

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 11/11/2022****Order passed on : 03/02/2023****WPS No. 4000 of 2009**

S.K.Dwivedi, S/o Late K.L. Dwivedi, aged about 59 years,
resident of SMA-23, Padumnagar, Bhilai-3, Distt. Durg (CG)
PIN 490021

---- Petitioner**Versus**

Steel Authority of India Ltd., Bhilai Steel Plant, Through the
Managing Director, Bhilai Steel Plant, Ispat Bhavan, Bhilai.

---- Respondent

For Petitioner	:	Mr. H.B. Agrawal, Sr. Advocate with Ms.Swati Agrawal, Advocate.
For Respondent	:	Mr. B.D. Guru, Advocate.

Hon'ble Smt. Justice Rajani Dubey**C A V Order**

This petition is filed under Articles 226/227 of the Constitution of India for quashing the order of penalty (Annexure P/1) dated 20.8.2008 and payment of annual increment and other benefits from 1.1.2009.

02. Brief facts of the case, as mentioned in the petition, are that the petitioner is employed as Deputy General Manager (MPRD-RG Department) of Bhilai Steel Plant (for short "BSP"). At the relevant time, he was posted as Deputy General Manager (Inspection Deptt.) and was entrusted with the job of organizing inspection of the refractory material at supplier's (vendor) premises and also in the stores situated in BSP. In addition to the petitioner, five other officers were also posted

in the refractory Inspection Section. Whenever occasion arose and call letters were received for inspection, the petitioner would consult his superior officers namely DGM, I/C (Inspection) and would decide the priority for sending the Inspection Officers for the purpose of inspection of the refractory bricks at the premises of the suppliers (vendors). The tour programme of such officer used to be approved by the Executive Director (Materials Management).

Against the inspection calls received from M/s Sarvesh Refractory, Shri NK Jain, Sr. Manager was deputed to conduct this inspection of the firebricks in November, 2007 and Shri T. Gopalkrishna, Jr. Manager was deputed in December, 2007 to inspect the material at Rourkela (Orissa) which is approximately 800 kms from Bhilai. Shri T. Gopalkrishna, Jr. Manager was also deputed to inspect the firebricks at the premises of M/s SKG Refractories, Nagpur in November, 2007. Nagpur is about 265 kms from Bhilai. Shri NP Das, Jr. Executive was deputed to inspect and witness the testing at the site of M/s Raasi Refractories, Narketpalli (A.P.), 855 kms from Bhilai, in November, 2007. The petitioner was neither present at the above places nor conducted any inspection or witnessed testing of the firebricks in those places.

03. After the inspection conducted by the inspecting officers and after their approval, the vendors supplied the material to the BSP and was received in the Refractory Stores. 17 samples from different lots of these bricks were drawn for further laboratory test at BSP's laboratory. The petitioner was neither present when the samples were taken and

when the test was conducted. The stores and laboratory are separate departments and are not under the control of the Inspection Department. Out of above 17 samples, 5 passed and 12 were declared defective. Accordingly, the rejection memos were issued to the suppliers as per existing procedure in vogue. On many occasions, the credibility of laboratory tests at BSP were put to serious challenge and on re-checking, the materials earlier declared unfit were declared fit and accepted. The details of such instances is listed at Annexure P/2. In all the above exercises, the petitioner was not associated and had no role to play.

The petitioner was issued a charge sheet No. VIG/BSP/COMP-305/2008/2117 dated 9.6.2008 together with statement of imputation of misconduct, which are collectively filed as Annexures P/3 & P/4. The charge was that the petitioner failed to effectively supervise the performance and devotion to duty of his sub-ordinate officers which resulted in acceptance of poor quality of refractory bricks. The complaints were received from the user departments but this was totally incorrect and false inasmuch as no complaint was made by the Refractory Engg. Deptt., which is the user department. At least the petitioner was not supplied with a copy of such complaints.

