

(2002) 12 CAL CK 0017

Calcutta High Court

Case No: Civil Order No. 1438 (W) of 1992

Jay Prakash Das

APPELLANT

Vs

Coal India Ltd.

RESPONDENT

Date of Decision: Dec. 23, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471
- Prevention of Corruption Act, 1947 - Section 5(1)
- Specific Relief Act, 1963 - Section 34

Citation: (2003) 1 ILR (Cal) 359

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Ashok De and Amaresh Bag, for the Appellant; R.N. Majumdar, Sushanta Pal, P. Basu and Nikhil Ray, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

In this writ petition dated February 5, 1992, a charge-sheet dated January 29, 1992 is under challenge. By an order February 6, 1992 it was admitted, and maintenance of status quo as regards Petitioner's employment was directed by way of interim relief.

2. The Petitioner had been served with a previous charge-sheet dated December 1, 1987; that had been pursued upto the stage of submission of report by the enquiry officer. The enquiry officer's findings were that the charge had not been proved. On receipt of an investigation report from the Central Bureau of Investigation (in short "C.B.I."), instead of proceeding further with the said previous charge-sheet, the disciplinary authority issued the impugned charge-sheet. The Petitioner challenges it contending (a) that the Respondents issued it illegally, arbitrarily, and in colourable exercise of power, because it contained same charge as the previous one; and (b) that they issued it with a view to harassing him in the face of the findings of

the previous enquiry.

3. The contents of the old and the new charge-sheets are quoted below:

(a) The old charge-sheet dated 1st December, 1987:

It is reported that you have produced false relationship certificate with Sri Bara Lakhman Das, Ex U/G Loader who is not your real father. By submitting the false relationship certificate you have got employment.

This is a serious misconduct on your part and you are liable for severe disciplinary action as per Section 17(i)(o) of the M.S. Order (sic). which reads as below:

(O): Giving false information regarding one's name, age, father's name, qualification of (sic) previous service at the time of the employment.

You are asked to explain in writing Within 48 hours of receipt of this letter as to why disciplinary action should not be taken against you.

(b) The new and impugned charge-sheet dated 29th January, 1992:

It has been reported that you entered (sic) employment of the company in the name of Shri Jai Prakash Das, allegedly son of Shri Bara Lakhman Das, who was working as underground Loader of Tilaboni Colliery, in the year 1987. It has also been ascertained that you are son of Shri Lal Deo Singh, Clerk, Grade I, Bankila Area and that you studied in Andaj Hindu Vidyalaya (High School), 1984, wherein you have been shown as son of Shri Lal Deo Singh. The declaration given by you, while your employment was processed, was false and you have cheated (sic) the Management by giving false information regarding your name, age, father's name etc. at the time of employment.

You are, therefore, charged for the same i.e. you deliberately gave false information regarding your name, father's name etc. in connivance with your father Shri Lal Deo Singh which is a misconduct under following claim (sic) of Model Standing orders applicable to you and to this establishment.

Section: 17(1) Clause:

(a) Theft, fraud or dishonestly is (sic) connection with the employer's business of property.

(b) Giving false information regarding one's name, age, father's name, qualifications or previous service at the time of employment.

You have also aided and abetted in the above mentioned misconduct (sic) (which is also misconduct under standing orders applicable to you) as also a breach of Act/Rule which are also misconducts under standing orders.

You are hereby required to show cause within 72 hours of receipt of this as to why disciplinary action should not be taken against you, as also why you should not be

processed (sic) against in the court of law. You are hereby suspended pending enquiry.

