

Lallan Prasad Vs. Steel Authority of India Limited Through the Managing Director and Ors

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Court : Jharkhand

Decided On : Jun-30-2017

Appellant : Lallan Prasad

Respondent : Steel Authority of India Limited Through the Managing Director and Ors

Judgement :

1 W.P.(S)No. 4095 of 2016 ` IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 4095 of 2016 Lallan Prasad, son of Sarabjit Prasad Resident of -
Sector - IXB, Street No. 14, Q. No. 866, Bokaro Steel City, Sector - IX, P.S. -
Harla, District - Bokaro, Jharkhand. Petitioner VERSUS1 Steel Authority of India
Limited through the Managing Director, Bokaro Steel Plant, Bokaro Steel City,
Bokaro.

2. General Manager (Projects), Steel Authority of India Limited, Bokaro Steel
Plant, Bokaro.

3. General Manager (Mechanical) & Disciplinary Authority, Steel Authority of India
Limited, Bokaro Steel Plant, Bokaro.

4. Deputy General Manager In-charge, (Mechanical & Maintenance), Steel
Authority of India Limited, Bokaro Steel Plant, Bokaro. ... Respondents. CORAM: -

HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE DR. S. N. PATHAK For the Petitioner : Ms. M.M Pal, Sr. Advocate. Ms. Mahua Palit, Advocate. Mr. S.C. Roy, Advocate. Mr. Sudeepta Kumar Pal, Advocate. Ms. Ruby Pandey, Advocate. For the Respondents : Mr. Rajiv Ranjan, Sr. Advocate. Mr. Shrestha Gautam, Advocate. Mr. Shashank Saurav, Advocate. C.A.V. On 09/03/2017 PRONOUNCED ON3006 /2017 Dr. S.N. Pathak, J.

Heard learned counsel for the parties.

2. The petitioner has approached this Court with a prayer for quashing the order dated 27.11.2015, passed by the Central Administrative Tribunal in O.A. No. 051/00039/2015 whereby the Original Application filed by the petitioner against the termination order as also the appellate order, has been dismissed. 2 W.P.(S)No. 4095 of 2016 ` Petitioner has further prayed for a direction to the respondent to reinstate him to his original post with full backwages and all consequential benefits and for other benefits to which he is entitled for after setting aside the impugned order dated 16.11.2012, passed by the Disciplinary Authority as also the appellate order dated 04.06.2013 affirming the order passed by the Disciplinary Authority.

3. The factual exposition as has been delineated in the writ petition is that an advertisement was floated by the respondent no. 1 in the month of June, 2007 for recruitment on the post of M.E. Operator/ H.V. Driver. The petitioner being eligible, applied for the said post and Admit Card was duly issued to him. The petitioner appeared in the written examination held on 04.09.2007 and after being selected and fulfilling all the requisite criteria and conditions, he was appointed to the said post in the pay scale of Rs.4170 - 6095. The petitioner, thereafter, joined in the said post on 17.09.2007. Since the date of his appointment, his work was appreciated by all and there was no complaint whatsoever. Later on, after a series of complaint against these appointments, the Vigilance Department started investigation in which petitioner also had to appear. The petitioner candidly submitted that he appeared in the written examination for which Admit Card was issued to him and he put his signature on the answer book and on being found successful, he was selected for the post for which he joined. However, on receiving complaints, the respondents tallied signature of the petitioner on the

joining report vis--vis signature on the answer sheet, counter foil and thereafter reached to the conclusion that both the signature i.e. on joining report as also on the answer sheet, do not match, thereby creating a doubt about 3 W.P.(S)No. 4095 of 2016 ` his appearance in the written examination and inference was drawn that his signatures do not match, thereby creating doubt about his appearance in the written examination and, accordingly, vigilance started investigation on the complaint and the petitioner was called for and his statement including his sample signatures were collected for investigation On the direction of the Vigilance Department, the petitioner gave ten sample signatures. During enquiry, the Vigilance Department tallied signature of the petitioner on his joining report vis--vis sample signature given to the Vigilance Department and further verified the same from the government examiner of questioned documents, Central Forensic Science Laboratory, Director of Forensic Science, Ministry of Home Affairs, Kolkata-14, which on examining the sample signatures, gave a reasoned opinion that the person who had given sample signatures to the Vigilance Department and the person who had signed the joining report, did not write the signature on the answer sheet counter foil. Meaning thereby, the signature before the Vigilance Department and the signature in the answer sheet did not tally at all as per the opinion of the experts.

