

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 4552 of 2013

Kayum Ansari son of Late Mali Mia, resident of village- Purnera, P.O. & P.S. Chari, District- Ranchi

... .. **Petitioner**

Versus

1. Central Coalfields Limited through its Chairman-cum-Managing Director having its office at Darbhanga House, P.S. Kotwali, District-Ranchi.
2. Director Personnel, C.C.L., At & P.O. Darbhanga House, P.S. Kotwali, Dist. Ranchi.
3. General Manager (P & IR), C.C.L., At + P.O. Darbhanga House, P.S. Kotwali, Dist. Ranchi.
4. The Chief General Manager (BRK-Sayl) C.C.L., At/P.O. Sayal 'D', P.s. Patratu, District- Ramgarh.
5. The Staff Officer (P & A), BRK-Syl, At + P.O. Sayal 'D', P.s. Patratu, District- Ramgarh.
6. The Project Officer, Saunda Colliery, CCL. P.O. Sounda, P.s. Bhurkunda, District- Ramgarh.
7. The Personnel Officer, Saunda colliery, C.C.L. P.O. Saunda, P.s. Bharkunda, District- Ramgarh.
8. Sri Girish Prasad, father's name not known to the Petitioner, Enquiry Officer-cum-Sr. Under-Manager/Depot Officer, Saunda Colliery, C.C.L., P.O. Saunda, P.s. Bhurkunda, District- Ramgarh.

... .. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Ajit Kumar, Advocate
For the Respondents : Mr. R. N. Sahay, Senior Advocate
Mr. Yashvardhan, Advocate

Through Video Conferencing

11/05.01.2022

Heard Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. R. N. Sahay, Senior Advocate along with Mr. Yashvardhan, learned counsel appearing on behalf of the respondents.

3. The present writ petition has been filed challenging the order of termination dated 12.01.2010 passed by the respondent no. 6 and a further relief has been sought to reinstate the petitioner with all back wages. It has been pointed out by the learned counsel for the petitioner that the appellate authority had dismissed the appeal filed by the petitioner vide order dated 26.06.2010 as contained in Annexure- 9 of the writ petition, but due to inadvertence, the same was not challenged in the writ petition. Accordingly, one interlocutory application being I.A. No. 1452 of 2021 was filed challenging the appellate order also. The I.A. was

allowed and the interlocutory application was taken to be a part of the writ petition for future reference.

4. The learned counsel for the petitioner submits that accordingly the order of termination dated 12.01.2010 as well as appellate order dated 26.06.2010 are under challenge in this writ petition.

Submissions of the petitioner

5. The learned counsel for the petitioner submits that the petitioner was earlier charge-sheeted vide letter dated 03.09.2007 on account of absence from duty with effect from 24.07.2007 without permission/information to the competent authority and upon enquiry the same resulted in order of punishment dated 16.10.2007 and by the same order the petitioner was permitted to resume his duty with effect from 18.10.2007. He submits that thereafter another show-cause was issued vide memo no. 518 dated 02.06.2009 referring to earlier absenteeism including absenteeism from 24.07.2007 and it was alleged that in spite of permission granted to the petitioner to join duty with effect from 18.10.2007, the petitioner had not joined his duty. The learned counsel submits that the impugned order dated 12.01.2010 refers to earlier charge-sheet dated 03.09.2007 for which the petitioner was already punished and accordingly, the impugned order of termination dated 12.01.2010 is a piece of complete non-application of judicial mind to the charges levelled against the petitioner vide memo No. 518 dated 02.06.2009.

6. The learned counsel for the petitioner has submitted that there was sufficient reason for not resuming his duty with effect from 18.10.2007 as the petitioner had given application for joining on 06.12.2008 with a medical certificate indicating that he was suffering from mental upset from 12.10.2007 till 04.12.2008 and was sent for medical examination on 03.03.2009 and was found fit for joining duty and thereafter he was moving in the office of Respondent no. 5 and 6 but after three months show cause dated 02.06.2009 was issued .

7. The learned counsel for the petitioner also submits that the appeal against the order of termination dated 12.01.2010 was also dismissed vide another impugned order dated 26.06.2010. He submits that the appellate order is a non-speaking order.

8. The learned counsel submits that in view of the aforesaid submissions both the impugned orders are fit to be quashed and set-aside

and the petitioner be reinstated in service with all back wages. The learned counsel has relied upon a judgement passed by this Court in W.P.(S) No. 5522 of 2007 decided on 23.12.2021 to submit that it has been held that a statutory appeal must be decided on merits by reasoned order.

