

Reasoned

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CRICUIT SITTING: BILASPUR

Transferred Application No.203/00011/2014

Bilaspur, this Monday, the 07th day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Vikash Kothe Aged about 49 years S/o Late Pandurang Kothe Sr.
 Tenechnician (Elect.) Electrical Maintenance
 P.No.B014535/147005 Rajhara Distt. Durg (C.G.) Through (wife)
 Smt. Chanda Kothe Aged about 46 years W/o Shri Vikash Kothe
 Quarter No.5L, Stree-35 Sector 6 Bhilai Nagar, Tahl & Distt. Durg
 (C.G.) **-Applicant**

(By Advocate –**Shri V.G. Tamaskar**)

V e r s u s

1. Steel Authority of India Limited
 Through Managing Director
 Bhilai Steel Plant Ispat Bhawan Bhilai Nagar
 Tah. & distt. Durg (C.G.)

2. General Manager (Mines)
 I.O.C. Rajhara Mines Bhilai Steel Plant,
 Rajhara Tahsil & Distt. Durg (C.G.)

3. A.K. Biswas Joint Director,
 (Medical and Health Services)
 Sector 9 Hospital Bhilai Nagar
 Tah. & Distt. Durg (C.G.)

4. Officer-in-Charge
 Police Station Rajhara
 Rajhara Tah. Rajhara
 District-Durg (C.G.)

- Respondents

(By Advocate –**Shri Sandeep Dubey for respondents No.1 & 2**)

ORDER**By Ramesh Singh Thakur, JM:-**

This application has been filed through Smt. Chanda Kothe (wife) of Shri Vikash Kothe (applicant) against the order dated 17.09.2011 (Annexure P/5) passed by the Steel Authority to India Limited, Bhilai Steel Plant, Bhilai.

2. The applicant in this Transferred Application has prayed for the following reliefs:-

“10(i) That the Respondent No.3 may be directed to place before Hon’ble Court the entire medical treatment record of Shri Vikash Kothe and peruse the same.

(ii) That the Respondents 1 and 2 may be directed to place before Hon’ble Court the entire record of Department Enquiry conducted by Respondents 1 and 2 and peruse the same.

(iii) That the Hon’ble Court be pleased to quash removal order No.P.O.(P-M/S)/Rajhara/Estt./2011/2673 Steel Authority of India Limited, Bhilai Steel Plant, Date 17/09/2011 Annexure P-5 by issuing appropriate writ, order or direction deemed fit in the interest of justice.

(iv) That the Hon’ble Court may also call for a C.B.I. report in the missing case of Shri Vikash Kothe.

(v) That the Hon’ble Court may also direct Respondents 1 and 2 not to dispossess the petitioner and his family members from the company’s quarter in their possession.”

3. The case of the applicant is that the applicant Shri Vikash Kothe was an employee of Bhilai Steel Plant, and was posted in Rajhara Mines under Respondent No.2. Unfortunately, during

course of his employment, he became mental patient and was taking regular treatment in hospital of Bhilai Steel Plant under Respondent No.3.

3.1 Due to his mental condition, the applicant (Shri Vikash Kothe) left his family and is missing since 05.01.2010. This was widely published in local news paper dated 18.02.2010 (annexure P/1) and report was submitted in Police Station Rajhara District, Balod (C.G.). The applicant's wife Smt. Chanda Kothe had also circulated pamphlets with her husband's photograph (Annexure P-2). A police report was also lodged in Police Station Rajhara Distt. Durg (C.G.). Thereafter concerned officer was informed by Station House Incharge Police Station, Rajhara, vide his memo dated 15.03.2010 (Annexure P-3)

3.2 The wife of the applicant Smt. Chanda Kothe and two children are dependent on him and are occupying the quarter allotted by Respondent 1 and 2. As the applicant Shri Vikash Kothe is missing w.e.f.05.01.2010, the inhuman action has been taken against Shri Vikash Kothe by respondents No.1 to 3 vide order dated 17.09.2011 (Annexure P-5), whereby Shri Vikash Kothe has been removed from service and his wife and children having directed to vacate the company's quarter or else no final payments will be made to them.

3.3 The wife of the applicant has challenged the action of the respondents on the ground that withholding of release of his final payments pending vacation of company's quarter by his family members is opposed to every canons of law equity and justice. The action taken vide Annexure P/5 by the respondent No.1 to 3 in utter disregards of law of the land such as mental health act, and disability act and final payments of an employee cannot be withheld pending vacation of company's quarter.

4. The respondents have filed their reply. The replying respondents have raised the preliminary issues to the fact that Smt. Chanda Kothe has filed his application who is not an employee of the respondents. So, this application is not maintainable only on the ground that Smt. Chanda Kothe wife of Shri Vikash Kothe has no authority to file this application before this Tribunal.

