

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3220 OF 2007

Maheshwari Sharma (Dead) through Lrs. ..Appellants

versus

M/s Coal India Limited and others ..Respondents

J U D G M E N T

J.S. KHEHAR, J.

of a The appellant was inducted into the services

private coal mining company as a Sardar in 1969. Consequent upon
the private coal mining company being taken over by M/s Coal
India Limited(respondent no.1 herein), the appellant became an
employee of Coal India Limited.

At the relevant time in 1989,
when the appellant was holding the post of Assistant Manager,
five persons died and two were seriously injured when the roof
in XI seam caved in on 30.06.1989.

A fact finding enquiry was
conducted, whereupon the services of the appellan
t were terminated by an order dated 3.7.1989.

9, the Dissatisfied with the order dated 3.7.198
appellant approached the High Court of Calcutta by filing Writ
Petition (C.O) Nos. 17365-66(W) of 1989. The aforesaid w

rit
petition
Signature Not Verified

ppellant was dismissed. It is therefore that the a
Digitally signed by

approached the Division Bench of the Calcutta High Court by
Parveen Kumar Chawla
Date: 2014.11.10
16:48:49 IST
Reason:

ant on filing FMAT No. 250 of 1992. A Division Bench of the Calcutta
High Court, allowed the claim raised by the appell

21.1.1995. Civil Appeal No.10867 of 1996, filed by Bharat Coking Coal Limited (a subsidiary of Coal India Limited) was disposed of by upholding the order dated 21.1.1995 passed by the Calcutta High Court. A direction was also issued to the employer to hold a departmental enquiry against the appellant wherein the appellant was required to be given a reasonable opportunity to defend himself in consonance with the prevalent rules. It was further held that the appellant herein would be entitled to subsistence allowance during the pendency of the enquiry. It was also directed, that the enquiry be completed within six months.

In compliance with the aforesaid directions, the respondent issued a charge sheet dated 8.10.1996 to the appellant. Finding the reply of the appellant unsatisfactory, a regular departmental inquiry was initiated against him. On the culmination whereof, the Inquiry Officer submitted a report dated 23.06.1997. In the above enquiry report, the appellant was found innocent. The Punishing/Disciplinary Authority, after examining the inquiry report dated 23.6.1997, issued a notice to the appellant on 2.7.1997, seeking his response in 72 hours. An extract of the aforesaid communication dated 2.7.1997 is material for the present controversy. Accordingly, the same is being reproduced hereunder:

"BHARAT COKING COAL LIMITED
(A SUBSIDIARY OF COAL INDIA LIMITED)
PERSONNEL DIRECTORATE
KOYLA BHAWAN
NO. BCCL: EE:X:C:64(2) 19 OF 528

Dated 2.7.1997

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Confidential

To
Shri Maheshwari Sharma
2nd Class A.C.M.
Muraidih Project,
Barora Area

Through : CGM Barora Area

Dear Sir,

I am directed to forward herewith a copy of the enquiry report into the charge sheet No. BCCL:EE:X:64(2):96:1012 dated 8.10.96 issued to you.

CMD after examination of the enquiry report has observed as under:

"There is evidence in the file to substantiate the allegations in the form of accident plan duly signed by the Manager and Surveyor orders under section 22(23) passed by DGMS Authority, statutory report of Mining Sardar, transit slips of explosive which lead to the conclusion that the roof had been heightened without permission and above operations had been place during the period when actual deploring district had been drowned with water.....

Shri Babulal was the Manger of the mine under Mines Act and, therefore he can not be absolved of his statutory responsibilities. Sri Maheshwari Sharma, AGM was carrying out the instructions obtained in the above matter for working under his charge in an illegal and unsafe manner."

If you wish to make any representative against the above observation of the Disciplinary Authority you may submit it within 72 hours of receipt of this communication to CMD BCCL. Your representation will be taken into consideration while passing the final orders.

Yours faithfully

(RKP Srivastava)
Personnel Manager (EE)"

The appellant responded to the aforesaid communication

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through his reply dated 4.7.1997. Having considered the reply of the appellant, a penalty of reduction by two stages in the time scale for two years with cumulative effect, was inflicted on the appellant, by an order dated 28.7.1997. The administrative appeal preferred by the appellant was dismissed by an order dated 25.9.1998.

