

Eastern Coalfields Ltd. and ors. Vs. Amaresh Roy and ors.

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Court : Kolkata

Decided On : Mar-24-2000

Reported in : (2000)3CALLT130(HC)

Judge : Syamal Kumar Sen and;Sujit Burman Roy, JJ.

Acts : [Constitution of India](#) - Articles 14, 21 and 226;; Conduct, Discipline and Appeal Rules, 1978 - Rules 4.1(II), 5.0(5), (9), (22), 29 and 29.1, 3;; Coal Mines Regulations, 1957 - Regulations 114 and 119;; Mines Regulations;; Mines' Rescue Rules, 1985

Appeal No. : Constitutional Writ Jurisdiction [Appellate Side] F.M.A.T. No. 1142 of 1997

Appellant : Eastern Coalfields Ltd. and ors.

Respondent : Amaresh Roy and ors.

Advocate for Def. : Mr. M.P. Banerjee, ;Mr. A.C. Chakraborty, ;Mr. S. Ghosh Dastidar and ;Mr. Amit Chakraborti, Advs.

Advocate for Pet/Ap. : Mr. P.K. Roy, ;Mr. Alok Kr. Banerjee, ;Mr. Raja Basu Chowdhury, ;Mr. Partha Basu,; Mr. Mangal Santra and ;Mr. Nikhil Roy, Advs.

Judgement :

S. K. Sen, J.

1. This appeal is directed against the Judgment and order of the learned single Judge dated March 25, 1997 whereby the learned Judge allowed the writ petition and held that the petitioner has been dismissed from service in utter violation of natural Justice. Rules contained in CTA Rules, Articles 14 and 21 of [Constitution of India](#), and quashed the order of dismissal. By the said order, the learned Judge further directed the respondents to pay the salaries of the writ petitioner from the date of dismissal till the date of Judgment within six weeks from date.

2. The short facts involved in this appeal inter alia are that the writ petitioner/respondent No. 1 at the relevant time was the Manager of Central Kajora Colliery (ECL), a subsidiary of Coal India Ltd. on 11.11.1994 at about 8.20 A.M. In the first shift the Pump Khalasi Khlrod Ghosh reported that one winding engine Khalasi was present at pit No.2. As such, the petitioner/ respondent No. 1 and Kirod Ghosh went to No.2 pit and they observed haze (smoke) coming out of the No.2 pit top and both of them had suspected heating of coal. Immediately the petitioner/respondent No. 1 took the cap-lamp and got himself ready for going down the mine and while he was rushing to the pit No.2, he saw Sri B.K. Nandi, an experienced Mining Sardar and a competent official, whom he directed to go down the mine and took out all the workers of the previous shift and also directed Sri S.K. Bakshi, Executive Engineer (Electrical Mechanical), Sri Abhoy Paul (Rescue Trained Overman) and Sri S.P. Das (Electrical Supervisor), all are competent officials of the said colliery, to go down the mine and assess the magnitude of heating and further directed them to cut off the electric connection of the underground working and to stop ventilating fan immediately and not to allow anybody to go down the mine. Thereafter, as the telephone in the mine was dead and the wireless was not working, the writ petitioner/ respondent No. 1 had to rush to the office of the General Manager so that the rescue team and other officials may be sent to investigate and to take precautionary measure. Accordingly, the rescue team came and inspected that there was no injury to any person nor was there any death nor was any property of the appellant-company damaged.

3. On 14.11.1994 the writ petitioner was transferred to the office of the General Manager, Kajora Area, to work as Senior Mining Engineer. Thereafter he was again transferred to Parascole West Colliery as Safety Officer to work under the

Manager on 2.5.1995. The said transfers were punitive transfers as evident from the minutes of the tripartite meeting of the safety committee dated 19.11.1994.

4. It appears that on 19.11.1994 a tripartite meeting was held and in the said meeting the Chairman-cum-Managing Director who was the Disciplinary Authority and other officials including Mr. B. Dev, Director (Technical) (Planning and Project) of the appellant-company, were present. In the said meeting the Chairman-cum-Managing Director stated that there was deficiency on the part of some officers dealing with the fire and he had taken action by transferring the writ petitioner from the post of Manager and more action might follow after submission of the enquiry report.

5. It also appears that on 15.11.1994 as per order of the Director (Technical) (Planning and Project) of the appellant-company, a committee was constituted with the General Manager (safety) and the General Manager (Production) and they made an enquiry by obtaining statements from the petitioner/respondent No. 1 the Executive Engineer, the Mining Sirdar, the Overman and the Assistant Foreman (Electrical), the Supervisor. They submitted the report on 25.11.1994. It appears from the said preliminary enquiry report that Sri Khirod Ghosh, the Pump Khalasi did not adduce any evidence before the said Committee.

