

(2004) 09 CAL CK 0065

Calcutta High Court

Case No: Writ Petition No. 2474 of 2003

Naresh Kumar Sharma

APPELLANT

Vs

Coal India Ltd.

RESPONDENT

Date of Decision: Sept. 8, 2004

Acts Referred:

- Coal India Executives Conduct Discipline and Appeal Rules, 1978 - Rule 24
- Constitution of India, 1950 - Article 77(3)
- Government of India (Transaction of Business) Rules, 1961 - Rule 3

Citation: (2004) 2 ILR (Cal) 408

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Jayanta Kumar Mitra and Binita Saraf, for the Appellant; Aninda Kumar Mitra and K. Mondal for first and third Respondents and Saktinath Mukherjee, D.S. Mishra, R.K. Gupta for second and fourth Respondents, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The writ Petitioner is aggrieved by his suspension from service, in contemplation of a disciplinary proceeding.

2. On March 30, 2001 he was appointed as Chairman-cum-managing director of the Respondent-company. Complaints were received by the government, inter alia, from the Central vigilance commission, and some members of the parliament, about abuse of office by him. The chief vigilance officer of the company started preliminary enquiries, and submitted a report dated May 27, 2003. It was examined by the joint secretary (coal) and the minister of coal of the central government on June 4. 2003. The minister directed, that pending disciplinary action the Petitioner should be suspended. Hence the order of suspension was issued on June 4, 2003.

3. Mr. Jayanta Kumar Mitra, senior advocate, appears for the Petitioner. His first contention is this. Admittedly, the Petitioner's disciplinary authority is the President, and hence the minister of coal of the central government had no authority, to suspend him.

4. Mr. Saktinath Mukherjee, senior advocate, appears for the central government. His submission in reply is this. The Government of India (Transaction of Business) Rules, 1961, and The Government of India (Allocation of Business) Rules, 1961 were made by the President under Article 77(3) of the Constitution of India. Under these rules the minister was empowered to act as the Petitioner's disciplinary authority. As was held in Samsher Singh Vs. State of Punjab and Another, decisions of the minister in exercise of powers available under these rules, would be deemed to be the decisions of the President. Mr. Aninda Kumar Mitra, senior advocate, appears for the company. He has adopted the submissions made by Mr. Mukherjee.

5. I agree with Mr. Mukherjee that in view of the provisions in transaction of business and allocation of business rules, the minister's decision would be deemed to be the decision of the President. The decision in Samsher Singh Vs. State of Punjab and Another, supports his contention.

6. Rule 3 of transaction of business rules empowers the minister-in-charge of a department to dispose of all business allotted to such department under allocation of business rules. As will appear from the allocation of business rules, all business relating to public sector enterprises dealing with coal and lignite were allocated to the minister-in-charge of coal. Hence I am unable to agree with the Petitioner's contention that, the decision to suspend him was not taken by his disciplinary authority.

7. Mr. Mitra's second contention is this. Under the relevant rules an employee can be suspended only when a disciplinary proceeding is contemplated or pending, but not during pendency of a preliminary enquiry. Provisions of the central vigilance manual, which the authorities were admittedly following, would clearly show that at the preliminary enquiry stage there is no scope to contemplate a disciplinary proceeding. Under the rules it can be contemplated only when the stage for issuing the charge-sheet is reached. Since such stage was to be reached in future, it must be inferred that the suspension was ordered without actually contemplating a disciplinary proceeding.

8. Mr. Mukherjee's submission in reply is this. Provisions of the central vigilance manual are meant only for guidance of the persons involved in the investigation ; they do not create any right in favour of any employee against whom the investigation begins. In the rules no stage has been specified for contemplating a disciplinary proceeding. So it cannot be said that at the preliminary enquiry stage no disciplinary proceeding can be contemplated. Learned Counsel for the company has adopted Mr. Mukherjee's submission.

9. I do not find any merit in Mr. Mitra's above noted second contention. Sub-rules (1) and (2) of Rule 24 of the Coal India Executives' Conduct, Disciplinary and Appeal Rules, 1978 (the relevant rules) are set out below:

24.0 Suspension

24.1 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-.

(a) where a disciplinary proceeding against him is contemplated or is pending ;

or

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interests or the security of the Company/State ; or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Provided that where the order of suspension is made by an authority lower than the Appointing Authority, such Authority shall forthwith report to the Appointing Authority the circumstances under which the order was made.

An order of suspension may be issued in Form VI.CM Ds of the subsidiary companies will have full power to suspend executives from E1 to E5 grade. They will also have the power to suspend executives from M1 to M3 grade for. a period not exceeding three months.

Chairman, Coal India Limited as the appointing authority has full power to suspend any executive.

24.2 It is desirable to issue the order of suspension along with the charge sheet in Form Vi but whenever this is not possible, the charge sheet must follow within a reasonable time. Wherever necessary the suspension order may follow the charge-sheet.

10. I agree with Mr. Mukherjee that provisions of the central vigilance manual are meant only for guidance of, and observance by, the persons who are involved in the investigation ; and they do not create any enforceable right in favour of the employee against whom the investigation begins. Provisions of the manual have, however, not been relied on for questioning the validity of the suspension order. They have been read and relied on, only, for contending that at the preliminary enquiry stage a disciplinary proceeding cannot be contemplated.

