

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No.650 of 2022

Gajendra Prasad, Aged about 50 years, son of Sri U.N. Sahu, Resident of Radha Udit Bhawan, Kuwartola, Ward No. 09, Gangjala, Saharsa, P.O. & P.S. Saharsa, District-Saharsa (At present residing at G/37, D.V.C Colony, Jharnadih, C.T.P.S., P.O. & P.S. Chandrapura, District-Bokaro.) (Currently residing at Room No. 02, Block-B, Officer's Dormitory, DVC Township, Post Banjhedih, P.S. Koderma, District-Jharkhand 825421).

.....Appellant

Versus

1. Damodar Valley Corporation through its Chairman, having office at D.V.C. Towers, V.I.P. Road, P.O. Kankurga, P.S. Manktala, Kolkata-54.
2. Director (HRD), now redesignated as Executive Director (H.R) Damodar Valley Corporation, H.R.D. Department (Now H.R. Department) (5th Floor) D.V.C. Towers, V.I.P. Road P.O. Kankurga, P.S. Manktala, Kolkata-54.
3. Additional Secretary, Damodar Valley Corporation, Office of the Director (HRD), D.V.C. Tower, V.I.P. Road, P.O. Kankurga, P.S. Manktala, Kolkata-54.
4. Chief Engineer, Chandrapura Thermal Power Station, Damodar Valley Corporation, Chandrapura, P.O. & P.S. Chandrapura, District-Bokaro.
5. Deputy General Manager (A), Chandrapura Thermal Power Station, Damodar Valley Corporation, Chandrapura, P.O. & P.S. Chandrapura, District-Bokaro.
6. Additional Chief Accounts Officer, Chandrapural Thermal Power Station, Damodar Valley Corporation, Chandrapura, P.O. & P.S. Chandrapura, District-Bokaro.
7. Enquiry Officer-cum-D.G.M. (Admn.) Damodar Valley Corporation, Head Quarter Kolkata, P.O. Kankurga, P.S. Manktala.

.....Respondents

P R E S E N T

**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Appellant : Mr. Atanu Banerjee, Advocate
For the Respondents : Mr. Srijit Choudhary, Advocate

Dated: 02/04/2026

JUDGMENT**Per: Deepak Roshan, J.:****I.A. No. 6048 of 2023**

1. The instant interlocutory application has been filed by the appellant seeking leave to place on record the Enquiry Report dated 17.08.2007, which was not produced during the writ proceedings.

2. Having regard to the fact that the penalty imposed upon the appellant is based on the said Enquiry Report, we are of the considered view that the same is relevant for adjudication of the present appeal, as such, this interlocutory application stands allowed.

3. Accordingly, I.A. No. 6408 of 2023 stands disposed of.

L.P.A. No. 650 of 2022

4. This intra court appeal is directed against the part of the order dated 29.06.2022 passed in *W.P.(S) No. 2908/2008*; whereby the order of punishment of "*withholding of one increment without cumulative effect for a period of one year*", was not interfered with by the Ld. Single Judge and the findings with regard to Article of Charge No. IV was upheld; although the said punishment order as well as the order of the appellate authority relating to Charge no.1 held to be perverse and was quashed in *W.P.(S) No. 2908/2008*, and, against the part of the order dated 29.06.2022; whereby the order dated 11.06.2018 passed by the disciplinary authority treating the period of suspension from 25.10.2002 to 01.05.2007 as the period of 'non-duty' was not interfered with and was thus upheld.

5. Briefly stated, the appellant was appointed as Assistant Operator (Electrical) in the respondent–Corporation in the year 1995. During the course of his service, the appellant solemnized his marriage on 11.07.2000. Subsequently, on account of a criminal case instituted against him, the appellant was placed under suspension with effect from 25.10.2002.

In the meantime, a memorandum of charges dated 02.06.2004 was issued initiating a departmental proceeding against the appellant, inter alia, alleging *(i) non-disclosure of marriage to the Corporation, (ii) demand of dowry, (iii) desertion of his wife, and (iv) leaving headquarters during suspension without permission.*

The petitioner denied the charges and upon not being not satisfied with the reply, order was issued to enquire into the charges (Annexure-6) in a disciplinary proceeding. The Enquiry Officer had initially submitted an ex-parte enquiry report on 04.06.2005 as the petitioner did not attend the enquiry proceedings.

Meanwhile, the appellant filed a writ petition being *W.P. (S) No. 7580/2006* challenging his order of suspension. The writ petition was disposed of vide order dated 23.02.2007 with a direction that if the enquiry is not completed by 30.04.2007, the petitioner's suspension shall stand automatically revoked w.e.f. 01.05.2007. Thereafter, the petitioner appeared on 12.03.2007 in terms of the order passed by this court, the proceedings were taken up and the suspension order was revoked w.e.f. 01.05.2007 and thereafter, another enquiry report was submitted on 17.08.2007.

After enquiry, the appellant was found guilty of Charge nos. (i) and (iv), whereas charge no. (ii) was not proved and charge no. (iii) remained subject to the criminal proceedings. Thereafter, the disciplinary authority, vide order dated 12.03.2009, imposed a minor penalty of withholding of one increment without cumulative effect for a period of one year. The appeal preferred by the appellant was also dismissed vide order dated 25.02.2010.

