(2002) 12 JH CK 0045

Jharkhand High Court

Case No: Writ Petition (S) No. 5463 of 2002

Shankari Prasad Niyogi	APPELLANT
Vs	
B.C.C.L. and Another	RESPONDENT

Date of Decision: Dec. 13, 2002

Acts Referred:

- Coal India Executives Conduct Discipline and Appeal Rules, 1978 - Rule 24.1, 27.1, 27.O
- Constitution of India, 1950 - Article 226

Citation: (2002) 12 JH CK 0045

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

Bench: Single Bench

Advocate: Mihir Jha and Shailesh, for the Appellant; A.K. Mehta, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.
The petitioner, a Deputy Chief Material Manager of Bokaro and Kargali Area, Central Coalfield Limited (C.C.L. for short), Ranchi has challenged the departmental proceeding initiated by the Chairman/MG. Director. Bharat Coking Coal Limited (B.C.C.L. for short) vide memorandum having reference No. BCCL:EE:X:C:94:2001:778 dated 6/11/2001.

The main grounds taken by the petitioner are that the aforesaid charge-sheet dated 6th November, 2001 is without jurisdiction and initiated for same set of charges for which earlier charge-sheet issued and on the ground of delay.

2. The brief fact of the case shows that while the service of petitioner was placed under M/s. B.C.C.L. an order No. 798 dated 28th November, 1991 was placed with M/s. Malpani Impex Pvt. Ltd., Bombay and order No. PUR/040070/Cooper Roller Bearing Import/CCWO/94/0511 dated 06/12.12.1994 was placed directly with M/s. Cooper Roller Bearing Company Ltd., UK., some complaint of gross irregularity relating to purchase of cooper bearings in CCWO washeries during 1991-92 was made by one Sri Lal Babu Rai

of Rashtriya Koyla Salahakar Samiti by his letter dated 9th February, 1996. The Director. Government of India, Ministry of Coal directed to investigate the matter.The correspondences between the Ministry of Coal, New Delhi and M/s. B.C.C.L. continued. The petitioner, in the meantime, was promoted from E-4 to E-5 grade on 12th October, 1992 and from E-5 to MI grade on 12th June, 1997 and his service was placed under M/s. C.C.L. Thereafter, while the petitioner was awaiting his promotion to next higher M2 grade, the impugned charge-sheet vide Memorandum dated 6th November, 2001 was issued.

3. Counsel for the petitioner relied on different facts to suggest that the authorities had knowledge of the charges and after long delay, they cannot initiate the proceeding. It was also submitted that the petitioner, in the meantime, having promoted to higher post, any report relating to period earlier than the year of promotion should not be considered for the purpose of enquiry. Reliance was also placed on one or other decision which will be discussed at appropriate place.

The other submission was that the Chairman/Managing Director of M/s. B.C.C.L. has no jurisdiction to initiate departmental proceeding, the petitioner being an employee of M/s. Coal India Limited (C.I.L. for short) and now being posted under M/s. C.C.L.

4. The respondents have refuted both the aforesaid pleadings. It is stated that the enquiry referred to by the petitioner was not a fact finding enquiry either in the nature of a preliminary enquiry or charge-sheet in a departmental proceeding. Prior to issuance of the charge-sheet vide Memorandum dated 6th November, 2001, no other departmental enquiry was conducted against the petitioner.

As regards the disciplinary authority, according to respondents, the Chairman-cum-Managing Director, M/s. B.C.C.L. is the disciplinary authority in relation to misconduct committed by an Executive while he was posted under M/s. B.C.C.L., a subsidiary Company of M/s. C.I.L.

Further case of respondents is that the petitioner has already submitted his explanation to the charge-sheet and succumbed to the jurisdiction of the Chairman-cum-Managing Director of M/s. B.C.C.L. Although the matter relates to the year 1991, but on receiving complaint, the S.P., C.B.I., Dhanbad had registered a P.E. vide No. PE-7(A)/ 2000(D) dated 17th May, 2000 against the petitioner, Dy. M.M. (P), C.C.W.O., M/s. B.C.C.L., M/s. Malpani Impex Private Limited, Bombay and other unknown persons for committing irregularities in tender proceedings for purchase of cooper bearings for Bhojudih Washery. After making the enquiry, the C.B.I, recommended the following action :

(i) Regular departmental action be initiated against Sri S.P. Neogi, the petitioner.

(ii) Banning of business with M/s. Malpani Impex Private Limited.

Considering the recommendations in its true perspective, the writ petitioner has been charge-sheeted. The respondents have denied that there has been a delay in issuing or serving the charge- sheet.

5. The counsel for the respondents also relied on the Coal India Executives" Conduct, Discipline and Appeal Rules, 1978 to suggest that the Chairman-cum-Managing Director of M/s. B.C.C.L. is the competent authority to initiate the departmental proceeding where the alleged misconduct was committed.

6. The Courts generally do not interfere with initiation of any departmental proceeding except for reasons like jurisdiction of the authority, long delay to initiate proceeding - without cogent explanation for delay, second departmental proceeding for the same set of charges etc.

In the case of Binay Kumar Singh v. State of Biharand Ors., reported in 1993 (3) SLR 327. the Patna High Court interfered with the departmental proceeding having initiated on 26th September, 1991 in respect to certain charges relating to the year 1972 of which the authorities had knowledge. That means, the departmental proceeding was initiated after about 19 years of the event and knowledge.

In the case of Sushil Chandra Mishra v. State of Biharand Ors., CWJC No. 4114 of 1990, the Patna High Court by its (unreported) judgment dated 4th December, 1991 interfered with the departmental proceeding on the ground of delay having initiated in respect to event of the year 1980-81 in respect to which explanation was earlier called for on 26th April, 1985 but after long delay order of suspension was passed on 20th July, 1990.

Similarly, the Patna High Court interfered with the departmental proceeding in the case of Shyam Kishore Prasad Singh v. State of Biharand Ors., CWJC No. 4584 of 1991 by its (unreported) order and judgment dated 30.10.1991. In that case, the event related to the year 1978-79, explanations were called for but proceeding was initiated on 11th July, 1991 i.e. more than 11-12 years of the knowledge.

The Karnataka High Court interfered with such proceeding because of unexplained delay of more than eight years depriving the petitioner from giving opportunity to defend himself in the case of Selvaraj v. K.M. Nandagopal, reported in 1995 (11) CLR 582.

The Calcutta High Court interfered with such proceeding because of unexplained delay of issuance of charge-sheet after seven years of alleged irregularities in the case of R.K. Gupta Vs. Coal India Ltd. and Others, .

7. Therefore, it will be evident that the delay to initiate a departmental proceeding is not the sole factor to interfere with the departmental proceeding but if it is unexplained and in spite of knowledge of the competent authority if the departmental proceeding is initiated after long delay then only the Court interfere with the departmental proceeding.

In the present case of petitioner, the charge related to the year 1991-94. The authorities came to know of the alleged irregularities in purchase in the year 1996 when complaints were made. The matter was taken over by C.B.I, for enquiry, who opined to initiate departmental proceeding, whereinafter the impugned charge-sheet vide Memorandum dated 6th November, 2001 was issued. Thus, the proceeding has been initiated after 8-10 years of the event and within six years of knowledge relating to irregularities and, therefore, it cannot be held to be delayed proceeding for the purpose of interference.

So far as the decision of the Supreme Court in The State of Punjab Vs. Dewan Chuni Lal, is concerned, the petitioner cannot derive any benefit of the said judgment. In the said case, the charge was based on adverse confidential report of the superior officers of a period earlier than the year in which he was allowed to cross efficiency bar. In this background, as the earlier confidential report cannot be considered to deprive the benefits, subsequently the petitioner having allowed to cross efficiency bar, the Court interfered with the order passed in the proceeding.

8. Now, the question arises whether the Chairman-cum-Managing Director of M/s. B.C.C.L. has jurisdiction to initiate departmental proceeding against one MI grade Officer of M/s. C.I.L. or not, who at present is posted in M/s. C.C.L.

While Chapter-Ill of the Coal India Executives'' Conduct, Discipline and Appeal Rules, 1978 deals with suspension. Chapter- IV deals with discipline. Under Rule 24.1 of the 1978 Rules, the appointing authority or any authority to which it is subordinate or any other authority to whom the powers to suspend is delegated may place an employee under suspension in contemplation or pending a departmental proceeding or during the investigation, enquiry or. trial of a criminal offence.

The minor penalties have been stipulated under Clause (i) of Rule 27.1. Under Clause (ii) of Rule 27.1, the major penalties have been specified. Who is the disciplinary authority to initiate such proceeding or to impose punishment stipulated under Rule 27.2, which reads as follows :

""27.2. Disciplinary authority.--(i) Subject to the provisions in Sub-rule (ii) below, the Authorities specified in column 3 of the Schedule appended to these rules or any Authority higher than it may impose the penalties specified in column 4 upon employees in different grades of pay shown in column 1 of the Schedule.

Note.--The Authorities empowered to impose penalties on employees officiating in higher posts shall be determined by the post held by the employee at the time when the penalty is imposed and a non-executive staff of the Company officiating in executive post at the time of imposition of penalty, shall be treated as an employee holding the executive post in a substantive capacity.

(ii) Notwithstanding anything contained in these rules no employee shall be removed or dismissed by an Authority lower than that by which he is appointed to the post held by

him."

If one looks into Schedule under Rule 27.O, it will be evident that the C.M.D. of the concerned subsidiary Company has been declared disciplinary authority to impose certain punishment for the officers in grade E-1 to M-3 posted in subsidiary Companies, as quoted below :

"SCHEDULE UNDER RULE 27.0

Sl. No.	Grade of Employee	Disciplinary Authority	Penalties which it may impose	Appellate Authority
1	2	3	4	5
xx	xx	xx	xx	xx
xx	xx	xx	xx	xx
3.	(a) Officers in grade E-1 to M-3 posted in Subsidiary Companies	CMD of the concerned Subsidiary Company	All penalties except those under Rule 27.1(ii)(b) to 27.1(ii)(d)	Chairman cum-Managing Director, CIL
xx	xx	xx	xx	xx
xx	xx	xx	xx	xx

The jurisdiction of the Disciplinary Authority shall be determined with reference to the Company/Unit where the alleged misconduct was committed."

9. The aforesaid note below the Schedule shows that the jurisdiction of the disciplinary authority to be determined with reference to the Company/Unit where alleged misconduct was committed. In the present case, the alleged misconduct having committed while the petitioner was posted in M/s. B.C.C.L., the Chairman-cum-Managing Director of M/s.

B.C.C.L. has also jurisdiction to initiate departmental proceeding and to impose penalties except those under Rule 27.1(ii)(b) to 27.1(ii)(d).

10. Thus, both the questions as raised in the case are answered in favour of respondents.

The proceeding having initiated by the competent authority i.e. Chairman-cum-Managing Director of M/s. B.C.C.L. and there being no delay in initiation of proceeding from the date of knowledge of the respondents, I am not inclined to interfere with the departmental proceeding in question.

11. The writ petition is, accordingly, dismissed.