4. One Bara Lakhman Das was an underground loader in Tilaboni colliery, under Bankola area of the Eastern Coal Fields Ltd., a subsidiary of the Coal India Ltd. On medical ground he took voluntary premature retirement on July 10, 1987. In terms of provisions of National Coal Wages Agreement-III, a dependant of said Bara Lakhman Das, if otherwise eligible for employment, was entitled to be considered for an employment under the Eastern Coal Fields Ltd. Said Bara Lakhman Das purportedly applied to the Eastern Coal Fields Ltd. for compassionate appointment of his son, named: Jay Prakash Das, i.e., the Petitioner. By a letter dated July 9, 1987 an employment was offered to the Petitioner; he was appointed on July 11, 1987. In Clause 3 of the offer letter it was mentioned that in case of furnishing any wrong information to the management, in the attested form or otherwise, the Petitioner's service would be liable to be terminated without notice. On September 18, 1987, one Bholanath Singh lodged a complaint with the Chief Vigilance Officer of the Eastern Coal Fields Ltd.; but was, actually, the son of one Laldeo Singh, a clerk, working in the Personnel Department at Bankola area of the Eastern Coal Fields Ltd.. Consequently, the said charge-sheet dated December 1, 1987 was issued against the Petitioner; the charge was that by submitting false relationship certificate he had obtained the employment. On the same day, by a reply dated December 1, 1987, the Petitioner disputed the correctness of the allegations made in the said charge-sheet; and defended himself as son of said Bara Lakhman Das. On December 4, 1987 an enquiry officer, appointed by the disciplinary authority, held an enquiry; he took on record oral and documentary evidence. In his enquiry report dated January 5, 1988, said enquiry officer recorded the findings that the charge levelled against the Petitioner had not been proved.

5. Before any further action was taken by the disciplinary authority, the C.B.I, had registered an F.I.R. dated December 30, 1988; and started a case (R.C. No. 80 of 1988) against several persons: including the Petitioner, and said Laldeo Singh and Bara Lakhman Das. Consequently, G.R. case No. 219 of 1989 was registered before the Sub-Divisional Judicial Magistrate, Durgapur. The C.B.I, started the case u/s 120B/420/467/468/471/477A of the Indian Penal Code, 1860, read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. After carrying out investigation, the C.B.I. submitted the report dated November 18, 1991. Relevant portions of the said report are as follows:

During the course of investigation it has been established that Shri Lal Deo Singh (A-1) was working as a Clerk in the Bankola Area Office, E.C.L. during 1987 and Shri Jay Prakash Das (A-2) joined as Piece Rated Trammer in Kumardihi "B" Colliery on 11.7.87 on compassionate ground due to voluntary retirement of Shri Baro Lakhman Das (A-2) from service on medical ground. It has also been established during investigation that Shri Baro Lakhman Das (A-2) was working as Underground

Loader in Tilaboni Colliery under Bankola Area, E.C.L. and had retired voluntarily on medical ground on 10.7.87. It has also been established that he had requested the authority to accommodate his son in his place, and on the basis of this request, Shri Jayprakash Das, purportedly his son, was accommodated in the post of Piece Rated Trammer in the Kumardih "B" Colliery on 11.7.87. But it has been established from the oral evidence of different witnesses that Shri Baro Lakhman Das has no son by name Shri Jayprakash Das and he has got only one son named Nemai & (sic) Nema Das who was aged only about 9/10 years at the time of retirement of his father, Shri Baro Lakhman Das (A-3).

During the course of investigation it has been established from oral evidences of different witnesses that "Jai Prakash" is not actual Jayprakash Das but he is Jay Prakash Singh, son of Shri Lal Deo Singh (A-1). During investigation it has also been established that Shri Lal Deo Singh (A-1) has got one son, aged about 21/22 years, in the name of Jay Prakash Singh. This fact is also evident from the entries in his Service Book. When the photograph of Shri J.P. Das (A-2) affixed on the appointment letter, was shown the two teachers of Andal Hindu Vidyalaya (High School), in which Jay Prakash Singh was admitted in Class-VIII in January, 1984 have confirmed that the photograph was of Shri Jay Prakash Singh and not of Shri Jayprakash Das. During interrogation, Shri Baro Lakshman Das has stated that Shri Jayprakash Das (A-2) is not his son and also denied having any knowledge of such employment of A-2. During the course of investigation, a certificate was seized which was issued under the signature of Shri Jagdish Prasad Yadav, Mukhim of the Gram Panchayat. In this certificate it was certified that Shri Jayprakash Das is the son of Shri Baro Lakhman Das. During examination, (sic) denied his knowledge about the contents of the certificate. He as well as other persons of the locality confirmed that Shri Baro Lakshman Das has got only one son named Nema Das, aged about 12 years. However, GEQD opinion on the certificate is not favourable.

