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

WRIT PETITION NO.6858 OF 2023

PETITIONER : 1) Dineshkumar Choudhary
s/o late Shri Hiralal Choudhary, aged 50 years, working as Chief Manager Finance, WCL, r/o C-3 Ashta Vinayak Paradise, Koradi road, Nagpur -441 111.

..VERSUS..

RESPONDENT(S) : 1) Coal India Limited,
through Chairman-cum-Managing Director, (A wholly Govt. of India owned Company under Indian Companies Act, 1956), Coal Bhawan, Premise no.04, MAB plot no.AF-III, action area 1-A New town, Rajarhat, Kolkatta-700156

: 2) Western coalfield limited,
a Govt. of India undertaking through Chairman cum Managing Director, Coal Estate, Civil Lines, Nagpur 440 001.

Mr. Mohan Sudame, Sr. Advocate a/b Mr. Akshay Sudame, Advocate for Petitioner
Mr. A.M. Ghare, Advocate for the respondents

CORAM : **ANIL S. KILOR AND RAJNISH R. VYAS, JJ.**

DATE : **30.09.2025**

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **Rule**. The Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. In the present writ petition, the correctness and the validity of the order dated 17.09.2021 passed by the respondent No.2/Disciplinary Authority and the order dated 06.12.2022 passed by the Appellate Authority, are under challenge.

4. The brief facts of the present petition are as under:

The petitioner is working as 'Finance Manager' under the respondent-WCL. On 6.10.2017, the respondents issued E-tender for removal of overburden/black cotton soil by hiring of equipment at Kolar Pimpri Extension OCM of Wani North Area. The work consists of removal of hard OB, removal of all type material (R.H.), evacuation of Coal, removal of silt and removal of OB.

5. As per the tender conditions, the measurement was the responsibility of the Engineer in-charge and the Contractor. The Clause 8.5 of the general terms and condition of the tender notice states that contractor shall submit bills and Engineer-in-Charge shall arrange for verification of bills with reference to measurement taken or to be taken or any other records.

6. The Clause 8.6 of the general terms and condition of the tender notice stipulates that payment on account shall be made on the Engineer-in-Charge, certifying the amount to which the contractor is entitled.

7. The Area Finance Manager was the paying authority.

8. The respondents found the difference in the quantities measured and progressive monthly billed quantity and therefore, a committee was constituted to verify the same on 30.11.2019.

9. The committee submitted its report on 23.12.2019 and reiterated that there was system failure till 14th running account bills and billed quantity was not checked.

10. On 17.11.2020, a charge-sheet came to be served on the petitioner, who was posted as Senior Manager (Finance), stating that while he was working as Group Accounts Officer from 2018 to 2020, he failed to ensure during the period from 17.03.2018 to 30.04.2019 the correct billing of HOE works based on monthly and progressive measurement, which resulted in excessive payment to the contractor to the tune of Rs.1.46 Crore.

11. The petitioner denied the said charge by submitting reply. It is the case of the petitioner that he was neither responsible for payment of bills nor for the measurement. He was never entrusted or assigned the said work. Whereas, he is the Senior Manager (Finance) and not a bill checking or auditing, passing and paying authority.

12. The Enquiry Officer, after conducting full-fledged enquiry, submitted his report holding that the charges against the petitioner were partially proved. In the report, it is observed by the Enquiry Officer that if the petitioner had checked the opening balances of the quantity mentioned in measurement book while arriving quantity executed, the mistake would have surfaced.

13. The Disciplinary Authority accepted the said finding that the wrong entry was ignored and not checked by the petitioner as Group Accounts Officer while passing the bill. Disciplinary authority vide impugned order dated 17.09.2021 imposed major penalty of reduction to a lower stage in the time scale of pay for six months i.e. from 01.10.2021 to 31.03.2022, without affecting increments during the penalty period and on expiry of such period, the reduction will not have the effect of postponing the future increment.

14. Feeling aggrieved by the said order, the petitioner filed an appeal before the Appellate Authority, the same came to be rejected vide order dated 06.12.2022, upholding the penalty imposed by respondent No.2. Hence, this petition.

15. We have heard Mr. Sudame, learned Sr. Advocate for the petitioner and Mr. Ghare, learned counsel for the respondents.

16. The learned Sr. Advocate for the petitioner argues that the Disciplinary Authority failed to appreciate that, as per the NIT and the work order, the authority responsible for receiving, scrutinizing, auditing, passing, and making payment of the bills was the Area Finance Manager (AFM), Wani North Area, WCL. Whereas, the petitioner was the Senior Manager (Finance), who was only entrusted with the work of salary and other payments. He was not responsible in any manner with the work of contractor.

17. It is submitted that it was not the work of the petitioner to check the measurement book. Therefore, there was no such occasion for the petitioner to know as regards excess payment made to the Contractor and hence, the allegation against the petitioner that the petitioner had knowledge of excess payment, is contrary to the record.

