

Court No. - 6

Case :- WRIT - A No. - 1848 of 2013

Petitioner :- Panchu Gopal Ghosh

Respondent :- Union Of India Through Inspector General Railway Protection

Counsel for Petitioner :- Vidhu Bhushan Kalia, Abhishek Singh, Birendra Singh

Counsel for Respondent :- Jyotsna Pal, Varun Pandey

Hon'ble Abdul Moin, J.

1. Heard Sri Abhishek Singh, learned counsel for the petitioner and Sri Raj Kumar Singh, learned counsel appearing on behalf of all the respondents.

2. Instant writ petition has been filed praying for the following main reliefs:-

(i) To issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 11.07.2012 and 03.09.2012 passed by the Respondent No. 3 and Respondent no. 2 respectively, as are contained in Annexure No. 1 and Annexure No. 2 respectively to this Writ Petition.

(ii) To issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to give effect to the impugned orders dated 11.07.2012 and 03.09.2012 passed by the Respondent No. 3 and Respondent No. 2 respectively, as are contained in Annexure No. 1 and Annexure No. 2 respectively to this writ petition.

(iii) To issue a writ, order or direction in the nature of Mandamus commanding the Respondents to treat the petitioner in service till his age of superannuation/retirement and to pay him all service benefits including regular salary."

3. Bereft of unnecessary details, the case set forth by the learned counsel for the petitioner is that the petitioner while working on the post of Senior Rakshak was removed from service vide order dated 05.08.1976 under Rule 47 of the Railway Protection Force Rules, 1959 (hereinafter referred to as "Rules, 1959") replaced by Rule 161 of the Railway Protection Force Rules, 1987 (hereinafter referred to as "Rules, 1987").

4. The said rule provides for imposition of penalty on the delinquent employee without holding any inquiry provided reasons are accorded for the same.

5. After the petitioner had been removed from service, he challenged the said order by filing Writ Petition No. 5215 of 1982 Inre; Panchu Gopal Ghosh Vs. Union of India and Ors. The writ Court vide judgment and order dated 22.09.1998, a copy of which is annexure 3 to the writ petition dismissed the writ

petition. Being aggrieved, the petitioner filed Special Appeal No. 20 of 1999 Inre; Panchu Gopal Ghosh Vs. Union of India and Ors. The Division Bench of this Court vide judgment and order dated 22.03.2010, a copy of which is annexure 4 to the writ petition was of the view that Rule 47 of the Rules, 1959 replaced by Rule 161 of the Rules, 1987 as well as exceptional clause under Article 311 (2) (b) of the Constitution of India are required to be seen and thus, was of the view that the removal order (dated 05.08.1976) be kept in abeyance subject to result of the inquiry. It was also provided that the disciplinary authority will take a fresh decision in this regard but if the disciplinary authority finds that the report of the inquiry officer is on the basis of the materials and outcome of the same then in such circumstances the authority concerned shall implement the order which has been passed earlier.

6. In pursuance thereof, the inquiry proceedings were initiated against the petitioner. Five charges were levelled against the petitioner. The inquiry report dated 04.05.2012 was submitted, a copy of which is part of annexure 5 to the writ petition, in which all the five charges were not found proved against the petitioner.

7. The disciplinary authority disagreeing with the said inquiry report issued a dissent note dated 05.06.2012, a copy of which is annexure 5 to the writ petition intending to disagree with the inquiry report on the following grounds namely (a) although the inquiry officer has indicated that the matter is extremely old about 35 years and no sufficient evidence is available to prove the charges yet he has failed to indicate any evidence to indicate as to how the charges have not been found to be proved and (b) in such circumstances where either to prove or disprove the charges, no evidence is available then the earlier removal order dated 05.08.1976 can be accepted as evidence which order has been affirmed with the dismissal of the appeal filed by the delinquent employee.

8. The petitioner claims to have submitted his reply on 26.06.2012, a copy of which is part of annexure 6 to the writ petition. The disciplinary authority vide order impugned dated 11.07.2012, a copy of which is annexure 1 to the writ petition not finding the explanation of the petitioner to be satisfactory has

removed the petitioner from service. Being aggrieved, the petitioner filed an appeal which has been rejected vide order dated 03.09.2012 and hence the petition.