6. It appears that the Director (Technical) (Planning and Project) being the respondent No.3 Issued a charge-sheet being reference No. ECL/O5(D)/113/1672/1676 dated 13th/14th February 1995 and served upon the petitioner alleging against the petitioner that on perusal of the preliminary enquiry report of the occurrence of heating/fire on 11.11.1994 in No.2 pit of Central Kajora Colliery, as submitted by the duly constituted committee. It was revealed that although the petitioner was informed by Sri Khirod Ghosh, a pump Khatasi of Lower Kajora team on that day about the Incident of heating/ fire in No.2 pit, yet the petitioner did not go down the mine to make spot enquiry into the causes of heating/fire himself for taking further remedial/ preventive action, and therefore it showed that the petitioner had acted in a manner prejudicial to the interest and Image of the company. A copy of the said charge-sheet has been annexed to the writ petition and marked 'C'.

7. It was further alleged in the said charge-sheet that from the report of the said preliminary enquiry it was observed that the petitioner after being aware of heating/fire in No.2 pit instructed Sri B.K. Nandi, a Mining Sirdar to go down the mine to take out persons of third shift of 10.11.1994 and also Instructed Sri S.K. Bakshi, Executive Engineer (E & M) to stop main mechanical ventilator and to accompany Sri B.K. Nandi, Mining Sardar. Thereafter the petitioner had gone to the Area Office to inform the General Manager, Kajorla area and others at 1-40 p.m. and D.G.M.S. officials at 3-30 p.m. and that this showed the gross negligence in discharge of his duties and responsibilities as Manager of the mine.

8. It was also alleged in the said charge-sheet that it was observed from the said preliminary report that although it was obligatory on the part of the Manager, as per the Regulation 114 of Coal Mines Regulations, 1957 to make instant visit to the underground to enquire into the causes and circumstances of any danger but the petitioner failed to do so till 5 p.m. on 11.11.94.

9. In the said charge-sheet it was further alleged that the above acts amounted to the acts of misconduct in accordance with Rule 5.0(5), 5.0(9) and 5.0(22) as well as violation of Rule 4.1.(II) of the Conduct. Discipline and Appeal Rules 1978 of Coal India Ltd. applicable to the executives of the company. The petitioner/respondent No.1 was directed to submit his written explanation within 10 days from the date of receipt of the chargesheet and to show-cause why the charges should not be established and why appropriate penalty should not be Imposed.

10. The writ petitioner/respondent No.1 duly gave his reply to the said charge-sheet. In his reply the petitioner categorically stated that he did not violate the Regulation 114 as alleged or at all; he did not do any wrong by remaining on surface for supervising, from the control room, the fire fighting operations as the Manager of the mine which has approval available in statutory provisions in Mines Rescue Rules and in Mines Regulations; he did not commit any mistake by not going underground alongwith higher officers during their series of visits because he was directed by the Director (Technical) (Planning & Project) to stay on surface for supervision of fire fighting and not to go down alongwith higher officers and he

did so and therefore he did not commit any offence as alleged in the said charge-sheet or at all. The petitioner in the said reply further stated that he had gone down the mine by about 5 p.m. on the same date i.e. 11.11.1994 after becoming free from surface Jobs in control room initially and urgently required for direction, control and management for fighting the fire quickly and adequately. He had remained present on the spot of fire fighting in the underground working from 5 p.m. of the said date to 11 a.m. of the next day and ensured correct measures for containing the fire and sealing of the fire appropriately and adequately. He has further replied that as the said Colliery did not have any telephone and as the wireless operator was not present by about 8.40 a.m. on the said date when the fire was suspected, the petitioner had to rush to his General Manager for informing him for his quick advice and action and for quick sending of Information to various authorities in obedience to the statutory provisions and by such prompt action he could ensure no loss of life or limb of any worker or of any employee or of any loss of production of the company or loss of employment of any worker and thereby could ensure gain to the company.

11. The petitioner/respondent No. 1 also prayed to the respondent No.3, the Director (Technical) (Planning and Project), ECL to recall and set aside the said charge-sheet.

12. The petitioner/respondent No.1 also alleged various infirmities appearing in the said charge-sheet and also Irregularities in the Issuance of the said charge-sheet. It has also been specifically alleged that the said charge-sheet is not supported by any list of documents or by any list of witness and therefore the enquiry conducted was not proper. The writ petitioner/respondent No.1 has also alleged that though the first two charges have been established against him whereas the third charge has not been proved.

13. The respondent No.2 had appointed an enquiring officer to inquire into the said charge-sheet levelled against the petitioner. The enquiry was proceeded absolutely without following the principles of natural justice as alleged in the petition. Several irregularities have been pointed out with regard to the said enquiry which shall be mentioned in detail hereinafter. A copy of the enquiry

proceeding has been annexed with the petition.