The appellant remained under suspension for the period from 25.10.2002 to 01.05.2007 and was paid subsistence allowance. The issue regarding treatment of the suspension period was kept open to be decided upon

culmination of the criminal case. Subsequently, the criminal case ended in compromise and, thereafter, the disciplinary authority during pendency of the writ petition, passed an order dated 11.06.2018 directing that the entire period of suspension be treated as “non-duty”.

Being aggrieved, vide WP(S) No. 2908 of 2008, the appellant approached the writ court challenging the order of punishment, the appellate order, including the order treating the suspension period as non-duty, and also sought consequential service benefits including promotion, annual increments and benefits under the U.C.P. Scheme.

The writ Court partly interfered with the findings relating to one of the charges, however declined to interfere with the punishment as well as the order treating the suspension period as non-duty, while relegating the appellant to avail appropriate remedy before the competent authority with respect to service benefits.

This LPA is against the part of the order dated 29.06.2022 passed in WP(S) No. 2908 of 2008 whereby the order of punishment of *‘withholding of one increment without cumulative effect for a period of one year’*; and against the part of the order dated 11.06.2018 passed by the Disciplinary Authority treating the period of suspension from 25.10.2002 to 01.05.2007 as the period of ‘non-duty’ has not been interfered with and has been upheld.

6. Learned counsel for the appellant submits that even though the criminal case pending before the District Court, Bhagalpur ended on compromise, the appellant was exonerated from the charges, but still the Respondents issued order dated 11.06.2018 that the period of suspension from 25.10.2002 to 01.05.2007 would be treated as ‘non-duty’ and the appellant would not be paid anything further other than the subsistence allowances.

7. Learned counsel further submits that the appellant has not done any such serious misconduct in terms of Regulation 95(B)(1) proviso (ii) of the Damodar Valley Corporation Regulation as whenever the appellant left the Headquarter he gave proper information to the competent authority and the suspension of appellant in contemplation of departmental enquiry was for the reason of the criminal case arising out of matrimonial dispute and not due to any misconduct in relation to discharge of duty by the appellant. Moreover, the denial of full pay to the appellant for the long suspension period for about more than five years is not justified as the suspension stood revoked on 01.05.2007 but the departmental enquiry remained pending up to 12.03.2009 which is certainly attributable to the Respondents.

8. Learned counsel lastly submits that the suspension of the appellant was because of institution of criminal case and the appellant was finally exonerated in the said criminal case in view of the compromise made between the parties and as such there appears to be no valid reason for denying full pay to the petitioner/appellant in the suspension period. In view the aforesaid submission he prays that impugned order may be set aside and the consequential benefit may be extended to the appellant.

9. *Per contra*, learned counsel for the respondents submits that delay in conclusion of Disciplinary Proceedings is solely attributable to the appellant as he did not cooperate in the proceedings and did not attend the enquiry proceedings due to which the Enquiry Officer had to submit an ex-parte enquiry report on 06.01.2005 and the suspension was revoked w.e.f. 01.05.2007 following which another enquiry report was submitted on 17.08.2007.

10. Learned counsel further submitted that on perusal of the order of the competent authority, dated 12.03.2009 under regulation 96 of DVC Service Regulation, 1957 and order in

appeal, dated 25.02.2010, under Regulation 105 of DVC Service Regulation, 1957, it clearly shows that the competent authority has neither completely exonerated the appellant nor held the suspension to be wholly unreasonable, as required under the Regulation 100 of DVC Service Regulation, 1957, for the appellant to be allowed to receive the difference between the full pay with allowances and the subsistence grant. Hence, he submits, that the appellant is only eligible to receive such proportion of pay or allowance as the competent authority may direct and he is not eligible for receiving the difference between full pay and subsistence allowance paid to him for the said period of suspension. In view of the aforesaid submission, he submits that no relief should be granted to the appellant.

11. Having heard Ld. Counsels for the rival parties and after going through the materials on record, it transpires that the appellant, who was appointed as Assistant Operator (Electrical) under the respondent–Corporation in the year 1995, was placed under suspension w.e.f. 25.10.2002 on account of pendency of a criminal case. A departmental proceeding was initiated against the appellant vide memorandum of charges dated 02.06.2004 and upon conclusion thereof, the appellant was inflicted with a minor penalty of withholding of one increment without cumulative effect. The appellant remained under suspension for the period from 25.10.2002 to 01.05.2007 and was paid subsistence allowance during the said period.

12. The question regarding treatment of the suspension period was kept open till the final verdict of the judicial Case No. 876/2001 and, upon culmination of the criminal case in compromise, the disciplinary authority, vide order dated 11.06.2018, directed that the entire period of suspension be treated as “non-duty”.

