

Ananda Chandra Prusty Vs. Orissa Mining Corporation Ltd. and anr.

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Court : Orissa

Decided On : Jan-22-1996

Reported in : 1996(I)OLR353

Judge : D.P. Mohapatra, Acting C.J. and ;R.K. Patra, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : O.J.C. No. 2616 of 1995

Appellant : Ananda Chandra Prusty

Respondent : Orissa Mining Corporation Ltd. and anr.

Advocate for Def. : J.M. Mohanty and A.K. Panigrahi

Advocate for Pet/Ap. : J. Patnaik, H.M. Dhal and A.A. Das

Disposition : Petition allowed

Judgement :

R.K. Patra, J.

1. In this writ petition, the petitioner seeks to quash the office order dated 23-6-1994 (Annexure-10) dismissing him from service as Assistant Accounts Officer of the Orissa Mining Corporation Limited. His appeal filed against the order of dismissal having been dismissed as communicated in letter dated 2-1-1995

(Annexure-II), the petitioner also assails the same.

2. At the material time while the petitioner was working as Assistant Accounts Officer in the C. P. F. section of the Orissa Mining Corporation Limited (herein after referred to as the Corporation'), he was served with two charges as per office letter dated 14-6-1991 (Annexure-1) in which he was called upon to explain as to why suitable action should not be taken against him. The petitioner submitted his explanations vide Annexures-2 and 3 denying the charges. The charges were enquired into and the Enquiring Officer in his report has held charge No. 1 to have been established and charge No. 2 as partly established. The Chairman-cum-Managing Director of the Corporation who is the disciplinary authority called upon the petitioner by notice dated 23-4-1993 (Annexure-4 series) to show cause within seven days as to why he shall not be inflicted with the punishment of dismissal. The petitioner in his letter dated 17-5-1993 (Annexure-5) prayed the Chairman-cum-Managing Director for extension of time to submit his reply. In the said letter he sought permission to verify the relevant records. In his letter dated 2-8-1993 (Annexure-8) the petitioner also requested the Chairman to re-open the enquiry for the purpose of re-examination and cross-examination of the witnesses already examined. In letter dated 3-9-1993 (Annexure-9) the petitioner was advised to submit his explanation and was further told that there was no scope to re-open the enquiry. There after, the order of dismissal was passed and communicated to the petitioner as per Annexure-10.

3. Shri Jitamitra Mohanty, learned counsel appearing for the opp. parties submitted that the charges have been proved against the petitioner and the findings of guilt recorded by the Enquiring Officer are based on materials on record and this Court in a petition under Article 226 of the Constitution cannot re-assess the evidence and set at naught the order of dismissal based on the findings of guilt.

4. Law is now well settled that a writ Court cannot sit in appeal over the findings recorded by the Enquiring Officer in a departmental enquiry. In exercise of writ jurisdiction, it cannot re-appreciate the evidence for itself. Whether or not the evidence on which the Enquiring Officer relied was satisfactory and sufficient for

justifying his conclusion would be outside the scope of writ jurisdiction. However, if it is shown that the findings recorded by the Enquiring Officer are not supported by any evidence or the conclusion on the very face of it is so arbitrary and capricious that no reasonable person could have come to such conclusion, a writ Court would be justified in setting aside the said findings/conclusion. Keeping the aforesaid legal position in view, let us now proceed to consider the contention of the petitioner that the findings recorded by the Enquiring Officer are perverse and based on no evidence.

5. The gravamen of charge No. 1 is that the petitioner made false notings while recommending sanction of loan in favour of persons mentioned in Annexure-A to the charge-sheet that there was no loan outstanding against them and due to such recommendation, persons against whom loans were outstanding got loan to which they were not entitled. In his explanation the petitioner took the plea that before endorsing the file to the Secretary he saw the Bank deposit counterfoils which were in the custody of one H. K. Mishra, Senior Accountant of the C. P. F. section and in view of the existence of authentic receipt vouchers, he made necessary recommendation for sanction of loan.