14. The respondent No.5 after the said enquiry submitted an enquiry report to the Disciplinary Authority, the respondent No.2. A copy of the Inquiry report has been annexed with the petition and marked 'E'.

15. Although preliminary enquiry report which was relied on by the enquiry officer recorded that due to the prompt action of the writ petitioner, the lives of the employees and mines itself could be saved. Ignoring that portion of the enquiry report, order of dismissal was passed without any reason, by the respondent No.2. The writ petitioner/respondent No. 1 challenged the said dismissal order under Article 226 of the Constitution which was allowed and the order of dismissal was set aside and the learned Judge directed to the respondents to pay all salaries of the writ petitioner from the date of dismissal till the date of the judgment from six weeks from date. The respondents in the writ petition being aggrieved has preferred this appeal.

16. On 16.8.1995 the 2nd Show-cause Notice was Issued and along with the said 2nd Show-cause Notice Report of the enquiry officer was forwarded to the writ petitioner/respondent No.1.

17. Disciplinary Authority after considering relevant aspects of the matter issued the order of dismissal against the writ petitioner.

18. The respondent authorities being aggrieved, has challenged the said order passed in the writ petition.

19. Mr. P.K. Roy, learned Advocate for the appellant, has referred to Regulation 41 which deals with the duties and responsibilities of the Manager. He has also referred to Regulation 114 of Coal Mines Regulations 1957 which deals with the avoidance of danger. Regulation 119 has also been referred which deals with the precaution to be taken after a fire has broken out.

20. It has also been submitted by Mr. Roy that although allegation has been made regarding non-supply of documents and violation of natural justice. According to him it will be evident from the minutes of 3rd sitting of the enquiry proceedings that

documents were supplied to the writ petitioner. It will be further evident from the sitting that writ petitioner admitted the service of documents upon him and the further prayed for adjournment of sitting for studying the documents. Accordingly, the enquiry authority adjourned the sitting to enable the writ petitioner to study the documents. It will also be evident from the proceeding of the enquiry that the enquiry authority did not allow the presenting officer to place his case before furnishing the documents to the writ petitioner. After the adjournment of the 2nd sitting to enable the petitioner to study documents, further sittings of the enquiry proceeding were held on 28.7.1995 and 29.7.1995. It will be evident from the minutes of the said 4th and 5th sittings of the enquiry proceedings that the writ petitioner has not only stated his case but also cross-examined at length.

21. It has also been submitted by Mr. Roy that the learned Trial Judge did not consider the facts which are on record that the documents were supplied to the petitioner and he also cross-examined the Presenting Officer and consequently there was no violation of principle of natural Justice and fair play.

22. Mr. Roy has also submitted that the petitioner has not sustained any prejudice nor he was handicapped in any manner whatsoever as the copy of the preliminary report of the enquiry was also handed over to him in course of hearing.

23. In this connection following decisions have been cited :

(I) Chandrama Tiwary v. Union of India, reported in : [1988]1SCR1102 ;

(II) Director General Indian Council of Medical Research & Ors. v. Anil Kumar Ghosh & Another, reported in 1988 (5) JT 317.

24. It is also the contention of Mr. Roy that the Disciplinary Authority has agreed with the finding of the enquiry officer. Since in the instant case the enquiry officer found that the writ petitioner/respondent No.1 is guilty in respect of the charges (a) and (b) and the same has been accepted by the Disciplinary Authority. It has been argued that since the Disciplinary Authority has accepted the findings of the enquiry officer, it is established principle of law that no separate reason is required to be given by the Disciplinary Authority.

25. In this connection reliance has been placed on the following cases :

(I) Ram Kumar V. State of Haryana, reported in : (1987)ILLJ504SC .

(II) J.D. Jain v. Management of State Bank of India & Another, reported in : (1982)ILLJ54SC .

26. The further contention of Mr. Roy is that no conclusive proof is required in departmental proceedings. In the Instant case, the petitioner was charge-sheeted on three grounds and the enquiry officer found him guilty of two grounds and such findings of the enquiry officer has been accepted by the Disciplinary Authority. The question arises if order of removal can be passed on the basis of two charges when the delinquent is absolved from the remaining charges. It has been submitted that in the Instant case the enquiry officer found the writ petitioner guilty in respect of two charges and found that the other charges found to be not proved. The Disciplinary Authority agreeing with the findings of the enquiry officer passed the punishment of dismissal on the basis of the proved charges. It has been submitted that when the order of dismissal is passed on the ground of two proved charges, the petitioner is not entitled to challenge the same on the ground that he has been exonerated from the remaining charge.