Submissions of the Respondents

9. The learned counsel appearing on behalf of the respondents, on the other hand, has opposed the prayer and has submitted that absence of the petitioner without intimation to the authority is an admitted fact. Although the petitioner has not annexed the enquiry report, but the same has been annexed along with the counter-affidavit, which reflects that charges are admitted. He submits that in spite of repeated opportunities granted to the petitioner to mend his ways the petitioner has been in the habit of absenting himself from duty. The learned counsel has referred to a chart in the counter affidavit reflecting only 76 days attendance in the year 2004 and 49 days attendance in the year 2006 and the petitioner remained absent on rest of the days during 2004 to 2009 with nil attendance in the year 2005, 2007, 2008 and 2009. He further submits that the impugned order dated 12.01.2010 not only refers to the charge-sheet dated 03.09.2007 and the inquiry report dated 07.09.2007, but also the inquiry conducted pursuant to letter no. 580 dated 17.06.2009 which is pursuant to the present charge-sheet dated 02.06.2009. He submits that the impugned order reflects application of mind and in view of the admission of the allegation made against the petitioner, the impugned order of termination does not call for any interference.

10. The learned counsel for the respondents has also referred to the second show-cause dated 28.08.2009 which was issued to the petitioner before imposing penalty on the basis of inquiry report. In response, the petitioner has accepted the fact that he did not join his duty in spite of direction to resume duty with effect from 18.10.2007 and has simply stated that he had no idea that intimation regarding absence is required to be given to the management. He has stated about his mental health problem and that he was found medically fit on 03.03.2009 to join duty but nothing has been stated as to what he did after 03.03.2009. After considering the show cause, the impugned order dated 12.01.2010 was passed.

11. So far as the appellate order is concerned, the learned counsel submits that the same also reflects application of mind and the appeal filed by the petitioner has been annexed as Annexure-8 which indicates that he has admitted his guilt and he had requested the authority to pardon him and that he shall not repeat his mistake again.

12. The learned counsel submits that the petitioner has already attained the age of superannuation and considering the facts and circumstances of this case, no interference is call for in writ jurisdiction. He submits that the impugned orders are well reasoned orders considering the facts and circumstances of this case when the allegation of absence from duty as well as not resuming his duty with effect from 18.10.2007 stood admitted by the petitioner.

Rejoinder of the petitioner

13. In response, the learned counsel for the petitioner submits that even if the petitioner has attained the age of superannuation, he would be entitled to pension if the impugned orders are set-aside.

Findings of this court

14. From the perusal of the records of this case, it appears that a show-cause was issued to the petitioner vide letter no. 518 dated 02.06.2009 making following allegation:

“as per record, it has been found that:

(1) You were absent from your duty 13.09.2003 and allowed on duty 26.4.2004.

(2) You were absent from duty on 24.9.2004 and allowed on duty 24.2.06.

(3) You were absent from duty 20.4.2006 and allowed on duty 24.11.06.

(4) You were absent from duty 24.7.2007 and allowed on duty w.e.f. 18.10.2007 with stoppage of one increment. But you have not joined duty.”

15. In response, the petitioner submitted his show-cause and admitted his absence from duty including the fact that he did not join duty with effect from 18.10.2007. However, it was the specific case of the petitioner that the petitioner was not well during the period from 19.10.2007 to 04.12.2008 due to mental ill health and he gave his joining pursuant to which, vide letter dated 03.03.2009, the petitioner was sent for examination by medical board and he was declared fit for joining duty on 03.03.2009 and a copy of the same was submitted by him. Thereafter certain letters were issued making enquiry about him and subsequently, vide letter no. 518 dated 02.06.2009, the petitioner has been charge-sheeted.

16. The enquiry officer conducted the inquiry and submitted the inquiry report as annexed with the counter-affidavit wherein a finding has been recorded that the petitioner applied for duty on 15.06.2009, so his actual absenteeism is from 19.10.2007 to 14.06.2009. The enquiry officer also recorded that the charges levelled against the petitioner were fully proved as he did not inform to the management at any point of time.

17. Pursuant to the enquiry report, second show-cause was issued to the petitioner vide letter no. 894 dated 28.08.2009 along with a copy of the enquiry report asking him to explain as to why major penalty even amounting to termination be not imposed upon him on the basis of findings of the enquiry officer.

