**Suresh Kumar Singh and ors. Vs. Central Coal Field Ltd. and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/522642

**Court** : Jharkhand

**Decided On :** Aug-25-2003

**Reported in** : [2004(1)JCR279(Jhr)]

**Judge** : M.Y. Eqbal, J.

**Acts** : Service Law; Constitution of India - Article 226

**Appeal No.** : C.W.J.C. No. 3577 of 2000

**Appellant** : Suresh Kumar Singh and ors.

**Respondent** : Central Coal Field Ltd. and ors.

**Advocate for Def.** : Ritu Kumar and; Ravi Kumar Singh, Advs.

**Advocate for Pet/Ap.** : Mahesh Tiwari and; Ajay Kumar Tiwari, Advs.

**Disposition** : Petition allowed

**Judgement** :

**M.Y. Eqbal, J.**

1. The petitioners have prayed for quashing the office orders dated 24.1.1999 issued by the General Manager, Dhori Area, Central Coalfield Ltd. by which the petitioners have been awarded punishment of demotion to the next lower post and pay scale and also for recovery of the financial loss caused to the respondents

from their salary.

2. Short facts of the case are that the petitioners were working as clerks in Amlo Project under Dhori Area of the respondents. On 4.7.1994 the petitioners were assigned the work of pay clerks. On the same day in the night after duty hours theft was committed in the strong room and the money and other articles kept therein were taken away. A police case was instituted on the next day against unknown. In course of investigation the petitioners were made accused and they were put under suspension pending issue of formal charge-sheet and initiate on of departmental proceeding. Charge against the petitioners was that on 4.7.1994 after disbursement of the amount to the employees, the unpaid amount together with the list showing the names of the workers who were paid their wages, was not returned to the cashier. It was further alleged that the petitioners unauthorisedly got the cash back in the strong room without accounting and did not return the balance cash to the cashier of the Amlo Project. As the petitioners failed to perform their duties, the same amounted to misconduet in terms of various clauses of the Standing Orders, The petitioners submitted their explanation and denied the allegation levelled against them. The departmental proceeding commenced and the Enquiry Officer submitted his report holding that the Management failed to prove the charges levelled against the petitioners. The Enquiry (Officer further held that the petitioners are not guilty of the charges. The Disciplinary Authority disagreed with the findings of the Enquiry Officer and show cause notices were issued to the petitioners intimating them the reasons for disagreement with the finding of the Enquiry Officer. The petitioners submitted their representation on 27.7.1998 to the Disciplinary Authority explaining the facts and circumstances of the case. The Disciplinary Authority issued office orders dated 24.1.1999 holding the petitioners responsible for the financial loss to the Company. The Disciplinary Authority, therefore, imposed punishment of demotion to the next lower post and pay scale and ordered recovery of a sum of Rs. 2,18,453.80 paise at the rate of Rs. 2000/- per month from the salary of the each petitioners.

3. Aggrieved by the impugned order the petitioners represented before the Chairman-cum-Managing Director COL and the latter rejected the appeal and

affirmed the order of punishment passed by the Disciplinary Authority.

4. Mr. Mahesh Tiwary, learned counsel appearing on behalf of the petitioners assailed the impugned orders of punishment as being illegal and wholly perverse. Learned counsel submitted that the Enquiry Officer, after considering the entire facts, evidence and other materials, came to a definite finding that the petitioners are not guilty of the charges but the Disciplinary Authority reversed the said finding of the Enquiry Officer merely on extraneous considerations and imposed the punishment. Learned counsel submitted that the Appellate Authority arrived at a finding that it was Sri Onkar Singh, the cashier who deliberately kept both the keys of the strong room in the Almirah of his office which was kept unlocked and the punishment imposed against him by awarding dismissal from service is justified. In view of this finding no charge could have been framed against the petitioners.