27. In this connection, reliance has been placed upon the judgment and decision in the case of Railway Board, New Delhi & Another v. Mr. Maryan Small, reported in : (1969)ILLJ743SC .

28. Learned Advocate for the appellant-company has further submitted that strict rules of evidence are not applicable in the departmental proceeding. It has further been submitted that it will be evident from the materials on record that two charges against the writ petitioner have been proved and established. It has also been submitted that learned Trial Judge has not considered the said aspect of the matter and on reappraisal of evidence, allowed the writ petition. It has been submitted that reappraisal of the evidence is not permissible in the writ Jurisdiction.

29. In this connection he has relied upon the Judgment and decision in the case of Bank of India & Another v. Degafa Surya Narayana, reported in : (1999)IILLJ682SC .

30. It has also been submitted by Mr. Roy that violation of any every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling down under no notice, no opportunity and no hearing, categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice viz. whether such violation has prejudice the delinquent officer/employee in defending himself properly and effectively. None of the exceptional categories is applicable in the instant case specially in view of the fact that writ petitioner was given opportunity to reply against the charge-sheet and in course of enquiry proceedings he was given full opportunity to defend his case Including presenting his witness and cross-examination and all the documents were supplied to him.

31. In this connection Judgment and decision in the case of State Bank of Pattala & Ors. v. S.K. Sharma, reported in : (1996)IILLJ296SC has been relied upon by the learned Advocate for the appellant-company.

32. Mr. Roy has referred to 5th sitting of the enquiry proceeding and submitted that the enquiry officer had given opportunity both to the Management and also to the writ petitioner to file their written brief note but writ petitioner declined to submit the same. It is not obligatory on the part of the presenting officer to supply the brief note to the delinquent. He has further submitted that as per usual practice the brief notes summarised the entire case as was placed before the enquiry officer. In the premises, it has been submitted that writ petitioner is not entitled to challenge that the enquiry authority has considered the brief note as the copy of the same was not supplied to him.

33. Learned Advocate for the appellant has submitted that after submission of the enquiry report the same was forwarded to the writ petitioner with a request to show-cause. The writ petitioner/respondent No. 1 chose not to submit his reply to the said show-cause notice. In the premises, it has been submitted that the petitioner is not entitled to challenge the enquiry proceedings and order of

dismissal consequent upon the departmental proceedings.

34. Mr. Roy, learned Advocate for the appellant has accordingly submitted that the order under appeal should be set aside, the appeal should be allowed and the writ petition should be dismissed with costs.

35. Mr. Mukul Prakash Banerjee, learned Advocate for the respondent, however, has disputed the contentions raised on behalf of the appellant. He has argued that though all the charges were based on the preliminary enquiry report nowhere in the said preliminary enquiry report it was alleged that Sri Khlrod Ghosh Informed the writ petitioner/respondent No. 1 about the incident of heating/fire in the pit No.2. But in the charge-sheet the allegation was that Sri Khlrod Ghosh Informed the Manager about the heating/fire at No.2 pit. Moreover, Sri Ghosh did not adduce any evidence before the said enquiry committee.

36. On consideration of the charge-sheet and the preliminary enquiry report, the said contention cannot be said to be without any substance. It also appears from the facts on record that although the Incident of heating/ fire on 11.11.1994 was found by the writ petitioner/respondent No. 1 himself and he took precautionary measure to save the life of the workmen who was working under the mine by direction the competent officials to take them out as well as directing them that no worker of the first shift shall go down the mine and also directed the engineer to stop mechanical ventilator and then rushed to the office of the General Manager to rescue them, yet he was transferred on 14.11.1994 to the office of the General Manager, Kajora Area, to work as Senior Mining Engineer on an unknown reason. It has been argued that although on 15.11.1994 a fax message was sent by the General Manager (Safety) to the higher officials about the said incident of heating/fire and a committee was formed by Mr. B. Dev, Director (Technical) (Planning and Project) of the appellant-company to enquire about the action taken by the officials on 11.11.1994 and to submit the preliminary enquiry report which was submitted on 25.11.1994 but before the report came or submitted, the Chairman-cum-Managing Director alongwith Mr. B. Dev, Director (Technical) (Planning and Project) of the appellant-company, held a tripartite meeting on 19.11.1994 where the Chairman-cum-Managing Director declared that deficiency

on the part of some officials had been observed for which he had already taken action by way of transferring the writ petitioner/respondent No.1 and more action would be followed after submission of the enquiry report. Thereafter on 13th/14th/February, 1995 the charge-sheet was Issued by Mr B. Dev (Technical) (Planning and Project) of the appellant-company and the charges were contrary to the said preliminary enquiry report. All the aforesaid facts have been recorded in the Judgment of the learned single Judge.