18. The petitioner responded to the said show-cause and stated that although the petitioner was declared fit for joining duty on 03.03.2009, but no order was issued permitting him to join the duty. He also stated that he had no knowledge that it is necessary for him to inform the management for being absent from duty. The petitioner did not dispute the findings of the enquiry officer in his show -cause reply. Rather, he admitted the charges of repeated unauthorized absence from duty.

19. The second show-cause reply of the petitioner was considered and the impugned order dated 12.01.2010 was passed terminating the petitioner with effect from 08.01.2010.

20. Upon perusal of the impugned order dated 12.01.2010, this Court finds that it refers to the enquiry which was conducted earlier pursuant to show-cause dated 03.09.2007 and also refers to enquiry conducted by the enquiry officer pursuant to letter no. 580 dated 17.06.2009. Vide letter no. 580 dated 17.06.2009 enquiry committee was constituted to enquire into the allegation levelled against the petitioner in show-cause letter no. 518 dated 02.06.2009 which is a subject matter of the present proceedings. The concerned authority has accepted the findings of the enquiry officer after having gone through the report of the inquiry officer and imposed punishment of termination.

21. This Court finds that the allegation levelled against the petitioner vide letter no. 518 dated 02.06.2009 of not joining duty with effect from 18.10.2007 stood admitted by the petitioner and this aspect is not in dispute even before this Court and the finding of the enquiry officer that the petitioner remained absent from duty without any intimation to the management, is also not in dispute and was never disputed by the

petitioner before the authorities. Even if the argument of the petitioner that he was mentally unwell and was found medically fit to join duty on 03.03.2009 is taken into consideration, there is no material on record to show any attempt on his part to join his duty. The petitioner has made a statement for the first time in this writ petition that prior to issuance of show cause dated 02.06.2009 he was moving in the office of the Respondent no. 5 and 6 to give his joining but the enquiry officer has given a finding that the petitioner applied for duty on 15.06.2009 which was never disputed by the petitioner in reply to his second show-cause.

22. Thus, the records of the case clearly indicate that the charges which were levelled against the petitioner regarding past conduct of unauthorized absence from duty including the charge of not joining his duty with effect from 18.10.2007 stood admitted by the petitioner.

23. Considering the aforesaid facts and circumstances of this case, the argument of the petitioner that order dated 12.01.2010 is a non-speaking order and that the same has been passed on the basis of earlier charge-sheet, is devoid of any merit, hence rejected. On account of the aforesaid reasons, this court is not inclined to interfere with the impugned order dated 12.01.2010.

24. So far as the appeal is concerned, the letter by which the appeal was filed has been annexed along with the counter-affidavit wherein the petitioner again admitted his guilt and has simply prayed to take a sympathetic view instead of dismissing the petitioner. No ground as such challenging the order of termination dated 12.01.2010 was raised in the appeal. The appellate authority, vide impugned order dated 26.06.2010, dismissed the appeal and it has been communicated that the appeal submitted by the petitioner was examined in detail and on perusal, the appellate authority observed that under the facts and circumstances, it is not at all expedient to interfere with the decision of the disciplinary authority as there is no material for further consideration.

25. This Court finds that the order of the appellate authority dated 26.06.2010 cannot be said to be a non-speaking order when seen in the light of the appeal filed by the petitioner. In fact, even in the appeal, the petitioner had admitted his guilt and had only prayed for a sympathetic consideration and has stated that if he again commits such mistake, then he may be terminated from service. The appellate order cannot be seen in isolation and it has to be seen in the light of the grounds of appeal raised

by the petitioner. Since the petitioner did not raise any material ground before the appellate authority, the impugned order of the appellate authority dated 26.06.2010 cannot be said to be a non-speaking order.

26. In the judgement relied upon by the petitioner passed in the case W.P.(S) No. 5522 of 2007 dated 23.12.2021 the inquiry officer in the said case had submitted a report in which he gave an opinion that the charges were not fully proved, but the disciplinary authority awarded punishment and the appeal against the order imposing punishment was dismissed without considering the merits and by merely observing that no ground was made out for interference.

27. The present case stands on a different footing altogether as the petitioner has admitted his guilt and the inquiry officer clearly held that the petitioner remained absent without intimating to the authority and had remained absent from duty from 19.10.2007 to 14.06.2009.

28. In view of the aforesaid facts and circumstances, the aforesaid judgement which has been relied upon by the petitioner does not apply to the facts and circumstances of this case.

29. As a cumulative effect of the aforesaid findings, the present petition is hereby dismissed.

30. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)