4. On the basis of the opinion dated 08.10.2010, Chargesheet dated 07.03.2011 was issued against the petitioner under the signature of respondent no. 3 alleging misconduct for giving false information regarding ones particular for the purpose of employment and the statement of allegation on which the said chargesheet is based. The petitioner was directed to submit his show cause within a specific time and the same was submitted on 11.03.2011 denying the allegations leveled against him and further requested to exonerate him from the charge memo. 4 W.P.(S)No. 4095 of 2016 ` 5. It is further averred that without considering the show cause filed by the petitioner, the respondents proceeded for departmental enquiry and further vide order dated 13.04.2011, it was informed that an enquiry committee had been constituted by one Sri S.C. pandey and Sri U. Rajak, Sr. Manager (Vig.) will be the Presenting officer. The petitioner duly appeared and the department as well as the petitioner filed their written statement along with supporting documents to defend their cases. The enquiry proceeding started on

13.04.2011 to enquire into the charges leveled against the petitioner and the same was concluded by submitting enquiry report dated 27.01.2012 with specific finding that the petitioner has been chargesheeted for giving false information regarding ones particulars for the purpose of employment. After considering details of the documentary evidence as also evidence adduced by the parties, the enquiry officer came to a final conclusion that the charge leveled against the petitioner are not proved and after holding that the statement of allegation itself is contradictory and not proved and only on the basis of the opinion given by the GEQD, Kolkata, which does not relate with the circumstances mentioned in para-2 of the statement of allegations, petitioner cannot be held guilty.

6. After submission of enquiry report, the disciplinary authority disagreed with the findings of the enquiry officer that the charges are not proved and while disagreeing with the disciplinary authority, the respondent no. 4 issued a final notice dated 06.10.2012 giving reasons for disagreement interalia:- (i) The Enquiry Officer has not appreciated the conclusive finding of GEQD which is based on scientific tools and cannot merely be set aside 5 W.P.(S)No. 4095 of 2016 without giving equally situated technical reasons. Thus the enquiry committee failed to appreciate the importance of GEQD opinion in this case. The defense also failed to controvert the findings of GEQD during the enquiry proceedings. (ii) The Enquiry Officer has failed to appreciate the part of statement of allegation wherein it has been stated that the signature of CSE do not match in the coded counterfoil of his answer sheet and the joining report. This part of the statement of allegation has not been evaluated with the findings of his enquiry. (iii) The defense side has not been able to prove that the witnesses saw the CSE sign in front of them. Mere placing of the roll no. sequence does not prove that the CSE was present. More so, it is very unlikely that after a span of 4 years DW-1 and DW-2 who met CSE for the first time on 4.9.2007 for a very short period still remember distinctly that they met CSE and also his seat location. Cross examination of witnesses reveals that the witnesses remember only one person the CSE and no other person. This goes to show that the claim of witnesses are doubtful and thus cannot be relied upon. (iv) The signatures of Sri Lallan Prasad on his coded counterfoil of answer sheet, joining report and specimen signatures provided to Vigilance Department at a glance also appears to mismatch, which has been

confirmed by GEQD. Disagreeing with the enquiry report, the notices were issued to the petitioner for filing his representation.

7. On receipt of the notice, the petitioner filed a detailed representation stating specifically that after going 6 W.P.(S)No. 4095 of 2016 ` through all the aspects, the enquiry officer has exonerated him from all the charges and without any basis, the disciplinary authority has disagreed, which is not legal, proper and not based on any evidence. It was also stated that the sole basis for differing from the enquiry report was the report of GEOD which is not scientific. It is case of the petitioner that without appreciating the show-cause reply, the disciplinary authority mechanically issued separation order dated 16.11.2012 whereby petitioner has been dismissed from the service.

8. Being aggrieved by order dated 16.11.2012, the petitioner preferred an appeal before the appellate authority stating in details entire facts including the legality of the disagreement note as also the fairness of the enquiry proceeding and the fact that the enquiry officer had completely absolved him from the charges. The appellate authority affirmed the order of the disciplinary authority vide its order dated 04.06.2013 which was communicated to the petitioner vide letter dated 19.06.2013. Being aggrieved, the petitioner challenged the same before learned Single Judge vide W.P.(S) No. 7064 of 2012 which was however withdrawn vide order dated 04.12.2014 in order to enable the petitioner to approach before the learned Central Administrative Tribunal. Thereafter, the petitioner moved before the learned Central Administrative Tribunal vide O.A. No. 051/00039/ 2015 challenging the order of dismissal dated 16.11.2012 as well as the appellate order dated 19.06.2013. However, the learned Central Administrative Tribunal, vide its order dated 27.11.2015, refused to interfere in the impugned orders of dismissal as well as appellate order and further observed as under:- In view of the above, this Tribunal finds no basis to interfere with the action taken against the applicant by the respondents. It is held that his removal from 7 W.P.(S)No. 4095 of 2016 ` service has been just and justifiable given the forensic evidence/ findings against him and that the impugned orders have been issued after due process and after giving him due opportunity to defend himself at various stages stipulated as per rules/ guidelines in the matter. In the result, the reliefs prayed for in para-8 of this