5. Mr. Ritu Kumar, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the Disciplinary Authority, after taking into consideration the evidence on record, depositions and the cross examinations of the witnesses and that the exhibited documents, arrived at a conclusion that the Enquiry Officer had not assessed the evidence objectively and impartially and came to a wrong finding that the charges were not established against the petitioners. The Disciplinary Authority thereafter, passed speaking order while disagreeing with the finding of the Enquiry Officer and the reason for disagreement with the finding of the Enquiry Officer was handed over to the petitioners for submitting their representations. According to the learned counsel, therefore, the Disciplinary Authority acted in accordance with law and the procedures and passed the impugned order of punishment. Not only that, the appellate Authority also reappreciated the entire evidence and came to a definite finding that the charges against the petitioners have been proved. It is contended, that this Court, on the facts of the case, should not interfere with the finding of the Disciplinary Authority in exercise of writ jurisdiction under Article 226 of the Constitution.

6. Before appreciation of the rival contentions of the parties I would like to refer some of the findings arrived at by the Enquiry Officer which is quoted hereinbelow:

'On the other hand the charges levelled against all the Pay Clerks S/Shri. B.D. Mehta, Gopal Mahto, A,K. Bhagat, Suresh Kumar Singh and Basudeo Ram Turi, are the same except the amount shown as handed over to them for disbursement of wages to workmen on 4.7.1994, as indicated in charge, No. 1, differs from each other. I weighing the evidence brought before the enquiry and analyzing the facts brought through witnesses statement before enquiry, it is observed that 'the copy of the Finance Manual which is filed as ME-5, and the letter No. 1A/CCL/Cash/94-95/1/370/, dated 9.8.1994 of GM (F) issued to all Area GMs./Project Officers, Security Officers/Area Finance Manager/Area Security Officer and Project Accounts Officers of the company on the subject of cash management which is filed as ME-9 are relevant. From ME-9 filed by the Management Representative it is seen that this letter was issued by GM (F) after the accident of 4.7.1994. In the letter the reason for it's issue has been indicated. This was issued when short coming have been noticed by the Management for implementation of Finance Manual Vol. 1. Part II Chapter 1. It has also been indicated in this letter that since the copies of the Finance Manual may not be readily available with all the people involved in cash management and, therefore, relevant portion from the Finance Manual relating to custody, safety and record keeping of cash etc. are reproduced in the letter with certain additional points which are underlined.

Since the MR failed to prove that the copies of the Finance Manual, containing the provisions of the cash management were given in the knowledge of the pay clerks concerned, reliance has to be given on the facts of GM (F) which indicates that since the provisions were not being followed because of its non implementation by the Project authorities, a fresh circular was issued.

The management witnesses produce could not corroborate the fact that the Finance Manual was made known to the Pay clerks and on the other hand all the witnesses produced by the pay clerks on their behalf have stated consistently that box containing the undis-bursed amount used to be kept after the payment on a particular day, with the cashier for which n receipt used to be obtained by them from the cashier. This fact could not be over looked and the pay clerks suddenly made responsible for certain acts which are being done since long with the knowledge of all the officials of the Project including Imprest Nominee, cashier, Security Finance. For proper management of cash the Imprest nominee and the Finance are mainly responsible but it has not been brought before the enquiry as to whether they have tried to enforce the Finance Manual in spite of that pay clerks have resorted to the practice being followed by them.

From the evidence on record it is apparent that this above mentioned practice was in vogue in project since long and was never objected by the local. Management including the Project Officer, Finance and Imprest Nominee at any point of time.

In view of the above facts, it is held that the Management has failed to prove the charges levelled against S/Shri. B.D. Mehta, Gopal Mahto, A.K. Bhagat, Suresh Kumar Singh and Basudeo Ram Turi and therefore, accordingly they are not guilty of the charges levelled against them. This is my findings.'

