



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

WRIT PETITION NO.8300/2022

<u>PETITIONER :</u>	R. Vijaya Jeevanand, aged 54 years, Occ. Sr. Manager Personnel (Retired), WCL, Nagpur, r/o Pioneer Green Valley, flat No.101, type-11 A-E, Opp. Afzal Bakery, Aakar Nagar, Katol Road, Nagpur 440013.
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	1. Coal India Limited (a Govt. of India Enterprise), Coal Bhawan Premise No.04, MAR, Plot No.AF-III, Action Area-1A, New Town, Rajarhat, Kolkatta- 700 156, (W.B.) through its CMD, CIL.
	2. The Chairman-cum-Managing Director, WCL, Coal Estate, Civil Lines, Nagpur 440 001.
	Mr. M. M. Sudame, Sr. Advocate a/b Mr. A.M. Sudame, Advocate for petitioner
	Mr. O.A. Ghare, Advocate for respondents

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<u>CORAM :</u>	AVINASH G. GHAROTE
	AND
	ABHAY J. MANTRI, JJ.
<u>Date of reserving the judgment</u>	10/02/2025
<u>Date of pronouncing the judgment</u>	14/02/2025

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule made returnable forthwith. Heard finally 10
with the consent of the learned Counsels for the respective parties.

2. The petitioner was selected and appointed as a Welfare Officer (Trainee) E-1 Grade, and had joined on 16/08/1995, with the respondent No.2. The petitioner, who later on was selected for the post of Senior Manager (Personnel) in Grade E-6, faced a departmental enquiry on the charge that during her period of 5 appointment as Manager (P) in the IR Department of WCL HQ, when she was assigned the job of employment to dependent and Manpower, being in charge of employment to dependent cases and Manpower of WCL she failed to take cognizance of posting orders in respect of new appointees in WCL (pg.55). This was in respect of the 10 appointment orders of three persons namely Mr. Anup Ramdas Dhote and Mr. Srinivas Gattaiah Thota dated 09/06/2016 (pg.86) for being appointed in the dependent category and posted in underground mine in Pathakheda area and specifically at Tawa Sub-Division and Mr. Mohan Ramavatar Kewat dated 25/02/2016 (pg.88). These 15 appointment orders were later on found to be forged, on the basis of which the Disciplinary Enquiry was commenced against the petitioner and several other persons on the above charge, in which they having been found to be guilty, a penalty of reduction of one stage lower in a time scale of pay for a period of one year which will not operate to 20 postpone her increments was imposed, vide order dated 13/10/2020

(pg.195). A departmental appeal filed to the Appellate Authority came to be rejected vide order dated 08/09/2022 (pg. 201) on the ground that though the posting orders were received on 27/02/2016, 24/05/2016 and 09/06/2016, the petitioner had failed to verify the same and therefore, did not interfere in the punishment imposed, which is being questioned in the present petition. 5

3. Mr. Sudame, learned Senior Counsel for the petitioner contends that the forged appointment orders were never marked to the petitioner for verification, on account of which, she having never received the same, the question of holding the petitioner guilty of failure to verify them, did not arise at all. 10

3.1. He invites our attention to the office order dated 08/01/2016 (pg.40) to contend that one Smt. Sugandhi Prakash Sr. Manager (Per) posted in IR Department was assigned the work of dealing with employment proposals of Pathakhara, Pench, Kanhan areas, WCL HQ and its units which would indicate that the petitioner was never assigned this work and though the petitioner by the same order was assigned the work of dealing of employment proposals of Ballarpur area amongst other areas, since the order specifically assigned dealing of employment proposals of Pathakhara area to 20

Smt. Sugandhi Prakash, the same stood excluded from the job assignment of the petitioner, on account of which, she could not have been held guilty.