OA are denied in full and the OA is dismissed with no order as to costs.

9. Being aggrieved by the aforesaid order dated 27.11.2015 passed by learned Central Administrative Tribunal in O.A. No. 051/00039/ 2015, the petitioner has preferred the instant writ petition.

10. Mrs. M.M. Pal, learned Sr. Counsel assisted by Ms. Ruby Pandey and Ms. Mahua Palit, strenuously urges that the impugned order is illegal, arbitrary and has been passed mechanically affirming the orders of disciplinary authority as well as appellate authority. Learned Sr. Counsel argued that though the petitioner has been absolved of the charges leveled against him and the enquiry officer had observed that there was no any legal evidence to implicate him on the charges leveled against him and merely on the findings given by the Forensic Department, he cannot be held guilty of the charges. The learned Sr. Counsel further argued that the disciplinary authority without giving cogent reasons for disagreement, has disagreed with the enquiry report mechanically and without assigning any reasons. Learned counsel further emphatically argued that there was a requirement of personal hearing to the petitioner, which was not done in the instant case and as such on this score itself the impugned order is liable to be dismissed. Learned counsel further argued that the Evidence Act has been given a go bye and the report of the Forensic Science Laboratory has been taken into consideration, which is against the principles of service jurisprudence. 8 W.P.(S)No. 4095 of 2016 ` Learned Sr. Counsel for the petitioner submitted that the statement of allegation given by the Management in details is contradictory to the allegation made in the chargesheet and nothing has been produced before the enquiry committee against the CSE for giving false information regarding particulars for the purpose of employment as alleged in the charge sheet rather at para-2 of the statement of allegation the Management has themselves accepted that the petitioner had appeared in the written test scheduled on 04.09.2007 and had furnished his particulars in the counter foil of the answer sheet and signed it. Meaning thereby, the petitioner was available in the examination hall for the purpose of examination for the post, which is in conformity with the statements given by the Defence Witnesses who were the eye witnesses. Learned counsel further submitted that so far the signature verification report received from GEOD

that the signature made available as standard specimen signatures to Vigilance by the CSE do not match with signature available on cadre counterfoil of the answer sheet and signature available on his joining report which was the basis of selection for the post, do not appear in line with natural notice to be provided to the charge sheet employee. Learned Sr. Counsel further submitted that the Central Administrative Tribunal failed to appreciate that it was not the case of the Management that some other appeared in the exam in place of the petitioner and it is a case of impersonation rather it is case of the management itself that the petitioner himself had appeared in the examination, found successful and thereafter was selected for the post and duly appointed. Learned Sr. Counsel further submitted that non-examination of invigilator as also the GEQD/ Hand Writing expert has also vitiated the 9 W.P.(S)No. 4095 of 2016 `entire proceeding. Learned Sr. Counsel further submitted that there is total violation of principles of natural justice as the enquiry proceeding was not fair and proper and further the complainant, handwriting expert (GEQD) Kolkata as also invigilator were not examined and the petitioners right to cross examine them have been snatched away in violation of various decisions of the Honble Courts. In order to strengthen her arguments, learned Sr. Counsel has relied upon several Judgments of this Court as also the Judgments passed by Supreme Court and further tried to impress upon that the order of the disciplinary authority as well as appellate authority has been passed mechanically and without appreciating the fact that the petitioner had already been exonerated by the enquiry officer. In order to buttress her arguments, the learned counsel emphatically stressed upon the Judgment of the apex Court regarding personal hearing and submitted that it is the requirement of law that the personal hearing is required before passing an order of dismissal. Learned Sr. Counsel further contended that the disciplinary authority should have given its reasons for disagreeing with the decision of the enquiry officer. She further contended that even if the rule does not specifically say that the delinquent employee should be given personal hearing when it disagrees with the enquiry officer, the same shall be read into the provisions and the delinquent employee shall be given an opportunity of personal hearing before a final decision is taken in the mater. The Judgments cited by learned Sr. counsel may be summarized as under: (i) State of Maharashtra Vs. Damu, S/o Gopinath Shinde and others

reported in (2000) 6 SCC269 [Relevant Para-40 which states as under:

10. W.P.(S)No. 4095 of 2016 ` 40. Ex. 64 is only the opinion of the Assistant State Examiner of Documents. From that description alone, it cannot be gathered whether his office would fall within the purview of Section 293 of the Code. Hence, without examining the expert as a witness in court, no reliance can be placed on Ex.64 alone.] (ii) Malay Kumar Ganguly Vs. Sukumar Mukherjee & ors. WITH Dr. Kunal Saha Vs. Dr. Sukumar Mukherjee and Ors. Reported in AIR 2010 SC1162[Relevant para-44 and 48 which reads as under: It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is stopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a Court of law.] (iii) Ram Chander Vs. Union of India and others reported in AIR 1986 SC1173[On the point that fair-play and justice also require that such personal hearing should be given.] (iv) Commissioner of Police Delhi and others Vs. Jai Bhagwan reported in (2011) 6 SCC376 (v) Yoginath D. Bagde Vs. State of Maharashtra and another reported in AIR 1999 SC3734[on the point that right to be heard would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any 11 W.P.(S)No. 4095 of 2016 ` legislative enactment or Service Rule including Rules made under Art. 309 of the Constitution.] (vi) Shashi Kumar Banerjee and others Vs. Subodh kumar Banerjee reported in AIR 1964 SC529[Para-21 - The experts evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.] (vii) Punjab National Bank and others Vs. Kunj Behari Misra reported in (1998) 7 SCC84[Relevant para-17 and 18 - The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. . In departmental proceeding what is of ultimate importance is the finding of the disciplinary authority.] (viii) Nirmala J.

Jhala Vs. State of Gujarat and Another reported in (2013) 4 SCC301 (ix) Ram Narain Vs. State of Uttar Pradesh reported in 1973 Cri. L.J.

1187. (x) Allahabad Bank & Ors. Vs. Krishna Narayan Tewari reported in 2017 (10 JBCJ171(SC). (xi) Kuldeep Singh Vs. The Commissioner of Police and others reported in AIR 1999 SC677. Learned Sr. Counsel further submitted that the appellate order is illegal, improper as also non-speaking and no reason has been assigned therein and as such, the impugned order of appellate authority, disciplinary authority as also the order passed by the learned Central 12 W.P.(S)No. 4095 of 2016 ` Administrative Tribunal affirming the impugned orders are fit to be set aside.

11. On the other hand though no counter affidavit has been filed, Mr. Rajiv Ranjan, learned Sr. Counsel assisted by Mr. Shrestha Gautam vehemently opposed the contention raised by learned Sr. Counsel for the petitioner. Learned Sr. Counsel appearing for the respondents has argued that the order of the disciplinary authority is a reasoned order and there is no illegality or infirmity in the impugned orders and the learned Central Administrative Tribunal has also rightly affirmed the impugned orders. Learned Sr. Counsel further argued that the Evidence Act cannot be taken as a basis for coming to a finding in a departmental proceeding. Learned counsel further submitted that a complaint was lodged and in furtherance thereof, an investigation was carried out by the Vigilance Department regarding the irregularities in recruitment of Heavy Vehicle Drivers/ ME Operators. When the signatures on the joining report and answer sheet did not match, the disciplinary action was initiated against the petitioner and a chargesheet was issued. Thereafter, proper inquiry was instituted to inquire into the issues involved and the appointing authority, after due consideration of all material facts and documents, ordered dismissal of the petitioner. Thereafter, appeal was also rejected on merit. The entire proceeding against the petitioner was in accordance with the rules prevalent in the Company and there had been no violation of principles of natural justice. Learned Sr. Counsel further submitted that the Courts should not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the grounds that another view is possible on material record. 13 W.P.(S)No. 4095 of 2016 ` To buttress his arguments, learned Sr. Counsel has relied in the