6. While dealing with the charge, the Enquiring Officer in his report observed as follows :

'.....Shri A. C. Prusty (petitioner) in his notes has noted that there was no outstanding against the persons mentioned in Annexure-A of the charge-sheet. But in his notes, he has neither mentioned the records he verified nor the reasoning for his recommendation. He has also not mentioned in his note that he had verified the Bank counterfoils with Shri H. K. Misra. To get rid of the blame or charge, Shri Prusty (petitioner) has not proved that there was no amount outstanding against the loanees on the date of sanction of fresh loan nor it was proved that the loans were fully re-paid. He has not also proved the records on which he relied or his recommendations based. Rather in his explanation and written submission, it is stated to have been done in good faith and if there is outstanding of loan amount then the Bank counter foils as seen by him with Shri H.K. Mishra would be false and manipulated. This proves that Shri Prusty

(petitioner) admits regarding outstanding of loan amounts and sanction of 2nd loans in favour of the employees as at Annexure -A of the charge-sheet when they were not eligible to get it.'

After observing as extracted above, the Enquiring Officer concluded that-

'In the absence of specific proof and documentary evidences in support of defence, I am of the considered opinion that the charge No. 1 is proved against Shri A. C. Prusty (petitioner).'

7. The burden of proof to establish the charge rested with the department. In order to prove the charge it was obliged to prove that the concerned persons had loans outstanding against them and the petitioner knew about it but made false notings that there were no loans outstanding against them. The department having brought the petitioner before the Enquiring Officer for trial, it must rely on its own strength for success of the charge and not on the weakness or failure of proof of innocence of the petitioner. When the burden of proof lies on the department and it does not discharge it by adducing evidence, the charge must fail. From the discussion made by the Enquiring Officer, as extracted above, it would appear that instead of placing the burden of proof to establish the charge on the department, he threw it on the petitioner. He was apparently toying with the impression that the petitioner was to establish his denial of charge and on his failure to do so, the charge should be taken to have been proved. This illegal casting of burden of proof on the petitioner has resulted in arriving at wrong conclusion when the Enquiring Officer held that in absence of evidence in support of defence the charge is proved. The Enquiring Officer having proceeded on a wrong hypothesis which is not permissible in law, the finding of guilt reached by him cannot be supported and is liable to be quashed.

8. The gist of charge No. 2 is that as Assistant Accounts Officer, the petitioner failed to exercise proper control and supervision on the staff on account of which six different registers were not maintained up-to-date. The Enquiring Officer found that no specific provision of rules was brought to his notice relating to the maintenance of registers. On the basis of the statement made by the presenting Officer, the Enquiring Officer observed that it was the duty of the Assistant

Accounts Officer of the section to ensure proper maintenance of accounts. The Presenting Officer was not a witness in the departmental proceeding. His duty was simply to present the Case on behalf of the department before the Enquiring Officer. In absence of any rule, as has been found by the Enquiring Officer, as to the persons who are required to maintain registers and in absence of any evidence aliunde no liability could be fastened on the petitioner. While considering this charge also, the Enquiring Officer fell into the same error as he did in respect of charge No. 1 by casting the burden on the petitioner to prove it. This is evident when he observed in the enquiry report:

'this is not disproved by Shri Prusty nor he has disproved the charge.'

The guilt of the petitioner cannot be held to have been established when the department itself fails to establish the charge. For the aforesaid reasons, we have no hesitation to hold that the finding of guilt recorded by the Enquiring Officer in respect of this charge is perverse and unsustainabla.

9. We may state here that we have not re-appreciated or re-assessed the evidence adduced in the enquiry. On the basis of the discussions and observations made by the Enquiring Officer in his report, we have come to hold that the findings of guilt are perverse.

10. In the result, we quash the findings of guilt recorded by the Enquiring Officer in the inquiry report. As a necessary corollary, it follows that the order of dismissal at Annexure-10 and the order of the appellate authority at Annexure-11 cannot be upheld which are hereby quashed.

11. The writ petition is allowed. There shall be no order as to costs.

D.P. Mohapatra, A.C.J.

I agree.