3.2. It is also his contention that though the office order dated 22/04/2016 (pg.41) assigned the job of employment to dependent cases and change of posting to the petitioner, since the petitioner was posted at the Head Quarter at Nagpur, she could not be held responsible of any posting order received at Pathakhera, on the basis of which, the abovenamed three persons came to be joined, as there was no corresponding responsibility assigned to her to verify the appointment/posting orders of these persons, nor were these posting orders were ever marked to her for the purposes of verification, due to which the finding of guilt, as against her, cannot be sustained. 5 10

3.3. He further invites our attention to the enquiry report dated 13/02/2020, and specifically the findings at para (H) (pg.185), in relation to the petitioner, which state that the petitioner was the dealing officer of employment to dependent cases and as such was supposed to ensure that the employment shall be provided to the genuine dependents as per the laid down provisions of the company 15 20

and although there is no SOP till date for allowing new incumbents in the company, but the petitioner was supposed to verify the posting orders received from areas and to tally them with the sanction orders issued from WCL HQ, with a view to avoid any employment by fraudulent means, which she failed to do, to contend that in absence of any SOP, which indicates a procedure for the petitioner to verify the posting orders at the areas with the sanction orders at the HQ, the petitioner could not be held to be guilty. 5

3.4. He further contends that the evidence led by the respondent No.2 also does not indicate that the posting orders on the basis of which the abovenamed three persons were appointed, were ever marked to the petitioner for verification so as to lay the blame at her doorstep. In support of this contention, he invites our attention to the evidence of Shri Harish Gawali MW-05 (pg.102) Question Nos.3, and 7 in Chief (pg.103) and Question No.2 in Re-examination (pg.104) and the evidence of Shri R. K. Singh DW-02 question Nos.8, 14 and 15 (pg.112-113). 10 15

3.5. It is, therefore, his contention that the material on record of the enquiry, does not establish the involvement or guilt of

the petitioner, on account of which, the punishment imposed cannot be sustained.

4. Mr. Ghare, learned Counsel for the respondents, while supporting the findings and punishment imposed, submits that the petitioner being the overall incharge for grant of employment to dependents and Manpower, was bound to verify the posting orders with the record as maintained in the Head Quarters of the respondent No.2, so that the fraudulent appointments and consequently loss caused to the respondent No.2, could have been avoided. According to the learned Counsel, this is a classic case of dereliction of duty, for which the punishment imposed is very meager and ought to be sustained. He further invites our attention to the finding in the enquiry report dated 13/02/2020 (pg.185) to the effect that copies of the fraudulent posting orders were addressed to Senior Manager (P)/Manpower and since the petitioner was then occupying this post, it was her responsibility to verify these posting/appointment orders, and had this been done, by her, the fraud would have immediately come to light. The petitioner, according to him, in light of this finding, cannot escape from the penalty imposed, which was rightly done. He further invites our attention to the evidence of Shri R. K. Singh (pg.113) to contend that

the fraudulent orders were received in the department of the petitioner, and being Senior Manager it was her duty to verify their genuineness, which she failed to do. He further contends that merely because there was no SOP at that time, that by itself, would not absolve the petitioner of her duty to do so. The punishment imposed 5 therefore, according to him, is fully justified and the petition needs to be dismissed with costs.

5. In order to bring home a finding of guilt to a Charged Officer, it is necessary to see whether it has been established on record that the concerned officer had failed to perform the duty 10 assigned to her. For this purpose, it would be necessary to find out what was the nature of the job of the officer and whether the concerned documents had reached such officer, so as to make it obligatory upon such officer to undertake the job of verification, for not doing which she has been held guilty. 15

6. The office order dated 08/01/2016 (pg.40) indicates that the petitioner had joined in the IR Department as Manager (Per) and was assigned the job of dealing of employment proposals of various areas, including Ballarpur area, in addition to which she was required to do jobs as assigned to her. Since Pathakhera area fell in 20

Ballarpur area, broadly speaking the petitioner could be said to be assigned the job dealing with the employment proposals from that area too. However, what is material to note is that the same office order dated 08/01/2016 (pg.40) also assigns jobs to one Smt. Sugandhi Prakash Sr. Manager (Per) of dealing of employment proposals of Pathakhera, PENCH, Kanhan Areas, WCL HQ and its units. This would in fact indicate that the job of dealing with employment proposals, for the Pathakhera area, stood excluded from the job assignment of the petitioner, on the principle of specific excludes general. It would thus be apparent that the job proposals of Pathakhera area were not assigned to be dealt with by the petitioner. 5 10

7. The petitioner thereafter by the office order dated 22/04/2016 (pg.41), was assigned the job of dealing with employment to dependent cases and change of posting, and was posted at the HQ of WCL at Nagpur. 15