37. It appears that the Disciplinary Authority already formed an opinion and was bent upon taking an action against the writ petitioner/respondent No.1. It appears that the Authorities proceeded on the basis of the preconceived idea or notion and was completely biased against the writ petitioner/respondent No.1. Moreover, in the reply to the charge-sheet it was specifically stated that the copy of the preliminary enquiry report was not furnished along with charge-sheet which was required for submitting explanation. It appears that along with the charge-sheet a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained, shall be communicated in writing to the employee and who shall be required to submit a written statement thereafter.

38. In our view, the procedure prescribed in the Rules is mandatory. It is well settled when power has been conferred upon an authority under certain Rules and the procedure has been prescribed therein that power has to be exercised in that particular manner only and not otherwise; the same must be done in that particular manner or not at all.

39. Moreover, it appears that Rule 29.3 specifically stipulates that along with the charge-sheet a list of documents and a list of witnesses shall be given and it is apparent that the same were not given alongwith the charge-sheet and the Trial Court held so, and such non-compliance makes a whole proceeding illegal.

40. It appear from Rule 29.1 of the CDA Rules that it prohibits imposition of any major penalty proceeding in CDA Rules unless an enquiry is held in course of Rule 29. This provision as framed is mandatory in nature and should be scrupulously followed. This principle has been recognised and settled by several decisions of the Supreme Court namely :

(I) A.S. Aluwalla v. P.S.E.B., reported in : (1975)ILLJ228SC ;

(II) Sukhdev v. Bhagatram, reported in : (1975)ILLJ399SC ;

(III) Ramana Dayaram Shetty v. International Airport Authority of India, reported in : (1979)ILLJ217SC ;

(iv) B.S. Minnas v. Indian Statistical Institute, reported in : (1984)ILLJ67SC : and

(v) Ranjit Thakur v. Union of India, reported in AIR 1987 SC 2388.

41. All the aforesaid decisions have been referred to by the learned single Judge. It appears that the learned Judge has correctly appreciated this position. The contention of the learned Advocate for the appellant-company that the proper opportunity was given to the respondent and there is no violation of principle of natural justice, cannot be accepted.

42. In this connection, judgment and decision in the case of The High Court of Judicature of Bombay v. Sashtkan S. Patil & Anr. reported in AIR 2000 SC 2 relied upon by Mr. Mukul Banerjee may be taken note of. In the aforesaid decision it has been inter alia, held that Interference with the decision of the department authority can be permitted, while exercising Jurisdiction under Article 226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of the statutory regulations prescribed in the mode of such enquiry.

43. Mr. Roy, learned Advocate for the appellant contended that at the 3rd sitting, documents were supplied and opportunity was given to cross-examine the presenting officer. Such procedure appears to us to be unheardy. There is no question or scope of cross-examining the presenting officer who is neither a party nor a witness to the proceeding. In any event, when the Rules provide that the documents are to be supplied along with the charge-sheet which has not been complied with natural Justice, subsequent copies at the time of hearing cannot cure the lacunae. Authority cannot by their sweet will substitute the procedure according to their convenience when a specific procedure has been prescribed under the statutory rules.

44. If there are statutory rules or any rules relating to the procedure, in those cases, even if a list of documents and a list of witnesses are not supplied along with the charge-sheet, subsequently even before the hearing starts, if such documents and list of witnesses are given, principles of natural Justice would be satisfied, but where there are specific rules relating to procedure which stipulate that alongwith the charge-sheet a list of documents and a list of witnesses shall be furnished and if it are not so furnished and the proceeding continues and thereafter copies are supplied with, even it would not be in compliance of natural Justice, on the contrary, the entire proceeding is violative of statutory rules for not supplying them along with the charge-sheet.

45. In the instant case, a peculiar and untenable procedure was adopted as no witnesses was produced in support of the charge-sheet and only the preliminary enquiry report was filed in the 3rd sitting of the enquiry proceedings and Instead of producing witnesses, the statement of the Presenting Officer was recorded as witness. It appears that the Presenting Officer stated that he did not Intend to produce any witness for establishing the charges and the Enquiry Officer directed the writ petitioner to cross-examine the Presenting Officer.