4.1 It has been specifically submitted by the replying respondents that Shri Vikash Kothe was initially appointed as Technician under the office of answering respondents on 25.02.1985 during working period he was absent from duty dated 05.01.2010 to 30.11.2010 total 330 days on the ground of long absentee the department has issued charge sheet dated 11.12.2010. A copy of charge sheet dated 11.12.2010 is annexed herewith as Annexure R/1. The charge sheet was sent in his local and

permanent address but it was return back due to non availability of Shri Viaksh Kothe. Thereafter department has published on notice board and for further enquire, the hearing date was fixed on 14.02.2011, 26.02.2011, 16.03.2011 and 30.03.2011 but applicant Vikash Kothe could not appear before enquiry officer. Subsequently the prosecution officer submitted the enquiry report to disciplinary authority. A copy of enquiry report is submitted as annexed herewith as Annexure R/2. Thereafter enquiry report has been sent to Shri Vikash Kothe on 01.06.2011 at local and permanent address but the enquiry report returned back to office of respondents due to unserved thereafter the disciplinary officer has passed order on 17.09.2011 by which Shri Vikash Kothe removed from service with the direction to vacate the house within one month.

4.2 It has been specifically submitted by the respondents that the applicant's wife Smt. Chanda Kothe has not filed any authorization for filing the instant petition and it has also been denied that Shri Vikash Kothe is a mental patient. So, Smt. Chanda Kothe who is not an employee of the answering respondents has no locus standi to file this application.

4.3 It has been further submitted by the replying respondents that Smt. Chanda Kothe on behalf of Vikash Kothe has submitted

an application before the respondent-company with request to final dues with interest and to release final payment without legally authority authorization. So, the respondent-company had not taken any action on the application of Smt. Chanda Kothe on behalf of Vikash Kothe.

4.4 It has been denied by the replying respondents that the respondents were aware that Vikash Kothe was mental patient and was missing from house. Vikash Kothe was a long absentee from duty and resultantly was removed from service. It has been admitted by the replying respondents that Smt. Chanda Kothe while submitting representation to office of answering respondents submitted a copy of FIR with relation to missing of Vikash Kothe. It has been denied by the respondents that the Vikash Kothe was mental patient because he has not submitted any medical prescription before competent authority and missing from the house from January 2010.

5. We have heard the learned counsel for the parties and gone through the documents attached with the pleadings.

6. From the pleadings itself it is clear that as per Annexure P/3 dated 15.03.2010, FIR 4/10 has been registered on 14.01.2010 in the Police Station Rajhara District Durg (C.G.). Smt. Chanda Kothe wife of Vikash Kothe has filed this missing report of Vikash

Kothe since 14.01.2010 at 15:45hours. It is clear from this Annexure that the SHO of this Police Station, Rajhara has clearly mentioned that the search operation of Vikash Kothe has been done and till date no clue has been found and the search is continuing.

7. As per Annexure P/1, the submission made by the applicant regarding missing of Vikash Kothe has been published on 18.02.2010 in newspaper Naiduniya published from Bhilai. As per this Annexure, the detail of the missing person namely Vikash Kothe has been given and it has been requested to give the information to the Assistant General Manager (MRD). Further, the submissions made by the applicant regarding distributing pamphlets have also been supported by Annexure P/2. From the Annexure P/3 which has been written by the SHO Police Station Rajhara to the General Manager Bhilai Steel Plant, Bhilai, Rajhara Mines, it is crystal clear that the information/report regarding the missing of Vikash Kothe was in the knowledge of the respondent-department. So, the submission made by the replying respondents to the fact that the respondents were not aware regarding the missing of Vikash Kothe is incorrect. As per replying respondents, they have admitted that the initial appointment of Vikash Kothe as Technician was under the answering respondents on 25.02.1985.

8. It is clear from Annexure R/1, whereby the copy of the charge sheet dated 11/12/2010 has been sent to his local and permanent address but it was returned back due to non availability of Shri Vikash Kothe. From the pleading, it is clear that the department has placed on the notice board intimation regarding the proceedings of disciplinary inquiry. The inquiry report has been submitted by the inquiry officer to the disciplinary authority as per Annexure R/2. Further, the inquiry report has also been sent to Vikash Kothe on 01.06.2011 in local and permanent address but the inquiry report returned back to the respondents due to unserved. Resultantly, the disciplinary authority has passed the impugned order dated 17.09.2011 (Annexure P/5) by which Vikash Kothe has been removed from service with direction to vacate the house within one month. From the pleadings itself it is clear that the disciplinary proceedings has been proceeded against the person regarding whom the missing report has been registered with the Police Station Rajhara District Durg which is also clear as per Annexure P/3.