13. The learned Single Judge in WP(S) No. 2908 of 2008, while partly interfering with the findings in the departmental proceeding, declined to interfere with the aforesaid order dated

11.06.2018. Thus, the limited issues which fall for consideration in the present appeal is firstly as to whether the order of punishment of '*withholding of one increment without cumulative effect for a period of one year*' is justified or not. Secondly, whether the action of the respondents in treating the period of suspension as "non-duty", as affirmed by the learned Single Judge, calls for interference in exercise of appellate jurisdiction.

14. The Court deems it appropriate to refer to the findings recorded in the enquiry report dated 17.08.2007 with regard to Article of Charge No. IV, which pertains to the allegation that the appellant, during the period of suspension, had left his headquarters without obtaining permission from the competent authority.

15. On perusal of the enquiry report, it reflects that the Enquiry Officer has, at the very outset, noticed certain infirmities in the framing of the charge, inasmuch as, no specific dates of absence were indicated therein. However, upon appreciation of the materials on record, the relevant period was considered between 20.12.2002 and 02.06.2004, it having been admitted that the appellant remained at headquarters till 19.12.2002.

16. The Enquiry Officer further took note of the defense of the appellant that he had, on each occasion of leaving the headquarters, submitted leave applications, though sent by post on account of alleged non-acceptance by the Sectional Head. However, the Enquiry Officer ultimately returned a finding that there was no material on record to establish that the appellant had obtained prior permission or sanction from the competent authority before leaving the headquarters. Consequently, while accepting the explanation of the appellant to the extent that he had made applications, the Enquiry Officer held that the requirement of obtaining prior permission was not satisfied.

17. Thus, Article of Charge No. IV stood proved on the ground that the appellant had left his headquarters without

prior approval of the competent authority. As such, with regard to the order of punishment of '*withholding of one increment without cumulative effect for a period of one year*', we, are of the opinion that it is not very harsh and the learned Single Judge has rightly declined to interfere with the finding of the disciplinary authority on this point.

18. The writ Court considered the issue with regard to the period of suspension from 25.10.2002 to 01.05.2007 as the period of 'non-duty' and gave its finding that the respondent DVC was deprived from taking the services from the petitioner as the petitioner was put under suspension. The writ Court held that the impugned order before it clearly reflected that the petitioner was put under suspension for the causes directly attributable to him which ultimately prevented the corporations from utilizing his services for the period from 25.10.2002 to 01.05.2007. The Court of learned Single Judge was of the considered view that the respondents were within their right to treat the period of suspension as 'non-duty' vide impugned order dated 11th June, 2018 and accordingly the same did not call for any interference.

19. Even otherwise, at this stage, it would be appropriate to refer to Regulation 100 of the D.V.C. Service Regulations, 1957, which governs the consequences of reinstatement after suspension. The said Regulation postulates that an employee, who has been suspended and is subsequently reinstated, would be entitled to the difference between full pay and allowances and the subsistence allowance already paid, only in a situation where the competent authority records a finding that the employee has been fully exonerated or that the suspension was wholly unjustified. In all other cases, the Regulation vests discretion in the competent authority to grant such proportion of pay and allowances as it may deem fit. For brevity, the Regulation 100 of the D.V.C. Service Regulations, 1957 has been quoted herein-below:

“Regulation 100 - When an employee who has been dismissed, removed or suspended is reinstated he shall be allowed the difference between the full pay with allowances and the subsistence grant, if the authority competent to order reinstatement or to revoke the suspension order holds that the employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified. In such a case the period of absence from duty shall be treated as a period spent on duty for all purposes. In other cases, the employee shall be given such proportion of such pay and allowances as the competent authority may direct.”

20. Thus, we do not think that there is any error on the part of the Respondents for governing the Appellant under such Regulation. In the present case, upon perusal of the order of punishment dated 12.03.2009 passed under the relevant Regulations, as also the appellate order dated 25.02.2010, it is evident that the appellant was not fully exonerated of the charges. On the contrary, he was found guilty of certain charges in the departmental proceeding and was visited with a minor penalty. It is further not the case of the appellant that the competent authority, at any stage, has held that the order of suspension was wholly unjustified.

21. In such circumstances, the case of the appellant would clearly fall within the Regulation 100, wherein the competent authority is empowered to determine the extent of pay and allowances admissible for the period of suspension.

22. It further transpires that, in exercise of such power, the competent authority, vide order dated 11.06.2018, has specifically directed that the period of suspension from 25.10.2002 to 01.05.2007 shall be treated as “non-duty”.

23. In view of the aforesaid statutory position, we are of the considered view that the appellant, not having been fully exonerated; nor the suspension having been held to be wholly unjustified, cannot claim, as a matter of right, the difference

between full pay and subsistence allowance for the period in question. The appellant would only be entitled to such proportion of pay and allowances as determined by the competent authority. As such, learned Single Judge has rightly dealt with these issues.

24. Accordingly, no illegality or infirmity can be attributed to the order dated 11.06.2018 treating the period of suspension as “non-duty”, and the same does not warrant interference in the present appeal.

25. As such, we are of the opinion that the instant LPA is devoid of any merit and as such it stands dismissed. Pending I.A., if any, also stands disposed of.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court, Ranchi
Dated the 2nd of April, 2026.
Amardeep/
N.A.F.R.
Uploaded on
07.04.2026