46. It also appears that the whole charge-sheet had been issued on the basis of the preliminary enquiry report and the said report, having not supplied alongwith the charge-sheet, can not be taken into consideration because of violation of Rule 29.3 of the Conduct, Discipline and Appeal Rules. The said preliminary enquiry report was filed on the 3rd sitting of the enquiry proceedings and marked as Ext.4. But no witness was produced for cross-examination who deposed before the preliminary enquiry committee and the statements of whom were incorporated in the said preliminary enquiry report and the enquiring authority gave his findings on the basis of the said preliminary enquiry report. The preliminary enquiry report, which contains ex-parte deposition, is intended to be used as evidence or to be marked as exhibit, the witnesses deposed therein must be produced in the enquiry proceedings for cross-examination. If the said witnesses are not produced, in that event, the preliminary enquiry report cannot be relied upon as evidence or marked as exhibit and the said document should be deemed as an invalid material and if any decision is given on the basis of such document namely, the preliminary

enquiry report for the purpose of establishing the charge in the departmental case, must be struck down not only on the ground of perversity but also on the ground of concealing relevant materials. In this connection, we may take note of the judgment and decision in the case of Gopal Krishna Sa'loo v. Calcutta Port Trust & Ors. reported in (1998)1 CHN 581 relied upon by the learned Advocate for the respondent.

47. Judgment and decision in the Renusagai's case reported in : AIR 1988 SC1737 may be taken note of. It was held by Mukherjee, J (as he then was) in the aforesaid decision as follows :--

'The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.'

48. In our view, the preliminary enquiry report suffers from Inherent lacuna or infirmity and as such cannot be relied on and if the preliminary enquiry report cannot be relied, the charge-sheet also falls since it is based on preliminary enquiry report.

49. As already noted although under Rule 29.3 of CDA Rules, 1978 along with the charge-sheet, a list of documents must be furnished and it appears that only in the 3rd sitting of the enquiry proceedings, the preliminary enquiry report was filed. But it appears from the enquiry report, that several documents were exhibited during the proceedings being E-1, E-2, E-3, E-4, E-5, E-6 and E-7 and it is on record that no such documents or list of documents was furnished alongwith the said charge-sheet.

50. The writ petitioner/respondent No. 1 preferred an appeal against the order of dismissal and the appellant-company disclosed at the time of hearing of the writ petition that the said appeal was not maintainable as it was not in accordance with

law. But the appellants tried to rely upon the grounds of the appeal as if it is the admission of the charges and the learned single Judge dealt with the said point and stated that only admission has been made that he is guilty by not going down the mine but he never admitted that he had violated the provisions of the Mines' Rescue Rules, 1985 and the Coal Mines Regulations, 1957 or made any violation of his responsibilities and if a departmental appeal is held to be Incompetent even any admission is made on the said documents cannot be relied upon. It appears that the learned Judge came to the findings that there was no evidence on record that the writ petitioner/respondent No. 1 violated any provision of the regulation and rules. Since there was no such evidence no reasonably minded person acting on the basis of evidence on record would have come to a decision that the writ petitioner/respondent No. 1 was guilty of charges levelled against him and the learned Judge was of the view that the decision of the enquiry officer was perverted. We do not find any Infirmary in the decision of the learned single Judge. In our view, the learned single Judge's decision appears to be correct.

51. Judgment and decision in the case of Chandrama Tewart v, Unton of India, reported in : [1988]1SCR1102 relied upon by the learned Advocate for the appellant, in our view, cannot be of any assistance to the appellant. In the aforesaid decision, a copy of the report submitted by the police in the criminal case relating to the alleged theft by the delinquent was not supplied to him. The document was not relied upon by the Enquiry Officer and as such the document not being relevant or material, non-supply of its copy did not amount to violation of the principles of natural justice. No prejudice was caused to the delinquent in cross-examining the concerned Police Officer.

52. In the instant case, the Rules provide that the documents are to be supplied along with the charge-sheet and the same has not been compiled with. Justice and fairplay required that rules and procedure for holding enquiry are to be scrupulously observed, otherwise the enquiry stands vitiated. The aforesaid decision lays down the broad principles that the relevant and material documents are to be supplied. Otherwise, the enquiry would be vitiated for violation of the principles of natural Justice. It has also been laid down that if the statement of witness recorded during the Investigation of the criminal case or in the preliminary

enquiry is not supplied to the delinquent officer, that would amount to denial of effective cross-examination. In our view, the said decision cannot support the case of the appellant for the reasons already noted.

53. Judgment and decision in the case of Director General Indian Council of Medical Research & Ors.; reported in 1998 (5) Judgment Today 317 relied upon by the learned Advocate for the appellant also, in our view, cannot be of any assistance to the appellant. In the aforesaid decision, the list of documents by which Articles of charges were proposed to be sustained was appended. There was no list of witnesses as the department did not propose to examine any witness. The dally proceedings were recorded and shown to the first respondent who signed the same. The first respondent does not submit any list of witnesses. In fact, he stated on more than one occasion that he had no witness to be summoned on his behalf. In the course of enquiry he made a request orally for summoning the Administrators and other authorities of the Municipality and the Accounts Officer of the Council to testify the statements made by them. The Enquiry Officer expressed his view that they were not necessary but permitted the first respondent to produce them on his own as his witnesses. The latter did not avail of that opportunity.