04. The petitioner submitted a detailed reply (Annexure P/5) and challenged the propriety of issuing a charge sheet to him for acts in which he was hardly connected. However, ignoring the detailed explanation of the petitioner, the respondent authorities without applying their mind, mechanically imposed a major punishment of

reduction of pay by one stage for a period of one year without cumulative effect and stoppage of increment. Aggrieved by the impugned order, the petitioner preferred an appeal before the Chairman, Steel Authority of India vide Annexure P/6, who is the appellate authority according to SAIL Conduct, Discipline and Appeal Rules, 1977, by which the petitioner is governed. But the learned Chairman also acted mechanically and replied to the petitioner that a minor penalty has been imposed which does not call for any interference. Copy of the letter of the Chairman, SAIL dated 15.12.2008 is annexed as Annexure P/7. The petitioner submitted a review petition before the Chairman, SAIL dated 6.1.2008 (Annexure P/8) which has not been replied till filing of this petition. So the petitioner filed this writ petition for the following reliefs:

“10.1 That, the order of penalty (Annexure P-1) may kindly be quashed and the petitioner’s pay may kindly be restored with payment of arrears.

10.2 That, the annual increment of the petitioner fell due on 1.1.2009 and which has been with-held may kindly be ordered to be released.

10.3 That for causing mental harassment to the petitioner who has been an honest and ardent faithful employee of the company, the managing Director, Bhilai Steel Plant and Chairman, SAIL, may kindly be severally re-primanded.

10.4 That this petitioner may be awarded cost and damages.

10.5 This petitioner may be granted any other relief which this Hon’ble Court may deem just, in the interest of justice.”

05. Learned counsel for the petitioner submits that a major penalty has been imposed on the petitioner at the fag end of his service in violation of Rule 25 as no departmental enquiry as contemplated in Rule 25 of SAIL Conduct, Discipline & Appeal Rules, 1977 (in short "CDA Rules of 1977") was conducted and the petitioner was not given any reasonable opportunity to defend his action. This was violation of principles of natural justice. The petitioner was not connected with the inspection of material at the sites of the vendors nor did he approve the quality of the firebricks. He was also neither responsible for accepting the consignment nor was responsible for supplying the defective bricks to the user department or for releasing the payments to the vendors. It cannot be expected of the petitioner to have an effective control in the matter of inspection being conducted by the Inspection Officers at a distance of 800 kms from Bhilai. It is physically and practically not possible for the petitioner to have effective control over the inspecting staff deputed at outstations.

It is further argued that the credibility of the laboratory tests at BSP cannot be said to be foolproof because on several occasions, the results of the laboratory tests conducted at BSP were put to serious challenge by the suppliers and on re-checking, the bricks earlier rejected were found to be in order and accepted. Therefore, the laboratory tests at BSP cannot be said to be the sole criteria for deciding the quality of the bricks supplied by the vendors nor could it be the basis for charging the officers for negligence or malpractice. The petitioner throughout his career has been considered to be an honest officer and imposing a major penalty at the fag end of his service is

nothing but high-handedness of the respondents. It is well settled law that for a single act of misconduct, multiple or at least double penalties cannot be imposed. However, in the case of the petitioner, not only his pay has been reduced by one stage for a period of one year without cumulative effect but the annual increment falling due on 1.1.2009 has also been withheld. For all these reasons, the impugned order is void ab initio, illegal and is liable to be quashed.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of **O.K. Bhardwaj Vs. Union of India** reported in **2001 (9) SCC 180**.

06. On the other hand, learned counsel for the respondent submits that the petitioner's services are governed by CDA Rules, 1977. Rule 23 (a) of the CDA Rules, 1977 provides for reduction to a lower stage in time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his terminal benefits. Rule 27 provides procedure for imposing minor penalties. Thus, the punishment as imposed on the petitioner vide Annexure P/1 is a minor penalty within the meaning of Rule 23(e) of the CDA Rules, 1977 which has been imposed by following the due procedure prescribed in Rule 27. Therefore, the impugned order imposing penalty is strictly in accordance with law.

