

ORISSA HIGH COURT: CUTTACK.

O.J.C. No. 16115 OF 1997

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Sri Prabhakar Sahoo Petitioner

-Versus-

Presiding Officer, Industrial
Tribunal, Rourkela and another Opp. Parties

For Petitioner : M/s. B.K.Nayak ,
J.K. Khuntia & S.S.Patra.

For Opp. Parties: M/s. J.K. Tripathy, B.P.Tripathy,
N.P.Mohanty, S.N.Mishra,
P.K. Chand, D.Satpathy &
A. Mohanty.
(For O.P. 2)

Date of Judgment: **29.08.2011**

PRESENT :

THE HONOURABLE SHRI JUSTICE M.M. DAS

M. M. DAS, J.

This writ petition has been filed by the petitioner calling in question the award dated 3.6.1997 passed in I.D. Case No. 41 of 1997 (65/94) by the learned Industrial Tribunal, Rourkela.

2. The case of the petitioner – workman is that he joined in service in the Rourkela Steel Plant in the year 1973 as S.S.W. (L-I) and was promoted to a semi skill worker in L-III grade. On 25.5.1990, he was issued with a charge sheet on the allegation that he committed acts of disorderly and indecent behaviour in the work premises. He submitted his show cause denying such allegation. An

enquiry committee was constituted by the Superintendent (Mechanical) Fertilizer Plant on 16.7.1990 and the matter was enquired into. In May, 1991, the enquiry was completed, but the Enquiry Officer delayed the submission of the enquiry report with a view to deny the workman his promotional benefits inasmuch as he was entitled for his promotion in June, 1992. The Enquiry Officer submitted his report on 30.4.1993, the date on which he retired from service. Those who were junior to the petitioner – workman, got promotion, but he was deprived of even the chance for appearing in the interview, which clearly discloses the revengeful attitude of the Management towards him. Further case of the petitioner - workman is that the Enquiry Officer submitted two findings, one under the caption of findings of the enquiry committee and the other finding in case of allegation against the second party – workman. According to the petitioner, there are different departments under the Management and each department has different sub-departments, like Technical, Mechanical and Operation which has different heads of departments and different line of supervision. Since the workman was in the mechanical maintenance division in Ammonia Plant of fertilizer plant, he was not obliged to carry out the order of Shri N.C. Jena, Assistant Manager (Production) and even if the petitioner -workman refused to carry out the order of Sri Jena, he was within his right. His further case was that the enquiry was conducted in a most perfunctory manner and the disciplinary authority concurred the findings of the

enquiry officer holding him guilty of the charges in a mechanical way without giving due credence to the evidence on record and inflicted one of the harsh punishments by reducing his basic pay from Rs. 1803/- to Rs. 1415/-, whereby the petitioner – workman lost 13 years of annual increments which is shockingly disproportionate to the alleged misconduct. More over, before imposing punishment, the petitioner – workman was not given an opportunity to have his say as he was not provided with a copy of the enquiry report. On the above basis, he raised an industrial dispute which was referred to the learned Tribunal, the reference being:

“Whether the action of the management of SAIL, Rourkela Steel Plant, Rourkela by reducing the basic pay of Sri P.K. Sahoo, S.S.W. Pl. No. 39574, Ammonia & NRP-II (Mech.Maint), Fertilizer Plant from Rs. 1803/- to Rs. 1415/- in his existing scale of L-3 is legal and/or justified, If not, what relief Sri Sahoo is entitled to get ?”

On appearance and on filing of the claim by the workman, the management filed its written statement contending that on 23.3.1990, while Shri Jena, Assistant Manager (Production), N.R.P.-II , Fertilizer Plant was in ‘B’ shift duty, i.e. from 2.00 P.M. to 12 mid-night, the plant tripped at about 4.00 P.M. due to power failure. After the power supply was restored, the condensate pump on Ben field section did not take load due to air-locking. Written instruction was issued to the charge-man (Mechanical Maintenance) to open suction slang of above pump at 5.00 P.M. When no response was made, Mr. P.Behera, Charge-man (Production) went to the concerned mechanical maintenance shift office twice and requested Mr. Chako, Charge-man,

Mechanical (Maintenance) to take up the job immediately in view of the urgency. In spite of such instruction, the job was not attended to and hence, plant control room was informed of the position. The petitioner – workman came to the work site at about 6.00 P.M. without tools and asked Shri Jena, Assistant Manager (Production) as to who had informed the plant control room. When Shri Jena replied that he himself has given the information, the petitioner – workman threatened him with a rough voice saying he would see how the job would be done and further unzipped his pant and made vulgar gesture towards Shri Jena in presence of Mr. V.V. Saha, Deputy Manager and Mr. P. Behera, Charge-man (Production). Therefore, a charge sheet was issued against the petitioner – workman for his disorderly and indecent behaviour in the work premises in accordance with Clause 28 (x) of the Standing Order of the Company. The explanation submitted by the petitioner – workman having been found not satisfactory, an enquiry committee was constituted to enquire into the charges levelled against him. The petitioner -workman participated in the enquiry and cross-examined the witnesses and he himself examined two witnesses on his behalf. After conclusion of the enquiry, the enquiry committee submitted its finding to the disciplinary authority holding the petitioner – workman guilty of the charges. After carefully going through the evidence on record, the disciplinary authority agreed with the conclusion arrived at by the enquiry committee. Although the misconduct committed by the

petitioner – workman was serious in nature and warranted extreme punishment like removal/dismissal from service, the disciplinary authority taking his past record into consideration imposed a lesser punishment with a view to give him a further opportunity to improve his conduct.