cases of J.A. Naiksatam Vs. Prothonotary & Senior Master, High Court of Bombay and others reported in (2004) 8 SCC653- [Relevant Para-6 and 7 - Even though the rule as such does not contemplate giving an opportunity to the delinquents before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there shall be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and thus, the principles of natural justice have been fully complied with and there is no infraction of rules or infirmity in the said decision. The contention that from the tentative decision it could be spelt out that the disciplinary authority had already taken a final decision in the matter and the details have been given therein and the opportunity which was given to the appellants was only an exercise in futility, is not acceptable.] 12. We have heard learned counsel for the parties, perused the records and are of the considered opinion that the termination of the petitioner has been the end result of the duly conducted disciplinary proceeding in which the petitioner had been afforded proper opportunity to defend his case. We further find that the basis of the disciplinary action against the petitioner is the forensic evidence/ finding relating to the signature of the petitioner on the counter foil of the answer sheet and the signature on his joining report and the forensic examination has clearly established that there is a mismatch between the two 14 W.P.(S)No. 4095 of 2016 ` signatures. The forensic findings from the recognized Government institution like the Directorate of Forensic Science, are the result of well recognized and established scientific processes and cannot be summarily rejected or ignored. We further find that the learned Central Administrative Tribunal has rightly come to a conclusion that the inquiry officer has attempted to summarily negate and brush aside the forensic evidence against the petitioner, there are obvious and serious issues of credibility and logic and that there appears to be ample justification in the decision of the disciplinary authority to disagree with the findings of the inquiry report on the grounds that the inquiry officer has not appreciated the conclusive evidence of the GEQD which is based on scientific tools and cannot merely be set aside without giving equally situated technical reasons. The petitioner has failed to establish the

grounds on which the action by the respondents can be questioned or invalidated. The learned Tribunal has also rightly taken into consideration the rulings of the Apex Court to the extent that the courts should normally not substitute their own judgment in place of the findings of a duly conducted inquiry, nor should they interfere with them in the normal course unless there are clear violations of the principles of natural justice, statutory regulations, established procedures or unless there is malafide. We also do not find any instance substantiated by the petitioner to interfere with the impugned orders. In the instant case the petitioner furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the decision of disciplinary authority as also the appellate authority and the Judgment passed by the learned Central Administrative Tribunal. The 15 W.P.(S)No. 4095 of 2016 ` petitioner had made an effective representation and the principles of natural justice were fully complied with and it cannot be said that the petitioner was not heard in the matter. The decisions cited by the learned Sr. Counsel for the petitioner do not come to her rescue. The contention of learned Sr. Counsel that the petitioner was not given personal hearing is not acceptable in view of legal proposition in case of J.A. Naiksatam (Supra) wherein Their Lordships have taken into consideration the Judgments passed in the case of Punjab National Bank Vs. Kunj Behari Misra and further the Judgment passed in the case of Yoginath D. Bagde Vs. State of Maharashtra on the point of personal hearing and Their Lordships have held in para-6 and 7 that they did not find any infraction of rules or infirmity in the impugned decision. Their Lordships further held that disciplinary authority gave its reasons for disagreement with the report of the enquiry officer and the appellants had given their full-fledged explanation and if at all the disciplinary authority gave detailed tentative decision before seeking explanation from the appellants, it enabled them to give an effective representation and the principles of natural justice were fully complied with and it cannot be said that the appellants were not being heard in the matter.

13. Here in the instant case, we find that even from the records of the case which has been annexed in the writ petition by the petitioner, the signature clearly shows that they do not tally each other. It is crystal clear that it has been signed by different persons. It is clear cut case of impersonation. Fraud has been proved.

There are catena of decisions which says that in case of fraud, the principles of natural justice is not attracted but in the instant case, 16 W.P.(S)No. 4095 of 2016 though it is case of fraud, ample opportunity has been given to the petitioner to prove his innocence but it has been proved that signature is not of the writ petitioner. It is established law that fraud vitiates everything. Based on the observation, very comfortably it can be inferred that the petitioner was given copy of proceedings and petitioner furnished reply thereof and in our view, principles of natural justice has been fully complied with.

14. Be that as it may, having gone through the rival submission of the parties, we find that no ground is made out to interfere with the impugned orders passed by the Disciplinary Authority as also the Appellate Authority. We further hold that the learned Central Administrative Tribunal, while passing the impugned order dated 27.11.2015 in O.A. No. 051/00039/2015 has considered all the aspects and has rightly arrived at the conclusion that the disciplinary authority as also the appellate authority have considered all aspects before imposing such penalty.

15. We do not find any merit in this writ petition. Consequently, this writ petition is dismissed. No costs. (Dr. S.N. Pathak, J) H.C. Mishra, J.

(H.C. Mishra,J.) Dated the June 30, 2017 High Court of Jharkhand at Ranchi RC/A.F.R.

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