It is submitted that the appellate authority after due consideration of the appeal preferred by the petitioner, found no substance in the appeal and dismissed the same vide order dated 15.12.2008 (Annexure P/7). The basic pay of the petitioner was reduced from

Rs.25,350 + 3042 (SI) p.m. to Rs.25,350 + 2028 (SI) p.m. for a period of one year w.e.f. 20.8.2008 and he was not to draw any increment during the punishment period. Further, the pay of the petitioner was restored on 31.7.2009 i.e. with effect from the date of his superannuation so that the punishment did not affect his terminal benefits. So, the petitioner is not entitled for any relief. The order imposing minor penalty upon the petitioner is based on materials available on record and there is no infirmity or perversity in the order warranting interference by this Court under Article 226/227 of the Constitution of India. This apart, this petition as framed and filed is not maintainable as there is no challenge to the appellate order passed by the appellate authority and as such, it is liable to be dismissed with costs.

07. Heard learned counsel for the parties and perused the material available on record.

08. In the CDA Rules, 1977, penalty is defined under Rule 23 which reads as under:

“23.0 Penalties:

The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

Minor Penalties :

- a) Censure;
- b) Withholding of increments of pay with or without cumulative effect;
- c) Withholding of promotion;

- d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Company or a Subsidiary Company by negligence or breach of orders; and
- e) reduction to a lower stage in time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his terminal benefits.

Major Penalties:

- f) Save as provided for in Clause (e) above, reduction to a lower stage in time scale of pay for a specified period, with further direction as to whether or not the employee will earn increment of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increment of his pay;
- g) Reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding condition of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- h) Compulsory retirement
- i) Removal from services which shall not be a disqualification for future employment under the Govt. or the Corporation/Company owned or controlled by the Govt.
- j) Dismissal from service which shall ordinarily be a disqualification for future employment under the Govt. or the Corporation/Company owned or controlled by the Govt”

Rule 27 of the CDA Rules, 1977 prescribes the procedure for imposing minor penalties which reads as under:

“27.0 Procedure for imposing minor penalties:

- (1) Where it is proposed to impose any of the minor penalties specified in clauses (a) to (e) of Rule 23, the employee concerned shall

be informed in writing of the imputations of misconduct or misbehavior against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days. The defence statement, if any submitted by the employee shall be taken into consideration by the Disciplinary Authority before passing orders.

(2) The record of the proceedings shall include -

- (i) a copy of the statement of imputations of misconduct or misbehavior delivered to the employee;
- (ii) his defence statement, if any; and
- (iii) the order of the Disciplinary Authority together with the reasons thereof.

09. Annexures P/3 and P/4 are the memorandum of charges dated 9.6.2008 and statement of imputations of misconduct against the petitioner, respectively which read as under:

**“Office of the Managing Director
Steel Authority of India Limited
Bhilai Steel Plant
Bhilai**

No. VIG/BSP/Comp-305/2008/1117

Dated 9/06/2008

MEMORANDUM

Shri S.K. Dwivedi, P.No.2847, DGM (Inspection), BSP, Bhilai is hereby informed that it is proposed to take action against him under Rule 27 of SAIL Conduct, Discipline & Appeal Rules, 1977. A statement of the imputations of misconduct or misbehavior on which action is proposed to be taken as mentioned above is enclosed as Annexure-I.

2. Shri S.K. Dwivedi is hereby given an opportunity to make such representation as he may wish to make against the imputations of misconduct within ten (10) days of receipt of this memorandum.

3. If Shri S.K. Dwivedi fails to submit his representation within the period as mentioned above, it will be presumed that he has no representation to make and further action will be taken against Shri Dwivedi based on available records as per the Rules.