The allegations as leveled against the accused persons have been well established on the basis of oral evidences. It has been proved by both oral and documentary evidence that both A-2 and A-3 were well-known to him and that he had initiated/processed regarding voluntary retirement of A-3 and appointment of A-2 in place of A-3. Investigation also established that Baro Lakshman Das (A-3) has got no son in the name of Jayprakash Das but he has Only one son named Nernai (sic) Nema Das, aged about 12 years. However, the G.E.Q.D. on the basis of the available documents could not opine whether Jayprakash Das is Jay Prakash Singh. Besides though Shri Jagdish Prosad Yadav has stated that he has not issued the certificate in favour of Jayprakash Das but G.E.Q.D. could not confirm this. Owing to these, this may not be a fit case for prosecution but there are sufficient materials to initiate departmental action. However, as Shri Baro Laksman Das has already retired from service no action can be possible against him as (sic) he may be cited as witness.

6. In the facts and circumstances narrated hereinbefore, without taking further action on the said charge-sheet dated December 1, 1987, the Respondents decided to issue a new charge-sheet; and accordingly, the impugned charge-sheet dated January 29, 1992 was issued against the Petitioner.

7. The Respondents' case appear from their affidavit-in-opposition dated September 4, 1993. They claim that the new charge-sheet dated January 1992 was not issued on the same charge as the one levelled in the previous charge-sheet dated December 1, 1987. They further contend that the earlier enquiry proceedings do not stand in the way of a further investigation into the allegations that the Petitioner had obtained employment by impersonation and thus committed fraud. It is their further case that Laldeo Singh, the Petitioner's actual father and an employee of the Eastern Coalfields Ltd., was also simultaneously charge-sheeted. By filing an affidavit-in-reply dated September 2, 2002, the Petitioner has contended that the dispute whether he is son of Laldeo Singh, or of Bara Lakhman Das, cannot be decided in a departmental proceeding. By a supplementary affidavit dated November 13, 2002 (as per leave granted), he has stated that on September 23, 2002 he filed a suit, being Title Suit No. 216 of 2002, in the Court of the Civil Judge (junior division), 1st Court at Durgapur, impleading Laldeo Singh and the Coal India authorities as Defendants; and he filed the same for a declaration that Bara Lakhman Das is his real, father and not Laldeo Singh. It has also been stated that the said suit is pending decision.

8. At the time of hearing, the Learned Counsel for the Petitioner has submitted (a) that in view of the enquiry made into the charge levelled in the charge-sheet dated December 1, 1987, the second enquiry sought to be made by issuing the impugned charge-sheet dated January 29, 1992, is not permissible; (b) that since the relevant rules do not permit the second enquiry, the impugned charge-sheet is not maintainable; (c) that the dispute as to, between Bara Lakhman Das and Laldeo Singh, who is the Petitioner's real father, cannot be decided in a departmental proceeding; and (d) that in view of the pending suit, filed u/s 34 of the Specific Relief Act, 1963, the Respondents cannot be permitted to proceed with the departmental proceeding. In support of his contentions he has relied on the Supreme Court decision in the case of [K.R. Deb Vs. The Collector of Central Excise, Shillong,](#).

9. On the other hand, the Learned Counsel for the Respondent has contended (a) that the present case is not a case of, a second departmental enquiry on the same charge, and therefore, the ratio of K.R. Dev's case (1) has no manner of application to the present case; and (b) that in view of the Supreme Court decision in the case of Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. AIR 1976 S.C. 888, Section 34 of the Specific Relief Act, 1963, has no connection with the proposed departmental proceeding. He has further submitted that Laldeo Singh had not been charge-sheeted in the year 1987; and now, if he is proceeded against, then the Petitioner cannot be let off.

10. After hearing the parties and considering the materials on record and the position of law, I find that there is no merit in the writ petition, and the same is liable to be rejected. My reasons are as recorded hereinafter.

11. In my view, the rules of fairness and non-arbitrariness require a disciplinary authority to conclude a disciplinary proceeding initiated against an employee. Unless the relevant rules enjoin a legal obligation or duty to the contrary, the disciplinary authority can conclude a disciplinary proceeding even by dropping it at any stage. However, the conclusion drawn by dropping a proceeding, for the purpose of initiating a fresh one, after the enquiry officer submits a report favourable to the employee, must be held to be not permissible, when it is done only to harass the employee. It will amount to harassing the employee (a) if the fresh proceeding is sought to be initiated on the same charge, or (b) if the fresh one, although initiated by a different charge-sheet, is intended only to make the enquiry officer's findings ineffective; and in both the cases the dropping will be without any valid reason. The said rules also lead one to the proposition that successive enquiries on a charge-sheet is generally not permissible, because they cause utter harassment to an employee. If a concluded enquiry is abandoned only for re-starting it on the basis of a cosmetically changed charge-sheet, it will be nothing but a successive enquiry on same charge-sheet. However, by a reasoned decision, the disciplinary authority is empowered to direct a *de novo* enquiry into the same charge-sheet; he can do so (a) when the enquiry is found bad in law, or (b) when there are other good reasons.

