

Court No. - 39

Case :- WRIT - A No. - 19151 of 2023

Petitioner :- Union Of India And 3 Others

Respondent :- Subhash Chandra Tripathi

Counsel for Petitioner :- Vivek Kumar Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Vivek Kumar Singh, learned counsel for the petitioners and perused the record.

2. Present writ petition has been filed against the order of Central Administrative Tribunal, Allahabad Bench, Allahabad, dated 02.06.2023, in Original Application No. 1427 of 2014 (Subhash Chandra Tripathi Vs. Union of India and 4 others). By that order, the learned Tribunal has allowed the Original Application and issued positive directions to the petitioners to release all retiral dues to the claimant-respondent including pension, with consequential benefits.

3. For ready reference, the discussion and the operative portion of the order dated 02.06.2023 is quoted hereinbelow :

"19. So far as the proof of charge is concerned, the applicant and respondents have their stands but the court without entering into the controversy of proof of charge, considered that even if the charges are deemed to be proved and the applicant was given ample opportunity to defend his case during the enquiry, still the facts remains that the decision of dismissal from service is quite harsh and hit conscience of the Court. Perusal of the record also reveals that it is an admitted fact that the applicant did not examine himself as a witness. Since the applicant had not examined himself as a witness, it was incumbent upon the enquiry officer to put evidence adduced against the

applicant during the enquiry to him in compliance of provision of Rule 14(18) of CCS (CCA) Rules, 1965. The said rule has not been followed by the respondents. As discussed, above, since the punishment awarded by the respondents is too harsh, there is violation of provision of Rule 14(18) of the CCS (CCA) Rules, 1965, the court have no option but to quash the orders passed by the disciplinary authority as well as appellate authority.

20. Accordingly, O.A. is allowed, Impugned orders dated 8.10.2014 and 26.4.2018 are quashed. Respondents are directed to release all retiral dues to the applicant including pension with consequential benefits. However, respondents are at liberty to take necessary action against the applicant, if they so wishes in accordance with the procedure and rules and pass a fresh order against the applicant, keeping in view the gravity of charges leveled against the applicant within a period of 3 months from the date of receipt of certified copy of this order."

4. Solitary submission being pressed by learned counsel for the petitioners at this stage is, in absence of any defect found in the departmental enquiry proceedings and in face of the punishment order of dismissal being interfered solely for the reason of that punishment being disproportionate to the charge levelled against the delinquent respondent, the Tribunal may not have granted the relief, noted above except after first modifying the punishment itself. Here, the Tribunal has not exercised its discretionary power and has thus not modified the punishment.

5. On the other hand, learned Tribunal has left it open to the Disciplinary Authority to pass penalty order. Having left it open to the Disciplinary Authority to pass a fresh order, the relief of payments should have been made subject to the final order to be passed by the Disciplinary Authority.

6. If the payments are made in compliance of the order of the Tribunal, the option given to the Disciplinary Authority to pass a

fresh order would largely remain illusory and in any case would create fresh litigation and complexity.

7. Having heard learned counsel for the petitioners and having perused the record, in light of the order we propose to pass, at present, no notice is required to be issued to the respondent.

8. Keeping in mind the submission advanced by learned counsel for the petitioners, we **dispose of** the writ petition with the direction that the Disciplinary Authority may issue a fresh notice to the delinquent respondent to modify the penalty awarded, within a period of two weeks from today. The said notice would allow the respondent to furnish his final reply within a period of four weeks therefrom. Upon such reply being received, the Disciplinary Authority may pass a fresh reasoned order with respect to quantum of penalty, if any within a period of six weeks from the date of reply being furnished by the petitioners.

9. To the above extent, the order passed by the Tribunal shall stand modified.

10. It is made clear, we have not examined the issue of award of penalty, on merits. It is left open to the Disciplinary Authority to pass such order as may be appropriate.

Order Date :- 17.11.2023
SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)