18. It is argued that the work, which was assigned to the petitioner, was to certify that whether there is any claim outstanding against the contractor for the work on account of material supply, house rent, water charges and electric energy etc. It is submitted that the documents filed on record show that the petitioner issued certificates only to the aforesaid extent and he never certified the correctness of the entries taken in the measurement book.

19. It is further argued that as per the tender condition, the Engineer in-charge and the contractor are required to correct the measurement of work jointly and record the same in the measurement book. He therefore argues that, since the tender conditions do not indicate that the petitioner, being the Finance Manager, was responsible for correcting or recording the measurements in the measurement book, there is nothing on record to suggest that it was the petitioner's duty to verify such measurements and ensure the entries made in the measurement book by the Engineer in-charge and the contractor. He therefore, argues that in absence of any evidence against the petitioner that he has committed any misconduct, the punishment imposed by the respondents, is contrary to law. In support of his submissions, he has placed reliance upon the judgment in the case of S***tate of Punjab ..v.. Ram Singh Ex-Constable***[1].

20. On the other hand, the learned counsel for the respondents submits that it was the duty of the petitioner to verify the measurement and record the same in the measurement book. Certain relevant entries of the measurement book are produced on record by the respondents to establish and show that there are discrepancies in the figures recorded in the measurement book. It is argued that as the verification was not properly made by the petitioner though he was assigned the said work, a huge monetary loss had been caused to the respondents.

21. It is further argued that, since the present matter arises out of the punishment imposed by the Disciplinary Authority and subsequently upheld by the Appellate Authority, pursuant to a full-fledged enquiry conducted by the Enquiry Officer and a report which was based on the evidence recorded during such enquiry, the jurisdiction of this Court is very

1 (1992) 4 SCC 54

limited. It is therefore, prayed that this Court may not entertain the challenge to the punishment imposed by the Disciplinary Authority as there is no perversity in the report of the Enquiry Committee.

22. The learned counsel for the respondent invites the attention of this Court to the pursis filed on record, along with certain documents, to demonstrate that there are as many as 18 instances in which the petitioner failed to tally the figures recorded in the measurement book, thereby causing huge loss to the respondents.

23. In light of the rival submissions made by the respective parties, we have perused the record and the authorities cited before this Court.

24. At this stage, before adverting to the facts of the present case, it would be beneficial to understand the term 'misconduct', which has been defined by the Hon'ble Supreme Court of India in numerous judgments.

25. The Hon'ble Supreme Court of India, in the case of ***State of Punjab*** (supra), has observed thus:

> *"5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:*
>
> > *"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."*
>
> > *Misconduct in office has been defined as:*
>
> > *"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."*
>
> *P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines 'misconduct' thus:*
>
> > *"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and*

unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

26. The record shows that the petitioner is working as 'Finance Manager' and as per the tender condition, entry of the measurements was to be carried out by the Engineer in-charge and the contractor. Further, the said measurements are required to be jointly recorded in the measurement book by the Engineer in-charge and the contractor. The certificates, which were signed and issued by the petitioner without any element of doubt, depict that he certified that there is no claim outstanding against the contractor for the work on account of material supply, house rent, water charges and electric energy etc.

27. Admittedly, the petitioner is not the authority to pass the bill of the contractor. Thus, from the record, it appears that the duty of the petitioner was only to issue certificate to the extent referred above.

28. No doubt the respondents have filed a pursis, showing entries of the measurement book and tried to impress upon this Court that there are as many as 18 instances, wherein the petitioner failed to verify the joint entries made by the contractor and Engineer in-charge and because of such discrepancies, a huge loss was caused to the respondent.

29. Having perused such entries produced along with the pursis, there is nothing to show that the entries were certified by the petitioner at any point of time. Furthermore, nothing is pointed out to support the argument of the respondents that the petitioner was assigned a duty to verify the entries recorded in the measurement book.

30. Thus, nothing is brought on record by the respondents to show that the petitioner had to certify correctness of the entries taken in the measurement book. In absence of any such evidence on record, it cannot be said that the petitioner has committed any misconduct.

31. In that view of the matter, we are of the opinion that the findings recorded by the Enquiry Officer against the petitioner, holding that the charges against the petitioner are partially proved, are perverse and without evidence.

32. In that view of the matter, as the respondents failed to establish the misconduct against the petitioner, we pass the following order:

(i) The writ petition is **allowed**.

(ii) The impugned order dated 17.09.2021 passed by the Respondent No.1/Disciplinary Authority and the order dated

06.12.2022 passed by the Appellate Authority, are hereby quashed and set aside.

Rule accordingly.

(RAJNISH R. VYAS, J.) **(ANIL S. KILOR, J.)**