54. The copies of the proceedings, in the said decision, were handed over to the respondent as and when ready and he himself deposed on all points referred to in the statement of defence. It should be mentioned here that the defence taken by the first respondent in the enquiry was that he claimed HRA on the basis of certificates Issued by the Municipal authority and the same had been granted. He contended that the assessment of the annual value for municipal purposes was only for the assessment of taxes levied by the Municipality and the assessment of rental value for claiming HRA was entirely different. According to him the rental value could even be assessed by the Special Land Acquisition Officer, 24-Parganas. Allpore.

55. During the enquiry he had opportunity to peruse every document that was sought to be used in evidence in the said case. Apart from the certificates produced by himself for claiming HRA, copies of the Municipal assessment

register for the relevant period certified to be true copies by the Secretary, Garden Reach Municipality and Issued under the seal of Administrator of the Municipality were marked as exhibits. A perusal of the list of exhibits shows that they consisted only of the official correspondence and the certificates produced by the first respondent and the certified copies Issued by the Municipality. At the conclusion of the enquiry the first respondent made his submission on the basis of the materials on record. The Enquiry Officer after considering the matter in detail gave his findings on his report on 21.7.1977. He held that both charges stood proved.

56. The Disciplinary Authority, in the aforesaid case, accepted the report as he found that the material on record was sufficient to sustain the findings. The main grievance was put forward by the first respondent before the High Court in the writ petition with regard to the alleged violation of the principles of natural Justice was that the witnesses whom he wanted to be examined by the Enquiry Officer were not examined. Secondly, it was alleged that the documents were marked as exhibits only on 21.7.1977 after the conclusion of the enquiry. Thirdly, it was urged that the Enquiry Officer was biased against the first respondent. The fourth objection was that the Municipal Authorities who had Issued certified copies of the municipal assessment register had not been examined and consequently those documents were not admissible in evidence.

57. Learned single Judge as well as the Division Bench of this High Court upheld the contention of the writ petitioner/respondent No. 1 and allowed the appeal. The Supreme Court, however set aside the finding of the High Court. It appears that the Supreme Court held that there was no violation of the natural Justice. In the aforesaid decision, the Supreme Court recorded that the first respondent did not furnish any list of witnesses and only in the course of enquiry he requested the Enquiry Officer to examine the officials of the Municipality who had Issued the certificates produced by him in support of his claim of HRA. The Supreme Court also noted that the High Court overlooked the simple fact that the said certificates were produced by the first respondent himself as having been Issued by the high officials of the Municipality and unless the factum of such issuance in dispute there was no necessity to examine those officials. The Supreme Court further held that the first respondent also in the aforesaid decision challenged the authenticity

of the Internal audit report and wanted the author thereof to be examined in order to substantiate the same. It has been noted that the Presenting Officer stated that the said report was not necessary for the case and the same was not introduced in evidence and as such there was no necessity to examine the Accounts Officer who prepared the internal audit report. The Supreme Court also recorded that the first respondent was given sufficient opportunity to produce witness and examine them but he did not do so. On the contrary, in the aforesaid decision, it appears that the respondent was given further opportunity to adduce the evidence in support of his defence and as such there was no question of violation of natural justice. The other objection which was taken was also negated by the Supreme Court. The documents were taken on file during the course of enquiry and the first respondent perused everyone of them before the conclusion of the enquiry. Copies were also furnished to him as requested by him and he was given seven days time for presenting his defence after the receipt of copies of documents though under the rules only three days' time was permitted. It appears therefore that the respondent was given more opportunity to prepare his defence.

58. It appears to us that the said decision does not have any application in the instant case and as such cannot assist the appellant in any manner whatsoever.

59. In the Instant case, it appears that the enquiry officer Inter alio, held that the petitioner did not violate any of the statutory rules and as the petitioner did not go down the mine and by that did not commit any offence for which the enquiry officer has exonerated him from his charges of violation of the statutory provisions of Regulation 114. The enquiry authority in its report recorded the charges against the writ petitioner/respondent No. 1 which appears at page 130 of the Paper Book. The said charges which enumerated in the enquiry report are mentioned hereinbelow :--

(1) That on being informed by Sri Khirod Ghosh, Pump Khalas about Incident of fire, Sri Amaresh Roy did not go down the mine to make spot enquiry and take remedial action.

(2) Sri Amaresh Roy instead of going down the mine himself, directed Sri B.K. Nandy, Mining Sardar to go down the mine to take out the persons of 3rd Shift and

also Instructed Sri S.K. Bakshi, Executive Engineer (E&M;) to stop the main Mechanical Ventilator and accompany Sri Nandy to underground but being Manager he did not himself go down mine upto 5 p.m.