4. Attention of Shri Dwivedi is invited to Rule 17 of SAIL, CDA Rules, 1977.

5. The receipt of this memorandum may be acknowledged.

Sd/ 09.06.08
(R. Ramaraju)
Managing Director,
Bhilai Steel Plant
& Disciplinary Authority

To,
Shri S.K. Dwivedi,
P.No.2847, DGM (Inspection)
Bhilai Steel Plant, Bhilai”

Annexure-I

Statement of imputations of misconduct against Shri S.K. Dwivedi, P.No.2847, DGM (Inspection), BSP, Bhilai

Shri S.K.Dwivedi, P.No.2847 working as DGM (Inspection-Refr) failed to effectively supervise the performance and devotion to duty of his following sub-ordinate officers leading to acceptance of several consignments of poor quality refractory bricks, which were resulting in quality complaint from user department and found to be deviating widely from A/T specification in joint sampling and testing by Vigilance on receipt at BSP, Bhilai:

i) Shri N.K. Jain : - MG-I Refractory bricks of B-7/L-1 to B-7/L-5 supplied by M/s Sarvesh Refractory Pvt. Ltd. against A/T no. 20606247 dated 6.1.2007, inspected & accepted at Vendor's premises vide I/C no.20732024 dated 19.11.2007.

ii) Shri T. Gopal Krishna :- MG-I Refractory bricks of B8/L1 supplied by M/s Sarvesh Refractory Pvt. Ltd. against

A/T no.20606247 dtd. 06 Jan 07, inspected and accepted at Vendor's premises vide I/C no.20735030 dated 14/12/07. These bricks were also sampled, inspected & accepted by him after receipt of material in BSP.

MG-I Refractory bricks of B/L-11 to 20 supplied by M/S SKG Refractory against A/T No.20704544 dtd. 05.10.07, Inspected and accepted at Vendor's premises vide I/C no.20735032 dated 27.12.07. While accepting the material of B/L-11 after receipt in BSP, he did not get CCS tested in the repeat sample though the bricks failed in several parameters including CCS in the first test. Samples of B/L-12, 14, 15, 16, 17, 19, 20 failed after receipt at BSP.

iii) Shri K.S. Sunder & Shri N.P. Das :- MG-i Refractory bricks of Lot-6 & 7 supplied by M/S Raasi Refractories Limited, against A/T no.20607492 dtd. 05.03.07, inspected and accepted at Vendor's premises by Shri N.P. Das vide I/C no.20738029 dated 17.11.07 and after receipt at BSP by Shri K.S. Sunder.

By the aforesaid acts of omission/commission Shri S.K. Dwivedi has failed to effectively supervise the performance and devotion to duty of his sub-ordinate officers leading to supply of poor quality of refractory bricks thereby violating Rule 4.0(2) and committed misconduct under clause 5.0(9) of SAIL, Conduct, Discipline and Appeal Rules, 1977."

10. Annexure P/5 is the reply of the petitioner wherein he categorically stated that he is not responsible for inspection and also objected to the credibility of the test report of the laboratory of BSP but the respondent authorities passed the impugned order dated 20.8.2008 imposing penalty on him.

11. The Hon'ble Supreme Court in the matter of **O.K. Bhardwaj** (supra) held in para 3 of the judgment as under:

“3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

12. It is clear from the operative part of the impugned order (Annexure P/1) that keeping in view the overall nature of omission/commission, the penalty of reduction of basic pay of the petitioner by one stage for a period of one year without cumulative effect was imposed on him. Thus, from all the documents annexed herewith it is clear that no enquiry was initiated against the petitioner and penalty was imposed upon him on the basis of his reply. This act of the respondent authorities is against the principles of natural justice and the settled legal position holding the field. The appellate authority also passed the order dated 15.12.2008 (Annexure P/7) against the petitioner dismissing his appeal without appreciating the legal position, in a mechanical manner as the appellate authority found that for imposing minor penalty, departmental enquiry is not required under

Rule 27 of the CDA Rules, 1977. The action and order of the respondent authorities are against the principles of natural justice.

13. On the basis of aforesaid discussions, the writ petition is allowed and the impugned order dated 20.8.2008 (Annexure P/1) is hereby set aside. The respondent authorities are directed to restore the payment of the petitioner and his annual increment which fell due on 1.1.2009. The said amount with simple interest @ 6% per annum shall be paid to the petitioner within a period of three months from the date of passing of this order.

sd/

(Rajani Dubey)

Judge