

(2006) 03 JH CK 0002

Jharkhand High Court

Case No: Civil Writ Jurisdiction Case No. 2602 of 1997 (R)

Uranium Corporation of India
Limited

APPELLANT

Vs

The Presiding Officer, Central
Government Industrial Tribunal
No. 1 and Others

RESPONDENT

Date of Decision: March 22, 2006

Acts Referred:

- Constitution (Forty-Second Amendment) Act, 1976 - Article 311
- Industrial Disputes Act, 1947 - Section 10(1), 10(2A)

Citation: (2006) 110 FLR 274 : (2006) 2 JCR 364

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: V. Shivnath, Anita Sinha, Birendra Kumar, M.B. Lal, Rekha Shankar and S. Topno, for the Appellant; I. Sen Choudhary, S.C. III, P.K. Sinha, JC to S.C. III for State and S. Srivastava, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

This writ petition has been preferred by the Management/petitioner M/s Uranium Corporation of India Limited,

Singbhum West (hereinafter to be referred as the Corporation") against the Award dated 5th March, 1997, communicated vide Notification

dated 12th April, 1997, passed in Reference Case No.90 of 1993, whereby and whereunder, the Presiding Officer, Central Government industrial

Tribunal No. 1, Dhanbad, has set aside the order of dismissal of 2nd respondent (now substituted by the heirs) and has ordered for reinstatement

of his services with 50% of the back wages and other consequential benefits, including continuity of service, seniority etc.

2. Learned Counsel for the respondents opposed the writ petition mainly on the ground that the High Court under Article 226 of the Constitution

of India can not re-appreciate the evidence to come to a different finding nor can it substitute its own findings in place of the findings, given by the

Industrial Tribunal and thereby, requested to dismiss the writ petition.

On the other hand, according to the counsel for the petitioner, the impugned Award dated 5th March, 1997, communicated vide Notification

dated 12th April, 1997, not being based on evidence and being perverse, is fit to be set aside.

3. The fact, as not disputed by the parties, is that the workman (late Nimai Majhi), Drill-man "C" of Mines, was proceeded against departmentally

and was charge-sheeted on 30th April, 1992 for the following charges of misconduct:

(i) Deliberate and concerned slowing down of work, amounting to misconduct under C.S.O.-31(e);

(ii) Willful insubordination and disobedience alone and in combination with another of lawful and reasonable order of a superior under C.S.O.-

42(a);

(iii) Deliberate slowing down of work in combination with others, amounting to misconduct under C.S.O.-42(v);

(iv) Willful damage and loss of working progress of the Company, amounting to misconduct under C.S.O.-42(y);

(v) Negligence of duty including malingering of job, amounting to misconduct under C.S.O.-42(cc) and

(vi) Acts or omission lowering down the quality of goods manufactured and reducing the production, amounting to misconduct under C.S.O.-

42(g).

4. In the departmental proceeding, the workman was given notice and after full opportunity, he was held guilty of the charges. The Management

adduced evidence and witnesses and the workman also adduced evidence and examined witnesses in his defence. The workman having been

found guilty of the charges of misconduct, was dismissed from the services of the Corporation by an Office Order dated 21st September, 1992.

5. The Union raised industrial dispute, in pursuance of which the Central Government, in exercise of power, conferred under Clause (d) of Sub-

section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, by Notification dated 6th August, 1993 made reference in the

following terms:

Whether the action of the management of Uranium Corporation of India in dismissing Shri Nimai Majhi Drillman "C" Token No. 702, vide order

dated 21.7.92 justified? If not to what relief the workman is entitled?

6. It appears that Reference No. 90 of 1993 was instituted before the Central Government Industrial Tribunal No. 1, Dhanbad, wherein, the

preliminary issue was raised as to whether due to non-supply of the report of enquiry officer, the workman was prejudiced. The matter was heard

at length and the learned Presiding Officer by order dated 4th May, 1995 held as follows:

So far points Nos. 1 and 4 are concerned, I have already dealt those two points elaborately in this order. Therefore it has to be held that on these

two points the workman was not prejudiced because of non-supply of the report of the Enquiry Officer, particularly when he had admitted his guilt.