(3) Sri Amaresh Roy violated the provision of Regulation 114 of CMR 1957 by not visiting underground till 5 p.m. on 11.11.1994.

60. All the three charges above, appear to be inter-connected. The main allegation against the writ petitioner/respondent No. 1 is that he did not go down the Mine. The finding of the enquiry officer is that the Regulation 114 has not been violated since then there is no provision in the Regulation for going down the Mine. If that be so, there was no reason, in our view, to hold the writ petitioner/respondent No. 1 guilty of the charges No.1 and 2 for not going down the Mine himself. It is on record that the writ petitioner/ respondent No. 1 took all steps which are required and in fact he sent B.K. Nandy, Sri Khlrod Ghosh and S.K. Bakshi the Executive Engineer to take all remedial measures and these officers and Sardar worked under instruction and they were rewarded. If there is no provision, the Regulation for going down the Mine as held by the enquiry officer, there is no reason for holding the writ petitioner/respondent No.1 guilty of misconduct on the first two charges which are closely inter-related with the third charge. It therefore appears that both the findings of the enquiry officer as also the Disciplinary Authority appear to have been passed without application of mind and only so extreme vindictiveness against the petitioner/respondent No.1.

61. Judgment and decision in the case of Ram Kumar v. State of Haryana, reported in : (1987)IILLJ504SC; J. D. Jatn v. Management of State of Bank of India &Anr.; reported in : (1982)ILLJ54SC ; Railway Board, New Delhi, v. Ntranjan Stngh, reported in : (1969)IILLJ743SC and Bank of India v. Degala Surya Narayana, reported in : (1999)IILLJ682SC relied upon by the learned Advocate for the appellant-company, in our view, do not apply to the facts of the Instant case.

62. Although, in our view, the principles enuntlated in the aforesaid decisions is well settled, the same has no application in the instant case since both the enquiry authority and the Disciplinary Authority from the facts and reasons noted above appear to have passed orders mechanically and without application of mind.

63. In view of the fact as already noted that if there is no Regulation for going down the Mine and the petitioner has been exonerated the same, the charge Nos.1 and 2 also being Inter-related to the third charge should also fall as already noted. It appears from the record that the petitioner/ respondent appeared to have taken appropriate steps in the matter and sent officers and personnel which took all actions as desired. In fact, the enquiry authority in its finding made following observations which are clearly in favour of the writ petitioner/respondent No.1 which is set out below :--

'Regarding allegation 'C' of the charge-sheet about obligation of Manager under Regulation 114 of Coal Mines Regulation 1957, it is not necessary for the Manager to make examination of the Mine himself because its working is '114 avoidance of danger (3). The Manager shall make or caused to be made by a competent persons a careful examination of the Mine on district'. Hence I agree with the contention of charged officer that it was not obligatory on his part to make Instant visit to underground is hence allegation 'C' as laid down in the charge-sheet is not established.'

64. In view of the aforesaid findings exonerating the writ petitioner/ respondent No. 1 there was no reason to hold the writ petitioner guilty of misconduct and passing an order of dismissal against him. In fact, it appears from record that the writ petitioner took all possible steps which yielded best results.

65. It is on record that under the direction of the writ petitioner/ respondent Sri B.K. Nandy went underground to take out the people from underground to surface and as a result met with the outstanding success, as all the men from underground could be taken out to surface without any loss to life and limbs, and the management of the company appreciated the said effort and rewarded the most capable mining Sardar B. K. Nandy. It appears that instead of going down the Mine which is not provided in the Regulation for which the petitioner was exonerated from the said charge, the writ petitioner took appropriate decision to send- other capable persons with equipments and materials for fighting the heating at the earliest so that heating could be fought and thwarted, and Mine could be saved. In fact, the writ petitioner was correct in sending rescuing team to

save lives in which he was successful since no life was lost and he also took appropriate steps to control co-ordinating the work of fighting to heating. As a result, the heating did not aggravate. It is surprising that although the Mining Sardar Sri B. K. Nandy and other persons sent by the writ petitioner were rewarded, the said Nandy who acted under the direction of the writ petitioner/respondent No.1 was subsequently dismissed. This aspect of the matter has been totally Ignored by both the enquiry authority as also by the Disciplinary Authority. The finding of the enquiry authority as also the Disciplinary Authority appears to be Inconsistent and based on non- consideration of evidence and on extraneous consideration.

For all the aforesaid reasons, we do not find any infirmity or error in the finding of the learned single Judge which calls for any Interference. Accordingly, the appeal falls and is dismissed.

There will be no order as to costs.

S. Burman Roy, J.--I agree.

Later

Stay of operation of the order as prayed for by the learned Advocate for the Appellants is refused.

66. Appeal dismissed

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