Dissatisfied with the punishment order dated 28.7.1997 passed against the appellant, as also, the administrative order rejecting the appeal preferred by the appellant on 25.9.1998, the appellant approached the High Court of Jharkhand by filing Writ Petition(S) No.6295 of 2003. The aforesaid writ petition was allowed by a learned Single Judge of the High Court on 17.5.2004. Coal India Limited, the respondent herein, assailed the order passed by the learned Single Judge by preferring LPA No. 584 of 2004. The aforesaid LPA came to be allowed by a

Division Bench of the Jharkhand High Court on 23.3.2005. Civil Review Application No. 61 of 2005 filed by the appellant was dismissed on 5.1.2007. The orders passed by the Division Bench are the subject matter of challenge before this Court.

A perusal of the order passed by the learned Single Judge dated 17.5.2004, specially the observations recorded in paragraph 12 thereof, reveals that the learned Single Judge came to the conclusion that it was clear from the inquiry report that the charges levelled against the appellant in the charge sheet dated 8.10.1996 had not been proved, and yet, the disciplinary authority had held the appellant guilty of misconduct, and passed the order of punishment, without complying with the requirements of law. It is apparent from the impugned order passed by the High Court on 23.3.2005, that on a reconsideration of the sequence of events which led to the passing of the order of punishment dated 28.7.1997, the Division Bench arrived at the factual conclusion, that the appellant had been duly informed about the reasons which had weighed with the Punishing/Disciplinary Authority whereupon a show cause notice was issued to the appellant on 2.7.1997. The punishment order was passed only after the appellant had been afforded an opportunity to respond to the same. The appellant had indeed responded to the said show cause notice, through his reply dated 4.7.1997.

Insofar as the procedural aspect of the matter is concerned, there can be no doubt whatsoever that the rules of natural justice were duly complied with when the communication dated 2.7.1997 was addressed to the appellant after the inquiry officer by his report dated 23.6.1997 had found the appellant innocent of the charges levelled against him.

We have minutely examined the reply submitted by the appellant dated 4.7.1997. The evidence on the basis of which the show cause notice dated 2.7.1997 was issued to the appellant remained uncontroverted in the reply dated 4.7.1997, inasmuch

as, the appellant did not dispute the fact that he was holding the managerial charge of the relevant mine as Assistant Manager, at the time of the occurrence on 30.6.1989.

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Insofar as the factual aspect of the matter is concerned, it was the vehement contention of the learned counsel for the appellant, that the person really responsible for the occurrence, had taken the onus and responsibility by acknowledging, that the incident had occurred on account of the excavation carried out by him. In this behalf it was pointed out that the responsibility was accepted by one M.M.Prasad through a communication which was placed on the record of the Inquiry Officer as Exhibit M-4, wherein the said M.M.Prasad acknowledged that the heightening of the galleries in 10 th rise section of XI seam was raised beyond 3 meters by him, without obtaining any permission from the Regional Director of Mines and Safety. It was the assertion of the learned counsel for the appellant, that on account of the acknowledgment of guilt by the aforesaid M.M.Prasad, the punishment inflicted on the appellant is wholly unjustified.

It is not possible for us to accept the contention of the learned counsel for the appellant. The appellant was not proceeded against on account of the activity of raising the height of the mines beyond the prescribed limit. The charge levelled against the appellant was, that in discharging his supervisory duties he did not take the appropriate action which he ought to have taken. Appropriate steps taken by him, would

have saved the lives of five employees. The assertion at the hands of the learned counsel for the appellant, that the appellant was on leave from 19.6.1989 to 24.6.1989 is also

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inconsequential, because the occurrence took place on 30.6.1989.

The appellant therefore had ample opportunity, to take appropriate remedial measures, but he failed to perform his duties diligently. It is therefore apparent, that the lapse at the hands of the appellant was duly established.

For the reasons recorded hereinabove, we find no justification whatsoever for interfering with the impugned orders passed by the High Court.

The instant civil appeal is accordingly dismissed.

.....J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;
OCTOBER 30, 2014.

.....J.
[S.A. BOBDE]

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ITEM NO.102

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3220/2007

MAHESHWARI SHARMA (DEAD) THR. LRS.

Appellant(s)

VERSUS

M/S. COAL INDIA LTD. & ORS.
(with office report)

Respondent(s)

Date : 30/10/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. Sanjeev Kr. Singh, Adv.
for Mr. Siddhartha Chowdhury, AOR(NP)

For Respondent(s) Mr. Vivek Narayan Sharma, Adv.
No.3

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Assistant Registrar

[signed order is placed on the file]