8. The Article of charge framed against the petitioner (pg.55) also records that during the relevant period the petitioner was working as Manager (Per) in the IR Department of WCL and was posted at WCL HQ and alleged that the petitioner failed to get the above detailed fraudulent orders tallied with the sanction orders 20

issued from WCL HQ and also failed to get them tallied with the appointment letters issued in this regard from the Ballarpur areas. Though the statement of imputation against the petitioner (pg.56) records that at the relevant time the petitioner was assigned the job of employment to dependent and manpower, however, there is no office order, which assigns the job of manpower to the petitioner on record or referred to in the report. 5

9. In the above context the evidence of Shri M.W.-5 Shri Harish Gawali, Chief Manager (Mining)/Vig. is material. Though in this examination-in-chief, in answer to Question No.3, he states 10 that the concerned documents were sent to the Senior Manager Manpower, WCL HQ, however, in cross-examination admits that the dispatch registers do not indicate that the appointment orders were received by the petitioner personally. Certain evidence in this regard need to be noted. 15

"M.W.-01- Shri Rajesh Nair – Examination-in-chief."

Q.4. Please Clarify that whether the copy of ME-01 has been given to Sr. Manager (MP), WCL (HQ) or not ?

Ans. As per distribution indicated in the order (ME-01) a copy has been marked to the Sr. Manager (MP), WCL (HQ). 20

Cross-Examination

Q.1. Please refer Q.3 of EIC in which you have stated that office order ME-01 has been distributed to nine officials. Kindly establish that all the copies under distribution has been sent and received by the concerned officials ?

Ans. From the Dispatch records it will be possible to confirm that the copies of the order was distributed to the marked persons.

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Q.2. From the reply given at Q.1 it seems that you have not confirmed whether the letters under distribution have been actually sent to the officials concerned ?

Ans. As per existing system copy of letters issued are distributed to all the people to whom the copies are marked. Hence based on this system I have stated that as per distribution entered in ME-01 the copy of the order has been distributed to the concerned persons.

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Q.3. It seems that the reply given above is on assumption basis ?

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Ans. Yes.

Re-Examination.

Q.1 Please refer Q.3 of cross-examination where you mentioned that it is on the assumption basis but don't you think that this particular letter i.e. ME-01 has been dispatched is to be confirmed by the Dispatch Register from the Area ?

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Ans. I agree that from record it has to be confirmed that the letter was dispatched as stated.

M.W-02- Shri S.J. Borkar - Cross-examination.

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Q.1. ME-01 and ME-02 has been cited as examples to establish a system of confirmation of appointment order and sanction order. By citing these documents it is not learnt that these documents as marked have been received by the concerned executive. Is there any document which establishes that ME-01 & ME-02 has been actually dispatched and received by the concerned executive/Charged Officer?

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Ans. I belong to a different Area and not having knowledge whether these documents have been received by the CO or not.

M.W-03- Shri Kawadu M. Padwekar -Cross-examination.

Q.1. ME-01 and ME-02 has been cited as examples to establish a system of confirmation of appointment order and sanction order. By citing these documents it is not learnt that these documents as marked have been received by the concerned executive. Is there any document which establishes that ME-01 & ME-02 has been actually dispatched and received by the concerned executive/Charged Officer? 5 10

Ans. I belong to Ballarpur Area and not having knowledge whether these documents have been received by the CO or not.

Q.3. Do you know that in the year 2016 there were two personnel executives posted in the Manpower Department, WCL (HQ), Nagpur, whose designations were Manager (MP) ? 15

Ans. In the year 2016 sanction orders were sent to Sr. Manager (MP), WCL (HQ).

Q.6. How can you say that ME-01 & ME-02 were distributed/sent to Sr. Manager (MP), WCL (HQ), Nagpur ? 20

Ans. I don't have the knowledge.

M.W 05- Shri Harish Gawali - Examination-in-chief

Q.1. Please give your introduction ?

Ans. My name is Harish Gawali, Chief Manager (Mining)/Vig. I have been called as a witness in the case further I was also associated with preliminary verification of the instant case. 25

Q.2. Kindly peruse the document ME-01 & ME-02 and state what this document is and who are the recipients of this document ?