7. In the notice issued by the Disciplinary Authority disagreeing with the findings of the Enquiry Officer the reasons for disagreement shows that the relevant documents, statements of witnesses and other concerned papers were not thoroughly examined by the Enquiry Officer. After submission of the representations by the petitioners, the Disciplinary Authority issued the orders of punishment. The relevant portion of the said order is reproduced hereinabove:

'Sri Suresh Kumar Singh, Clerk Gr. III, submitted his representation dated 27.3.1998 denying the points/reasons of disagreement recorded by the Disciplinary Authority. However, on examination and analysis of representation dated 27.3.1998 of Sri Suresh Kumar Singh and the report of the Enquiry Officer, it is found that the Enquiry Officer has failed to conceive and consider the evidence brought on record during the departmental inquiry. The Enquiry Officer also failed to consider the evidence that the management had to suffer a considerable financial loss. Sri Suresh Kumar Singh has not brought any additional points in his defence other than what he has already produced in the departmental enquiry.'

8. It is worth to mention here that the order of punishment was passed by the Disciplinary Authority against the petitioners whereby they have been demoted to the next lower grade. By the same order Sri Onkar Singh, the cashier has been dismissed from service. The appellate Authority considered the cases of the

petitioners along with the case of Onkar Singh and disposed of the appeal by a common order. So far the finding recorded by the appellate Authority in respect of the charges against Sri Onkar Singh is concerned, the same is reproduced hereinbelow:

'In respect of Sri Onkar Singh Ex-Cashier :

(A) On 4th July, 1994 he collected Rs. 16,51,050.00 from the Bank and handed over Rs. 15,97,527.00 to 5 Pay clerks for disbursement.

(B) The actual disbursement started by the pay clerks after 3 p.m. and closed 5 p.m. on the same day.

(C) He was fully aware that all the amount handed over to the pay clerks were not disbursed but he did not make any effort to take back the undisbursed amount from the pay clerks and to take back in the cash.

(D) When the pay clerks Informed that they have kept the undisbursed amount in the locked boxes at the cash room, Shri Onkar Singh did not make any effort to confirm and to transfer the huge unpaid cash on account of the non disbursement to the safer location at the nearby colliery as was the practice in vogue where the armed guards were posted.

(E) He did not inform to the Sr. Security Officer for arranging security measures for safe guarding of the cash.

(F) He wrongly anticipated that a Cat-I Mazdoor who was acting as the security Guard will take care of the balance money in the cash room.

(G) He deliberately kept both the keys of the strong room in the almirah of his office which was itself kept unlocked.

In view of the above the penalty of dismissal from service and recovery of Rs. 67,031.05 awarded by the Disciplinary Authority is considered justified.'

9. It is, therefore, clear that it is the cashier who handed over the amount to the pay clerks for disbursement but he did not make any effort to take back the

undisbursed amount from the pay clerks. When the pay clerks (the petitioners) informed the cashier that they have kept the undistributed amount in the locked boxes at the cash room, Sri Omkar Singh did not make any effort to confirm and to transfer the huge unpaid cash to the safer location at the nearby colliery as was the practice in vogue where the armed guards were posted. He was further asked to inform that the Senior Security Officer to arrange security measures for safeguarding of the cash. The appellate Authority further found that the cashier deliberately kept both the keys of the strong room in the Almirah of the office which was itself kept unlocked.

10. From those findings of the appellate Authority it is clear that it is the cashier who was wholly responsible for the safe custody of the undisbursed cash amount which he failed to do so. Of course there is some negligence on the part of the petitioners also but in view of the finding arrived at by the Enquiry Officer and the reasonings given by the Disciplinary Authority without identifying the evidence and further in view of the finding arrived at by the appellate Authority, the punishment imposed upon the petitioners appears to be excessive and disproportionate to the unproved charges levelled against them. The punishment imposed against the petitioners by demoting to the next lower post and pay scale and also for recovery of the amount from their salaries is excessive and will amount to double punishment. The matter, therefore, needs reconsideration by the appellate Authority.

11. For the aforesaid reasons this writ application is allowed and the impugned orders of punishment passed by the appellate Authority is quashed and the matter is remitted back to him for passing a fresh order on the quantum of punishment in accordance with law.