ORISSA MINING CORPORATION AND ANR. A

v.

ANANDA CHANDRA PRUSTY

NOVEMBER 5, 1996

[B.P. JEEVAN REDDY AND K. VENKATASWAMI, JJ.] B

Service Law—Disciplinary proceedings—Burden of Proof—Depends upon nature of charges and explanation by the delinquent officer.

Two charges framed against the respondent who was working as Assistant Accounts Officer with the appellant-corporation. Disciplinary inquiry was held. C

On the basis of inquiry report, the respondent was dismissed from service. Respondent challenged the said order in the High Court. The High Court allowed the Writ Petition and quashed the order. D

In appeal to this Court it was contended that the question of burden of proof becomes irrelevant when both parties have adduced their evidence.

Dismissing the appeal on the facts and circumstances of the case this Court. E

HELD: 1. In a departmental or disciplinary inquiry the question of burden of proof depends upon the nature of charges and nature of explanation put forward by the delinquent officer. [435D] F

2.1. There is no such thing as absolute burden of proof always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer depending upon his explanation. [435F] G

2.2. In the instant case one of the charges was that the respondent had made certain false noting on account of which loans were disbursed to certain ineligible persons. The respondents case was that those loans were based upon certain documents produced and certain records H

maintained by other employees in the office. In such a situation it was for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or accounts could not have formed the basis of wrong noting made by the respondent. [435 F-H].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14163 of 1996.

From the Judgment and Order dated 22.1.96 of the Orissa High Court in O.J.C. No. 2616 of 1995.

Interjit Roy and Raj Kumar Mehta for the Appellants.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

Heard the counsel for the parties.

The respondent was an Assistant Accounts Officer in the service of the appellant-corporation. Two charges were framed against him and a disciplinary inquiry held. The first charge was that the respondent made certain false notings while recommending sanction of loans to certain persons to the effect that no loan was outstanding against them. On the basis of such false notings, loans were sanctioned to them, contrary to the rules. The second charge was that he failed to exercise proper control and supervision on the staff on account of which the relevant registers and record were not kept upto date. The inquiry officer reported that while charge No.1 is established, charge No.2 is proved only partially. On the basis of the said report the respondent was dismissed from service, which he challenged by way of writ petition in the Orissa High Court. The High Court has allowed the writ petition holding: (a) the burden of proving the first charge rested with the department. The inquiry officer, however, has wrongly cast the burden of disproving the charge upon the respondent. The department must succeed on the strength of its own evidence and not on the basis of weakness or the failure of the delinquent officer to prove his innocence. Since the inquiry officer has proceeded on a wrong hypothesis not permissible in law, the finding recorded by him on charge No.1 is liable to be quashed. (b) No rules have been cited which show

which officer is required to maintain which register nor is there any oral evidence to establish the guilt of the respondent. In the case of this charge too, the burden has been wrongly cast upon the respondent to prove his innocence. Accordingly the High Court quashed the order of punishment impugned in the writ petition.

Learned counsel for the appellant-corporation submitted that the question of burden of proof becomes irrelevant when both parties have adduced their evidence. Learned counsel also complained that the High Court seem to suggest that the standard of proof required in disciplinary matters is similar to the one obtaining in criminal cases. Counsel submitted that while saying that it is not reappreciating the evidence, the High Court has precisely done that. On the other hand the learned counsel for the respondent supported the reasoning and conclusion of the High Court.

In a disciplinary or a departmental inquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer. In this sense, the learned counsel for the appellant may be justified in complaining that the standard of proof stipulated by the High Court in this case sounds inappropriate to a disciplinary inquiry. At the same time we must say that certain observations made by the inquiry officer in his report do lend themselves to the criticism offered by the High Court.

On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us herein above viz., that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those nothings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent.

A In the facts and circumstances of this case, we decline to interfere in the matter under Article 136 of the Constitution except to clarify the position of law. The appeal is accordingly dismissed with no costs.

P.T. Appeal dismissed.