9. The stand of the respondent-department that the applicant has no locus standi to file this T.A. is rejected simply on the ground that Smt. Chanda Kothe is entitled for the benefits which accrued to a missing person.

10. In the reply filed by the replying respondents, the specific stand of the replying respondents is that as per Annexure R/1 memorandum dated 11.12.2010 was issued to Vikash Kothe along with Annexure-I which reads as under:-

“Annexure-I

**STATEMENT OF THE ALLEGATION ON THE BASIS
OF CHARGES ARE FRAMED AGAINST SHRI VIKASH
KOTHE, P.NO.147005, SR. TECHNICIAN, ELE.MAINT.
TOWNSHIP RAJHARA**

It has been reported that Shri Vikash Kothe, P.No.147005, Sr. Technician, Ele. Maint. Township Rajhara has absented himself from duty without intimation, prior permission or sanction of leave w.e.f.05-01-2010 to 30-11-2010 (Total 330 days).

The above fact reveals that Shri Vikash Kothe is in habit of remaining absent from duty without prior permission or sanction of leave, which is an act of misconduct punishment under Standing Order for Mines.”

11. Further as per Annexure R/2, the inquiry report has been submitted to the disciplinary authority with the recommendation that the charges have been proved against the delinquent. In the inquiry report Annexure R/2, it has been mentioned that 7 days time was given to Shri Vikash Kothe for written statement for his defense thereafter the notice regarding further date in the proceedings were given to Shri Vikash Kothe for hearing i.e.14.02.2011, 26.02.2011, 16.03.2011 and 30.03.2011. The said notices were issued to the address as found in the departmental file.

The notice was also published by way of fixing notice of the house on last resided.

12. From the pleadings itself it is very clear that the missing report was registered by the wife of Vikash Kothe on 14.01.2010 at 15:45 which is clear as per Annexure P/3 and the copy of which has been addressed to respondent-department. Knowing this fact the respondent-department has resorted to issuance of charge sheet and the issuing of notice by way of alternate process i.e. by fixing notice on the residence last known as per official record. It is relevant to mention that no notice or service has ever been issued to the family of missing person of Vikash Kothe. Particularly, the fact regarding the missing of Vikash Kothe has already been in the knowledge of respondent-department. So, the said act of the respondent department itself is against the principle of natural justice and the order of removal of disciplinary authority based on inquiry report itself is illegal and unlawful and deserves to be quashed and set aside.

13. On perusal of the pleadings, we find that charge sheet was issued to the applicant on 11.12.2010, after the respondents had received the intimation from the police authority vide Annexure P/3 dated 05.03.2010 that the applicant has been found to be missing. The respondents have not controverted the specific stand

of the applicant, raised by him in Para 8.2 of his pleadings, that “concerned officer was informed by Station House Incharge Police Station Rajhara vide his memo dated 15.03.2010”. Since the intimation of missing of the applicant was already received vide Annexure P/3 dated 15.03.2010 by the respondents, it was not incumbent on their part to issue the charge sheet on 11.12.2010 to the applicant. Therefore, the charge sheet itself is unsustainable in the eye of law.

14. Regarding the impugned order dated 17.09.2011 whereby Vikash Kothe has been removed from service for the punishment of willful absence from duty from 05.01.2010 to 30.11.2010, it is relevant to mention that the missing report had already been registered by wife of Vikash Kothe on 14.01.2010 and there is no question of willful absence on the part of Vikash Kothe for the said period for which the charge sheet has been issued and punishment has been awarded. As per Annexure P/1 and P/2, it is clear that Shri Vikash Kothe was suffering from mental disorder. In view of this, the action taken by the respondent-department in the disciplinary proceedings is against the principle of natural justice particularly when the missing report has been registered on 14.01.2010. The disciplinary authority has not dealt with this issue regarding the willful absence from duty for the relevant period

w.e.f.05.01.2010 to 30.11.2010. Resultant on this ground Annexure P/5 is liable to be quashed and set aside.

15. In view of the above, this Transferred Application is allowed the order of removal of Shri Vikash Kothe dated 17.09.2011 (Annexure P/5) is quashed and set aside. Applicant is entitled for all consequential benefits. Respondents are directed to grant all consequential benefits to the applicant within a period of three months from the date of communication of this order. As regards the relief sought for by the applicant in relief clause 10(v) of the TA, to direct the “Respondents 1 and 2 not to dispossess the petitioner and his family members from the company’s quarter in their possession”, the respondents are directed to act in accordance with their rules. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc