

(2001) 05 CAL CK 0005

Calcutta High Court

Case No: C.A.J. A.P.O. No. 66 of 2000 and Ors.

Eastern Coalfields Ltd.

APPELLANT

Vs

Khogen Bouri and Others

RESPONDENT

Date of Decision: May 7, 2001

Citation: (2002) 2 LLJ 469

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Ganguly, J

Bench: Division Bench

Advocate: Aloke Banerjee, Nikhil Roy and Partho Basu, for the Appellant; Subrato Ganguly and Bijoy Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the learned counsel for the parties.

This appeal is directed against a judgment and order dated December 9, 1999 passed by a learned single Judge of this Court whereby the learned single Judge was pleased to hold that a departmental proceeding which was held against the petitioner for dismissal from service by an order dated May 24, 1996 are unsustainable and the entire disciplinary proceedings including the final order of dismissal were quashed. There was also an order directing the respondents to forthwith reinstate the petitioner in service along with his arrears of salary and other benefits. Against the said judgment there was an order of stay by the Appeal Court as a result of which the writ petitioner/respondent was not reinstated by the appellants herein.

2. Pursuant to our order previously passed in this Appeal the original records relating to the departmental proceeding viz. dismissal order, the enquiry proceeding and the charge-sheet were placed before us. We have looked into all those records. We find that only charge against the petitioner was of absenting from duties with effect from December 12, 1995 allegedly without any information and

sufficient reasons. The authorities held that the same amounted to serious misconduct in terms of the model standing order. On being served with such a charge-sheet dated April 9, 1996 the petitioner gave a reply on April 11, 1996 stating therein that he had an attack of asthma. He has also stated in his explanation that he is a chronic patient of asthma and as he had been affected by an attack of asthma he could not attend his office to discharge his duties for the said period of about three months. From the explanation given by the writ petitioner it appears that he has frankly admitted that he was suffering from asthma for sometime and he could not attend his duties in view of that illness and he wanted his case to be sympathetically considered and wanted permission for resumption of duties. He also attached a medical certificate along with his reply to the charge sheet.

3. From the enquiry report we find that the enquiry was held only on May 4, 1996 in which the statement of one Management's representative was recorded. The statement of Management's representative merely reiterated the recitals in the charge-sheet. Then the statement of the writ petitioner was recorded. Nothing else was recorded in the enquiry proceeding. From the enquiry report, we find that in the finding which was arrived at by the Enquiry Officer the truth of the explanation given by the petitioner was not disbelieved. The finding of the Enquiry Officer is not that the petitioner was not suffering from such disease or that his explanation was false. As such this Court does not understand how could, inspite of the aforesaid factual position, the Enquiry Officer held that the absence is without sufficient cause. We find that if a worker is a patient of asthma and was prevented from attending his duties due to an attack of asthma, and when this explanation of his was not doubted or disbelieved by the Management, then there is sufficient cause for him not to attend his duties. It is not expected that a person with an attack of asthma will work in the mines. It is humanly not possible.

4. In the facts and circumstances of the case, the findings of the Enquiry Officer are not based on proper appreciation of the materials on record and we cannot approve of the said finding. We are also of the view that the order of dismissal on the basis of such findings cannot be sustained. Therefore, we affirm the view taken by the learned single Judge.

5. Strongly on the question of lack of territorial jurisdiction of this Court argument was advanced by the learned counsel for the appellant. But from the judgment we find that the said questions were also raised before the learned single Judge. The learned single Judge held that this Court has jurisdiction in view of the following finding which is set out below:

"It is the further contention of the writ petitioner that since the registered office of Eastern Coal-fields Ltd. is situated at, Sanctoria, Burdwan within the territorial jurisdiction of this Hon'ble Court, which is a necessary party and also the order of approval for dismissal was ultimately obtained from the Director, Personnel of the Eastern Coalfields, Ltd., whose office is at the said registered office, the writ petition

can be maintained before the Calcutta High Court."

We do not find that the said finding of the learned Judge was specifically or even impliedly challenged in the grounds of appeal. The learned Judge has held that an order of dismissal has to be approved by the Director, Personnel of Eastern Coalfields Ltd. and it is an admitted position that the office of the Director is at the registered office of the company which is within the jurisdiction of this Court. These facts have not been even disputed before us nor does it appear from the grounds of appeal that the aforesaid finding of the learned single Judge was assailed. We are of the view that since the registered office of the appellant is within the territorial jurisdiction of this Court and the order of dismissal is to be approved by an officer sitting in the registered office, this Court has jurisdiction. Apart from that it is also not in dispute that the appellate authority's office is within the territorial jurisdiction of this Court.

6. Some arguments were sought to be made on the question of availability of an alternative remedy. But we find that the writ petition was admitted and the final order had been passed cannot be thrown out on the ground of non-exhaustion of an alternative remedy. Apart from that we find that in the instant case the departmental enquiry has not been held after complying with the principles of natural justice. It is an accepted position that where the impugned proceeding has been conducted in a manner which is inconsistent with the principles of natural justice, the order passed in such proceeding can be challenged by filing a writ petition and without exhausting alternative remedy. In this connection kindly see the observation of the Constitution Bench of the Supreme Court in the case of State of U.P. v. Md. Nooh reported in AIR 1958 SC 86, which has been further affirmed recently by the Supreme Court in the case of [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,](#).

7. So, we are of the view that in the facts and circumstances of this case the writ petition is maintainable. We, therefore, affirm the views of the learned single Judge and hold that the dismissal order, the enquiry proceeding and the charge-sheet stand quashed. The petitioner must be forthwith reinstated in his service within a period of seven days from the date of service of this order on the respondent Nos. 1, 2 and 3. Since the petitioner did not work for all these periods we are not directing full payment of back wages and salary. We are directing that the petitioner shall be paid 50% of the entire back wages and his salary within a period of one month from the date of his reinstatement. So far as the petitioner's continuity in service and seniority are concerned, there should not be any break in any manner. After reinstatement, the petitioner must be paid his salary in the appropriate grade in which he would have been placed, but for the order of dismissal. The appeal is therefore dismissed.

8. There will be no order as to costs.

9. All parties to act on a signed xerox copy of this dictated order on the usual undertaking.