12. In this case, as I find, it cannot be said that the impugned charge-sheet was issued on the same charge as the previous one. It is apparent from the two charge-sheets, that they have not the same contents, and do not disclose the same allegation. The allegation in the previous charge-sheet was one of obtaining employment by furnishing false relationship certificate. On the other hand, the impugned charge-sheet was issued with the allegations that the Petitioner, in connivance with his father (Laldeo Singh) had deliberately given false declaration regarding name, father's name, etc., for obtaining the employment. Therefore, in the facts and circumstances, it cannot be said that the Petitioner is being sought to be proceeded against, twice, on the same charge. The disciplinary authority also did not direct a *de novo* enquiry into the same charge; on the contrary, he initiated an altogether fresh disciplinary proceeding. It is put on record that no rule, which barred the initiation of the proceeding in question (as contended), has been brought my notice by the Learned Counsel for the Petitioner. So, I find no reason to accept the contention that the impugned charge-sheet was issued illegally.

13. From the facts and circumstances of the case, I also find no reason to hold that the fresh proceeding was initiated with the sole intention of rewinding the enquiry report of the previous proceeding. There is no doubt that said report will get perpetually eclipsed with the progress of the fresh proceeding; and, of course, will

deprive the Petitioner of the possible benefit he might derive from the favourable findings recorded therein. But the factual position is that the reason for issuing the impugned charge-sheet and initiating the fresh proceeding was the investigation report submitted by the C.B.I, The C.B.I, had categorically recommended initiation of disciplinary proceedings against the Petitioner and said Laldeo Singh. in my considered view, the dropping of the previous proceeding because of the changed circumstances, cannot be held to be unfair or arbitrary or without any valid reason. Accordingly, I hold that the disadvantage caused to the Petitioner, on the facts, cannot be considered to be a deliberate harassment; nor does it cause any demonstrated irretrievable prejudice to him.

14. In K.R. Dev's (supra) case the disciplinary authority had directed successive enquiries, into same charge, through different enquiry officers; and in that factual background, it was held by the Supreme Court that under r. 15 of the C.C.S. (C.C.A.) Rules, 1957 the disciplinary authority had no power to completely set aside the previous enquiries on the ground that the reports failed to satisfy him. The present case is not one where, after setting aside the previous report on the ground that the disciplinary authority felt dissatisfied with it, the same charge was sought to be enquired into twice. This is a case where, after dropping the previous proceeding, a new proceeding was initiated under the changed circumstances. Therefore, the said decision, in my opinion, does not help the Petitioner in the present case.

15. The contentions (a) that in the disciplinary proceeding the question, as to between the two (Laldeo and Bara Lakhman) who is the Petitioner's father, cannot be resolved; and (b) that because of the reliefs prayed for, in terms of Section 34 of the Specific Relief Act, 1963, in the pending suit, the proceeding cannot be permitted to continue-in my view, are absolutely without any merit. The implied reference made to the likely requirement of adjudication of a question concerning a paternity dispute, is misconceived. The disciplinary proceeding is concerned only with the question of veracity of the declaration given by the Petitioner for obtaining the employment; there can be hardly any doubt that his employer has unabridged right and power to examine the element of truth in it. Reference made to Section 34 of the Specific Relief Act, 1963 is totally misplaced. The suit filed by the Petitioner does not create a protective "Lakshman" circle for him. The exercise of his employer's inherent power existing in *praesenti*, cannot be put by the Petitioner to hibernate in the womb of a litigation initiated by him, which will yield an uncertain result in *futuro I*, therefore, reject the said contentions also.

16. For the foregoing reasons, I find no merit in the present writ petition; and accordingly, the same is hereby dismissed. In the facts and circumstances of the case, there will be no order as to costs.