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Court : Kolkata

Decided On : Feb-06-2007

Reported in : [2007(113)FLR268],(2007)IILLJ588Cal

Judge : Jayanta Kumar Biswas, J.

Appeal No. : W.P. No. 15435 (W)/2006

Appellant : Shyamapada Bauri

Respondent : Eastern Coalfields Ltd. and ors.

Advocate for Def. : R.N. Majumdar, ;Susanta Pal and ;P. Basu, Advs.

Advocate for Pet/Ap. : Nirmalendu Ganguly and ;Subhayu Banerjee, Advs.

Disposition : Petition dismissed

Judgement :

Jayanta Kumar Biswas, J.

1. The petitioner is questioning the order of the General Manager, Pandaveswar Area, Eastern Coalfields Ltd. dated January November 7, 2006 terminating his service with immediate effect. By charge-sheet dated September 24, 2005 disciplinary proceedings were initiated against him alleging that he was unauthorizedly absenting from duty from September 5,2005. He did not submit any

reply to the charge-sheet. The disciplinary authority decided to hold an inquiry; an inquiry officer was appointed. Inquiry proceedings were held on October 31, 2005. The management examined two witnesses, who were made available for cross-examination.

2. The inquiry officer submitted report dated November 3, 2005 recording his findings that the charge had been established. Second show cause notice dated December 7, 2005 was issued by the disciplinary authority. The petitioner chose not to submit any representation. In the circumstances, the disciplinary authority issued the impugned order imposing punishment. Though appellate forum was available, the petitioner did not prefer any appeal, and instead approached this Court by taking out this writ petition dated June 26, 2006.

3. Counsel says that since from the evidence of the management witness it will appear that on September 10, 2005 the petitioner visited the dispensary complaining pain on his right leg ankle, it cannot be said that from September 5, 2005 he remained unauthorizedly absent from duty. It is contended that the petitioner was actually compelled to remain absent. Argument of counsel is that as a result the inquiry officer and the disciplinary authority were not right in holding that the charge of unauthorized absence from duty was established.

4. His next contention is that though nothing was mentioned in the charge-sheet about punishments imposed in the past for unauthorized absence during more than one period, the disciplinary authority imposed the punishment terminating service considering the past conduct. His contention is that the incidents of past unauthorized absence were extraneous insofar as the proceedings in question were concerned. He relies on a Division Bench order dated December 19, 2005 made in MAT 4086/2005 (*Eastern Coalfields Limited v. Shew Sankar Pashi*). Counsel for the company relies on the Division Bench decision in *General Manager, Eastern Coalfields Limited and Anr. v. Rajender Singh and Ors.* 2003 (99) FLR 997 (Cal).

5. The management witness concerned, not cross-examined, though was available, only said that the petitioner had visited dispensary on September 10, 2005 complaining pain on right leg ankle. I am unable to accept the contention that

such statement of the management witness proved that under compelling circumstances the petitioner remained absent from duty from September 5, 2005. He did not submit any application for leave, nor did he see the doctor of the health centre to whom he had been referred by the doctor attending the dispensary. No prescription or document was produced by the petitioner in support of his alleged illness. On, these facts, I am unable to hold that the inquiry officer recorded perverse finding that the charge of unauthorized absence had been established.

6. As to the question of punishment, I am unable to agree with counsel that it was disproportionate to the gravity of proven misconduct. In the second show cause notice the disciplinary authority mentioned that attendance of the petitioner was zero in 2002, zero in 2003 and below twenty in 2004. On those facts, the disciplinary authority called upon the petitioner to show cause why his service should not be terminated. In his representation dated November 11, 2005 he did not dispute the correctness of the facts stated in the show cause notice, he only said that he would not commit similar mistake in future.

7. In 2001 he was charge-sheeted for unauthorized absence. Inquiry was held and punishment was imposed. In 2002, he was again charge-sheeted for unauthorized absence. Again inquiry was held and punishment was imposed. In 2003, he was noticed about his habit of remaining unauthorizedly absent from duty. He was again charge-sheeted and punishment was imposed. In my view, while considering the question of punishment the disciplinary authority was quite empowered to consider past conduct of the petitioner.

8. It is apparent that considering the past conduct, the authority decided to terminate the petitioner's service by way of punishment. On the admitted facts, I am unable to agree with counsel that the punishment imposed was disproportionate to the gravity of proven misconduct. I do not see how the Division Bench order is of any assistance. In that case, their Lordships of the appeal Court disposed of the appeal giving liberty to the company to proceed afresh. There it was held that charge-sheet had not been served on the employee concerned. That is not the case here.

9. For these reasons, the writ petition is dismissed. There shall be no order for costs in it.

10. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the person concerned.

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