11. In the absence of any statutory requirement, a disciplinary authority is under no obligation to hold preliminary enquiries into the allegations, before contemplating a disciplinary proceeding against an employee. On receipt of the complaints, the" disciplinary authority is free to decide the course of action. It is quite lawful for him

to contemplate a disciplinary proceeding even on the basis of the allegations contained in the complaints. For his satisfaction he is, however, free to direct preliminary enquiries, and on receipt of reports, including interim reports, he is free to take the decision to initiate a disciplinary proceeding. The decision to initiate a disciplinary proceeding does not impede further investigations or preliminary enquiries through competent agencies.

12. The question whether a disciplinary proceeding was contemplated by the disciplinary authority is always a pure question of fact. The contemplation must get the shape of a recorded decision; there is no second mode. So the void, if there is one, is not to be filled by drawing an inference from the rules and the existing fact situation. The answer should be either there is a decision or there is none.

13. In this case, I find that on June 4, 2003 the disciplinary authority recorded the necessary order regarding contemplation of the disciplinary proceeding against the Petitioner. Hence there is no scope to contend that the suspension was without actually contemplating a disciplinary proceeding.

14. Provisions of r. 24.2 are intended to prevent prolonged suspension. If they are read to conclude that absence of the charge-sheet, either accompanying the suspension order or following it very soon, must mean that the suspension was not in contemplation of a disciplinary proceeding then such interpretation shall defeat the principal purpose of r. 24. There may be innumerable valid reasons for which the charge-sheet cannot be issued while, or soon after, contemplating the "disciplinary, proceeding.

15. Contemplation of a disciplinary proceeding ends with an independent decision of the disciplinary authority recorded for it. It is followed up by actual initiation of the proceeding, and the time taken for it is irrelevant for ascertaining whether the disciplinary authority had actually contemplated a disciplinary proceeding. The decision to suspend is also an independent decision. It is followed up by conclusion of the proceeding either contemplated or pending.

16. Provisions of r. 24.2 are there to ensure expeditious conclusion of the proceeding. Failure to comply with them, while can be a ground to question the continuance of suspension, cannot, however, be a ground to assail the validity of the suspension order. From such failure, it also cannot be inferred that there was actually no contemplation of a disciplinary proceeding.

17. The decisions reported in AIR 1936 253 (Privy Council) and State of Uttar Pradesh Vs. Singhara Singh and Others, do not help the Petitioner. They have been relied on in support of the proposition that where a power is given to do a certain thing in a certain way, it must be done in that way or not at all, and the other methods of performance are necessarily forbidden. I am unable to accept the contention that while deciding to suspend the Petitioner the disciplinary authority did not exercise the power in the way mentioned in Rule 24 of the rules.

18. Mr. Mitra's third contention is this. On June 4, 2003 there was no material before the disciplinary authority to contemplate a disciplinary proceeding against the Petitioner. On the basis of preliminary enquiry report dated May 27, 2003 the disciplinary proceeding was not contemplated, because the charge-sheet subsequently issued is not connected with such report. Learned counsel for the Respondents have explained in detail the nature and status of the several investigations and enquiries initiated by the competent authorities.

19. In view of the scope of the writ petition, I do not think it will be appropriate at all to refer to and discuss the nature of the various allegations, and the nature and status of the enquiries. The admitted position is that the authorities are still investigating and making enquiries into various allegations made against the Petitioner; and only in connection with some of them charge-sheet has been issued.

20. The question, however, is whether on June 4, 2003 there was any material before the disciplinary authority to contemplate a departmental proceeding. I find that the preliminary enquiry report dated May 27, 2003 was there, and it was examined by the authorities before recording the decision for initiating the disciplinary proceeding. So it cannot be said that there was no material before the disciplinary authority to contemplate the proceeding.

21. Simply because the charge-sheet has not yet been issued regarding the allegations in connection therewith the report dated May 27, 2003 was filed, it cannot be said that on the basis thereof no disciplinary proceeding could be contemplated by the authority. The question whether the material available was sufficient, is absolutely beyond the scope of examination. It has not been contended (though in the pleading a case was sought to be made out) that the authorities acted mala fide.

22. Mr. Mitra's last contention is that the authority's decision to suspend the Petitioner in contemplation of a disciplinary proceeding, even before conclusion of the preliminary enquiries, and receipt of necessary reports and advice from the central vigilance commission, was unjust and improper. He has relied on the decision reported at Council of Civil Service Unions and Ors. v. Minister for the Civil Service 1984 (3) All. E.R. 935.

23. I am unable to agree with Mr. Mitra. The Petitioner was holding the highest post of the company. The decision to initiate the proceeding was not taken on mere receipt of the complaints. Investigations were made by competent agency. On receipt of preliminary enquiry report regarding some of the allegations the authorities formed the opinion regarding necessity of the proceeding. While contemplating the proceeding the competent authority decided to take-advice from the central vigilance commission for framing the charges. Once the authorities found compelling reasons to initiate disciplinary proceeding, which was contemplated by the competent authority, it cannot be said that the decision to

suspend was unjust or improper.

24. For the foregoing reasons, I do not find any merit in the writ petition ; and hence it is hereby dismissed. There will be no order for costs.

25. Urgent certified xerox copy of this judgment and order shall be supplied to the parties, if applied for.