3. Mr. B.K.Nayak, learned counsel for the petitioner, over and above challenging the award on the question of appreciation of evidence by the learned Tribunal, submitted that the finding of the learned Tribunal that the punishment imposed against the petitioner-workman by reducing the pay scale is not shockingly disproportionate so as to infer victimization and there has been no violation of the principles of natural justice and the domestic enquiry has been conducted in a fair and proper manner are contrary to the materials on record. He submitted that the above findings of the learned Tribunal are contrary to the provisions of the Standing Order and are liable to be set aside. An extract of the Standing Order has been annexed as Annexure-8 to the writ petition. The petitioner-workman preferred an appeal against the punishment imposed as per paragraph-33 of the Standing Order and Mr. Nayak alleges that the appellate authority assigned no reason while confirming the order of punishment imposed. The other question raised by Mr. Nayak is that the Senior Manager (Mechanical), who acted as the disciplinary authority being not the appointing authority of the petitioner-workman, he could not have imposed such punishment on the

petitioner-workman which is totally without jurisdiction. According to Mr. Nayak, non-consideration of the petitioner for promotion in the year 1992, when his juniors were considered, on the ground that disciplinary action is pending against him, reduction of his scale of pay imposed as punishment in the year 1992 and non-payment of the guaranteed benefits to him in 1995 amounts to punishing the petitioner-workman thrice for the same allegation.

4. Mr. B.P. Tripathy, learned counsel appearing for the opp. party No. 2 - management, on the other hand, contended that the Tribunal on examining the facts has rightly come to the conclusion that the domestic enquiry was conducted fairly and properly and there is no victimization. The incident with regard to the failure of functioning of the pump in question on 23.3.1990 was admitted by both the parties. He further submitted that from the evidence adduced by the Management before the learned Tribunal, the allegations made in the charge sheet have been again corroborated by the witness.

5. The learned Tribunal in paragraph-16 of the award has come to the conclusion that it cannot re-appreciate the evidence or say that the evidence is inadequate and, therefore, held that it cannot be said that there is no evidence to support the findings of the Enquiry Officer and it cannot also be held that on the basis of the evidence adduced, no reasonable person could come to such finding. Accordingly, it held that there is a prima facie case in respect of the

misconduct charged. With regard to the punishment imposed, on considering the evidence adduced before it, the learned Tribunal held that the punishment imposed against the petitioner-workman is not shockingly disproportionate so as to infer victimization. Hence, the action of the Management cannot be levelled as mala fide. With regard to the competency of the disciplinary authority, this Court finds that the said question was considered by the learned Tribunal which held in paragraph-18 of the award that on perusal of the circular No. 483 dated 8.9.1986 containing delegation of powers, it is seen that Manager and Executive in equivalent rank are eligible to constitute enquiry committee. The post of Superintendent being equivalent to the post of Senior Manager, the contention raised by the petitioner-workman is unsustainable. As per the delegation of disciplinary power, the Superintendents and the Executives in equivalent rank are empowered to impose major punishment other than removal or dismissal. In the present case, Mr. S.C. Das, Senior Manager (Mechanical) Fertilizer Plant, who is in the equivalent rank of Superintendent, has passed the impugned order and as such, there is no violation of the Standing Order of the Company. It further appears that the learned Tribunal on analyzing the materials produced before it has come to the conclusion that there is no violation of the principles of natural justice and the finding of the Enquiry Officer is a reasoned one. With regard to the allegation of the workman that the report of the enquiry committee was not supplied to him, the learned

Tribunal has referred to Order 30(a) of the Standing Order which provides that copies of relevant documents like findings of the Enquiry Officer, enquiry proceedings etc. shall be supplied by the Management to the employees concerned on request and there is nothing on record to show that the petitioner-workman requested the Management for any such document and was not provided with such document. To supplement the above finding, it would be apt to refer to the decision in the case of **Sarv U.P. Gramin Bank v. Manoj Kumar Sinha**, 2010 (3) SCJ, 134. In the said case, the Hon'ble Supreme Court considering the question with regard to non-supply of the enquiry report to the delinquent, in paragraph-30 thereof held as follows:

“Thereafter, this Court notices the development of the principle that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with. The Court notices a number of judgments in which the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. Ultimately, it is concluded as follows:-

“44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that the delinquent employee has to show “prejudice”. Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.”

6. Considering the findings of the learned Tribunal in the impugned award and the settled position of law, this Court is of the view that in a writ of certiorari, it cannot act as an appellate court over the findings recorded by the industrial court unless the same are shown to be illegal or perverse or has violated the principles of natural justice. As this Court finds that there is no apparent error in the impugned award nor the same can be termed as either illegal or perverse, it feels appropriate not to interfere with the same.

7. In the result, therefore, the writ petition fails and, accordingly, the same is dismissed. No costs.

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M.M. Das, J.

***Orissa High Court,Cuttack
August 29th,2011/Biswal.***