

(2008) 3 JCR 205
Jharkhand High Court
Case No: None

Krishna Murari Sahay
(K.M. Sahay)

APPELLANT

Vs

Steel Authority of India
Ltd. (SAIL) and Others

RESPONDENT

Date of Decision: April 19, 2008

Citation: (2008) 3 JCR 205

Hon'ble Judges: D.G.R. Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

The petitioner has prayed for an appropriate writ:

(i) For quashing the order dated 2.9.2002 (Annexure-4) by which by way of punishment, his pay has been reduced to Rs. 5,800/- in the scale of Rs. 5800-9471 (S-9 Grade) with immediate effect.

(ii) For quashing the order dated 14.11.2002 (Annexure-9), whereby the petitioner's appeal before the appellate authority was dismissed.

(iii) For issuance of a writ of mandamus commanding upon the respondents not to give effect to the letter dated 2.9.2002 (Annexure 4) and the order dated 14.11.2002 (Annexure 9) and to promote the petitioner in L-10 Scale of pay.

(iv) For a direction to the respondent to pay to the petitioner, the deducted wages for the period between 20.10.1997 to 21.12.1997 amounting to Rs. 19,900/-.

2. The facts of the case as stated briefly are that the petitioner was appointed to the post of Grade-I (L-5 post) on 24.10.1978 and he was employed under the respondents-Bokaro steel Plant, Bokaro. He was promoted as Control Panel Operator to the Grade of L-6 in

the year 1989 and later in the year 1989, after succeeding in the departmental examination, he was given the post of Chemical Analyst under L-6 (Cluster "C"). On 2.7.1990, he was again promoted to the post of Operative Chemical (L-7 Grade) and in the year 1994, he was promoted to the Grade of L-8 and finally in the year 1997, he was again promoted in the grade of L-9 (Cluster "D").

On 18.10.2001, he was served with a charge-sheet-cum-suspension order. The charge against him was that he had committed acts of "sabotage" and willful loss of Companies material. Specific statement of allegation against the petitioner was that in the morning of 6.10.2001, he had poured concentrated hydrochloric acid on the ground in E.C.D. Laboratory intentionally and willfully. As a result, the whole Laboratory got filled with highly toxic, panjant and is suffocating fumes.

The petitioner submitted his show cause to the charge-sheet on 23.10.2001. His replies not being found satisfactory, a departmental enquiry was initiated against him. The petitioner participated in the enquiry. The Enquiry Officer submitted his Enquiry Report, holding that the charge was proved against the petitioner. On receipt of the Enquiry Report, the Disciplinary authority vide the impugned order dated 2.9.2002, (Annexure-4) imposed the punishment of reduction of payment in the minimum scale to Rs. 5800/- in the scale of Rs. 5,800-9471 of his basic Grade (S-9 Grade) with immediate effect.

The petitioner thereafter preferred an appeal before the appellate authority on 7.10.2002. The petitioner's appeal was dismissed by the impugned order dated 14.11.2002 (Annexure-9).

3. The petitioner has assailed the impugned orders of punishment passed by the disciplinary authority as also the order rejecting the petitioner's appeal on several grounds stating, inter alia:

(i) That the impugned orders are wholly arbitrary as there has been a flagrant violation of the principles of natural justice. The petitioner was deprived of his right to receive a copy of the Enquiry Officer's Report, before the disciplinary authority could arrive at its conclusion with regard to the guilt or innocence of the petitioner in respect of the charge levelled against him.

(ii) That the Enquiry Officer as well as the disciplinary authority has failed to consider the evidence of the defence witnesses at all and have solely relied upon the evidence of the Management witnesses.

(iii) That the disciplinary authority as well as the appellate authority has seriously erred in dismissing the appeal summarily without application of mind and also without assigning reasons whatsoever, for rejecting the sufficient grounds pleaded by the petitioner in his memorandum of appeal.

Mr. Dhananjay Kr. Dubey, learned Counsel for the petitioner would explain that the fact that the petitioner was not served with the second show-cause notice alongwith the copy of the Enquiry Report, has been admitted by the respondents in their counter-affidavit.

4. Per contra, the contention of the respondents as appearing from their counter-affidavit is that the departmental enquiry against the petitioner was conducted in a fair, proper and unbiased manner by observing the principles of natural justice and giving full opportunity to the petitioner to defend himself and the petitioner had fully availed the opportunity. It is also contended that the quantum of punishment imposed on the petitioner is commensurate with the gravity of his misconduct vis-a-vis, the charge against him. Earlier also for his various acts of misconduct, the petitioner was warned/given minor punishments on several occasions. It is further contended on demand of the petitioner the appellate authority had given a copy of the Enquiry Report to the petitioner and it, therefore, cannot be said that the petitioner was not given full opportunity to defend his case and that any prejudice was caused to him, since he had presented his appeal after receiving the copy of the Enquiry Report.

5. The facts which emerge from the above narrations, is that the petitioner was found guilty of the charge framed against him by the Enquiry Officer. The petitioner was awarded the punishment of reduction of his salary. Admittedly, before imposing punishment on him, no second show-cause notice was served on him nor was a copy of the Enquiry Report given to him by the Disciplinary authority. The petitioner's grievance is that he had no occasion to know the contents of the Enquiry Report and to properly defend himself by way of submitting his case effectively and neither was he given any opportunity to defend himself since no second show-cause notice was served on him. In their counter-affidavit, the respondents had admitted that the Enquiry Report was not served on the petitioner.

6. It is obvious that the petitioner had admittedly no opportunity to defend himself nor was informed of the basis on which the impugned punishment was awarded to him. The petitioner has, thus made out a clear case of prejudice and violation of principles of natural justice.

In the case of [Union of India and others Vs. Mohd. Ramzan Khan](#), , the Apex Court has held that:

the Enquiry Report is an adverse material if the enquiry officer records a finding of guilt and proposes a punishment against the delinquent and in a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching its conclusion, the same is violative of the rules of natural justice.

7. It further appears that the appellate authority while dismissing the petitioner's appeal, has not made any discussions whatsoever on the several grounds advanced by the

petitioner. In fact the appellate authority has not even adverted to any of the grounds and has dismissed the appeal in a summary manner. It is apparent that the appellate authority has also not applied its mind to the facts and circumstances and the grounds advanced by the appellant.

8. I find merit in this application Accordingly, this application is allowed.

9. The impugned order dated 2.9.2002 (Annexure-4) and the order dated 14.11.2002 (Annexure-9) are hereby quashed. The respondents shall not give effect to the impugned order dated 2.9.2002 (Annexure-4) and the order dated 14.11.2002 (Annexure-9) and they are also directed to pay to the petitioner, the amount of deducted wages for the period, during which, he was put under suspension, within one month from the date of his order.