So far point No. 3 is concerned nothing on this score was brought on the record of enquiry so that the Enquiring Officer or the disciplinary

authority could have been inclined to consider that point. So far points Nos. 2 and 5 are concerned, evidently the decision in E.C.I.L. case lays

down the law that giving of a copy of enquiry report could have provided the workman an opportunity to show as to how the findings of the

Enquiring Officer were wrong or not based on the materials on the record. So far punishment was concerned he could have had an opportunity to

represent against that after receipt of the report of the Enquiry Officer only if Enquiry Officer had suggested some punishment. But in his report the

Enquiry Officer has not suggested any punishment rather he has mentioned the submission of the concerned workman that he was working in the

mine since the beginning of its operation and till then there had not been any adverse remarks on his performance of duty, or against his discipline

etc. The Enquiry Officer also mentioned in the report that the workman had appealed to the management to take a lenient view towards him.

Therefore these points in favour of the workman had already been placed by the Enquiry Officer before the Disciplinary Authority.

So far point No. 5 relating to punishment is concerned, after amendment of Clause (2) of Article 311 in the Constitution of India by 42nd

Amendment Act, 1976, now there was no necessity to give a proceedee any opportunity of making representation on the proposed penalty even

in case of a Govt. servant. No doubt at the time of final hearing of other related issues in this reference, naturally the Tribunal shall consider the

point of adequacy or harshness of punishment awarded to the concerned workman.

For the aforesaid reasons I do not find that the workman was in any way prejudiced, under the circumstances of this case, by non-furnishing the

report of the Enquiry Officer before the punishment was inflicted upon him.

Considering all the points I find and hold that the domestic enquiry against the workman was conducted fairly and properly and that the workman

was not prejudiced by non-supply of the copy of Enquiry Report.

Put up on 5.7.1995 for argument on merits at Dhanbad. Inform both sides.

7. It appears that the matter; thereafter, remained pending and there was a change of Presiding Officer, The Presiding Officer, after giving hearing,

answered the Reference in favour of the workman by the impugned Award dated 5th March, 1997 and set aside the order of dismissal and re-

instated the workman with 50% back wages and other consequential benefits. The Award was passed on the basis of a decision of Ranchi Bench

of Patna High Court dated 8th January, 1997 in C.W.J.C. No. 3231 of 1996(R). In the said writ petition, the Award passed in another reference

being Reference No. 88 of 1993, was under challenge. The order of reinstatement was passed by the Tribunal with a liberty to the Management to

proceed with the enquiry from the stage of giving of copy of the enquiry report to the workman and by putting the workman under suspension, if so

required. As in the other Reference Case, such order was passed, which was affirmed by the High Court, the teamed Presiding Officer held that

the case of the present workman is quite similar and stands on the same footing, as he is one of the five Drillmen out of the 50 Drillmen, who had

been dismissed by the management on the charge of ""Go-slow tactics"".

8. From the impugned Award, it will be evident that the learned Tribunal has not given its findings on merits of the case of the present workman

while passing the impugned Award on 5th March, 1997, The learned Tribunal also failed to notice that in the same Reference by earlier order

dated 4th May, 1995, on hearing the parties, the Tribunal had held that, the workman was not prejudiced because of non-supply of the report of

the enquiry officer, particularly when he had admitted his guilt (emphasis added). The aforesaid finding of the Tribunal dated 4th May, 1995,

having not been challenged by any person, reached finality and became binding between both the workman and management. In the aforesaid

background, it was not open to the learned Presiding Officer to set-aside the order of dismissal on mere statement that the case of the workman

was quite similar and stood on the same footing like other 50 Drillmen.

9. In the present case, the workman has accepted his guilt. Once he accepts the guilt, in fact no enquiry was required to be conducted nor there

was any occasion to supply a copy of the enquiry report. It was open to the disciplinary authority to pass order on the basis of the admitted guilt,

commensurate to the gravity of the charges. In this background, there was no occasion to give again liberty to the management to proceed with the

domestic enquiry from the stage of serving the copy of the enquiry report, as ordered by the learned Presiding Officer, which will be completely the

workman having accepted his guilt.

10. So far as quantum of punishment is concerned, the Tribunal has not held that it is disproportionate. Further, the gravity of charges, as made in

the enquiry report, attracts major punishment like dismissal and, thus, it cannot be held that the punishment of dismissal was disproportionate.

11. In view of the aforesaid discussions and findings, this Court has no other option but to set aside the impugned Award dated 5th March, 1997,

passed in Reference No. 90 of 1993, communicated vide Notification dated 12th April, 1997. The said Award is, accordingly, set aside and the

writ petition is hereby allowed, but without any order as to costs.