Ans. ME-01 is office order Ref. No.1564 dated 09.06.2016 issued by APM, Pathakhera Area regarding posting of Shri Anup Ramdas 30

Dhote and Shri Srinivas Gattaiah Thota at Tawa Sub Area. The copy of this order is distributed to -

- 1) GM (IR), WCL, Nagpur
- 2) GM, Pathakhera/Ballarpur Area
- 3) Sub Area Manager, Tawa Sub Area
- 4) Dy. GMF, WCL, Pathakhera Area
- 5) Sr. Manager (System), WCL, Pathakhera Area
- 6) Manager (VTC), WCL, Pathakhera Area
- 7) Concerned Employee.

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Copy for information to :

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- 1) APM, Ballarpur Area
- 2) Sr. Manager (MP), WCL (HQ).

ME-02 is office order Ref. No.504 dated 25.02.2016 issued by APM, Pathakhera Area regarding posting of Shri Mohan Ramawatar Kewat, at Sarni Mines. The copy of this order is distributed to -

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- 1) GM (IR), WCL, Nagpur
- 2) GM, Pathakhera/Ballarpur Area
- 3) Sub Area Manager, Tawa Sub Area
- 4) Dy. GMF, WCL, Pathakhera Area
- 5) Sr. Manager (System), WCL, Pathakhera Area
- 6) Manager (VTC), WCL, Pathakhera Area
- 7) Concerned Employee.

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Copy for information to :

- 1) APM, Ballarpur Area
- 2) Sr. Manager (MP), WCL (HQ)

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Q.3 Whether these document ME-01 & ME -02 have been sent to Sr. Manager (MP)IR, WCL (HQ) ?

Ans. Yes.

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Cross-examination.

Q.4. Is there any other document available to show that these documents have either been received or marked to the Charged Officer ?

Ans. This can be answered by either the person who investigated the case or the PO dealing with this case.

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Re-examination.

Q.2 Please refer to your answer to Q.4 of cross-examination please state that whether the posting orders i.e. ME-01 & ME-02 were directly addressed/copy of the same have been given to Sr. Manager (MP)/IR ?

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Ans. Since the copy of ME-01 & ME-02 is distinguishably marked to Sr. Manager (MP), WCL (HQ), no further marking is required."

The above evidence, which has come on record, is clearly insufficient to prove that the copies of ME-01 and ME-02, the fraudulent appointment orders were even received by the petitioner for verification, so that it could be said that it was her responsibility to tally them and confirm their veracity.

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10. Since there was an observation in the enquiry report that the three fraudulent appointment letters were received in the Manpower Section of IR Department WCL HQ, which did not address the issue vis-a-vis the petitioner, on 10/02/2025, we had put a categorical query to Mr. Ghare, learned Counsel for the respondents, whether there was anything on record to demonstrate that these

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fraudulent appointment orders had ever reached to the petitioner, whereupon he had made a candid statement that the record does not disclose so. This is also the position we find from a perusal of the documents and evidence on record.

11. As stated above, to bring a finding of guilt, home to a 5
Charged Officer, it is necessary to establish, the chain of events linking the Charged Officer to the imputation and so also the responsibility of the Charged Officer in respect of the imputation. We, however, find that the same is missing and has not been established. Though in the evidence it has come on record that the 10
fraudulent appointment orders had been sent to Senior Manager (Per) in the Manpower Department, the office orders dated 08/01/2016 (pg.40) and the one dated 22/04/2016 (pg.41) do not indicate that the petitioner was ever posted in the Manpower Department. It has not been brought on record that the post of 15
Manager (Per) was in the Manpower Department. Even if it is presumed to be so, the evidence states that the fraudulent appointment orders had reached the Senior Manager (MP), whereas the designation of the petitioner, as per the above office orders was Manager (Per). It has not been established that the petitioner was 20

ever handed over the fraudulent appointment orders, for the purpose of their verification or tallying them with the sanction orders.

12. We are, therefore, constrained to observe that the petitioner has been held to be guilty, without the imputation, having been established, according to the standard of evidence, necessary to 5 pronounce an employee guilty of any misconduct, on account of which, we cannot sustain the finding in this regard and the punishment imposed.

13. We, therefore, quash and set aside the impugned order dated 13/10/2020 (pg.195) and direct the respondents to release all 10 the withheld dues and retiral benefits of the petitioner, which shall be done as far as possible within a period of four weeks from today.

14. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)