer) in the scale of pay on Rs.6395-180-10715 (W-8) for a period of 5 years. This according to the learned counsel for the petitioner amounts to multiple punishment for single misconduct ie., not only demotion in rank but also reduction in pay to the bare minimum in the reduced rank. Admittedly as per the rules governing Neyveli Lignite Corporation Limited, the punishments imposed against the petitioner are multiple punishments for a single misconduct. It is not permissible.

12. The judgement relied by the learned counsel for the petitioner in **A.K.Bindal And Another Vs. Union of India and Others** reported in **(2003) 5 SCC 163**, the **Hon'ble Supreme Court of India** observed as follows:

33. The Voluntary Retirement Scheme (VRS) which is some times called Voluntary Separation Scheme (VSS) is



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introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The Office Memorandum dated 5.5.2000 issued by Government of India provided that for sick and unviable units, the VRS package of Department of Heavy Industry will be adopted. Under this Scheme an employee is entitled to an ex-gratia payment equivalent to 45 days emoluments (pay + D.A.) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1.1.1992 and therefore it has provided adequate compensation in that regard in the second VRS which was announced for all Central Public Sector Undertakings on 6.11.2001. Clause (a) of the scheme reads as under:

a) Ex-gratia payment in respect of employees on pay scales at 1.1.87 and 1.1.92 levels, computed on their existing pay scales in accordance with the extant scheme, shall be increased by 100% and 50% respectively.

34.This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work



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or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated .

13. With regard to continuance of this proceedings after submitting Voluntary Retirement Application, this Court is of the view that, the aforesaid judgement relied by the learned counsel for the petitioner was under different circumstances. In that case, a claim was made subsequent to



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Voluntarily Retirement for enhancement of pay due to later development.

That is not the case here. Even after the petitioner had submitted the Voluntary Retirement Application, stigma of finding guilty of the alleged misconduct committed by the petitioner is still there. It is the fundamental right of the petitioner to challenge the punishment imposed against him at least to clear his name. Therefore, the judgement relied by the learned counsel for the petitioner is not applicable to this case.

14. For all these reasons, **this Court sets aside the final orders passed by the Disciplinary Authority in Lr.No.SM/MM/P & A/E5-DA-23/2009 confirmed by the 2nd respondent in Lr. No.SM/MM/P & A/E5-DA-23/2009 and remits the matter back to the Disciplinary Authority to give opportunity to the petitioner to file his explanation on the Enquiry Report and proceed with the disposal of the matter in accordance with law.**

15. Accordingly, this Writ Petition is allowed. No costs.

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Index :Yes/No

Internet:Yes/No

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G.CHANDRASEKHARAN, J

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To

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