9. The legal argument as raised by the learned counsel for the petitioner while raising a challenge to the orders impugned is that when the inquiry officer had submitted the inquiry report dated 04.05.2012 per which all the five charges levelled against the petitioner were not found proved consequently, the disciplinary authority while issuing the dissent note and indicating that (a) although the inquiry officer has indicated that the matter is extremely old about 35 years and no sufficient evidence is available to prove the charges yet he has failed to indicate any evidence to indicate as to how the charges have not been found to be proved and (b) in such circumstances where either to prove or disprove the charges, no evidence is available then the earlier removal order dated 05.08.1976 can be accepted as evidence which order has been affirmed with the dismissal of the appeal filed by the delinquent employee, has failed to apply his mind inasmuch as the charges are to be proved by the inquiry officer and once he has not found the charges as proved against the petitioner, on the ground that sufficient evidence is not available against the petitioner after lapse of 35 years, consequently, it was not expected from the inquiry officer, as has been indicated by the disciplinary authority that the inquiry officer was required to give reason as to why the said documents were not available. The further argument is that a perusal of the dissent note when read with the removal order dated 11.07.2012 would indicate that the disciplinary authority has proceeded on the basis of assumptions, presumptions, surmises & conjectures inasmuch as he has concluded in the removal order dated 11.07.2012 that as the petitioner had earlier been removed on 05.08.1976 obviously certain documents must have been available to justify the order meaning thereby that without conclusively coming to the conclusion that documents were available in order to remove the petitioner from service, he has proceeded on the basis of presumptions and assumptions rather has gone to the extent of indicating that earlier removal order dated 05.08.1976 can itself be read in evidence. He further argues that this aspect of the matter has also not been considered by the appellate authority

while rejecting the appeal of the petitioner vide order dated 03.09.2012 and as such, on this ground alone, the orders impugned merit to be quashed.

10. Learned counsel for the petitioner also states that at the time of filing the writ petition, the petitioner was aged about 68 years and now is about 79 years of age.

11. On the other hand, Sri Raj Kumar Singh, learned counsel appearing on behalf of all the respondents on the basis of averments contained in the counter affidavit argues that the Division Bench of this Court while disposing of the special appeal vide judgment and order dated 22.03.2010 had itself provided while directing for a fresh inquiry that if the disciplinary authority finds that the report of the inquiry officer is on the basis of the material and outcome of the same then in such circumstances the authority concerned shall implement the order which has been passed earlier. Sri Singh further argues that even though the inquiry officer had not proved the charges against the petitioner yet there was reasonable basis with the department in the earlier removal order dated 05.08.1976 and thus, even if the charges have not been found to be proved against the petitioner on the ground that the documents are not available consequently, the removal order dated 05.08.1976 could be read in evidence which was not read by the inquiry officer and as such, the disciplinary authority has not committed any illegality in removing the petitioner from service.

12. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

13. From a perusal of records it emerges that initially the petitioner who was working on the post of Rakshak in the Railway Protection Force was removed from service without holding any inquiry under Rule 47 of the Rules, 1959, now Rule 161 of the Rules, 1989 on the ground that holding of an inquiry is not feasible. The appeal filed against the said order was also rejected. The petitioner being aggrieved, filed a writ petition before this Court which was also dismissed vide judgment and order dated 22.09.1998. Being aggrieved, the petitioner filed a special appeal and the Division Bench of this Court vide judgment and order

dated 22.03.2010 disposed of the said appeal with the direction to the respondents to hold an inquiry against the petitioner and it was further provided that if the disciplinary authority finds that the report of the inquiry officer is on the basis of the materials and outcome of the same then in such circumstances the authority concerned shall implement the order which has been passed earlier.

14. In pursuance thereof, the inquiry was held against the petitioner with respect to five charges. Admittedly, all the five charges were not found proved by the inquiry officer while submitting his inquiry report dated 04.05.2012. The disciplinary authority did not agree with the findings of the inquiry officer and hence issued a dissent note dated 05.06.2012 proceeding to dissent on two reasons namely (a) although the inquiry officer has indicated that the matter is extremely old about 35 years and no sufficient evidence is available to prove the charges yet he has failed to indicate any evidence to indicate as to how the charges have not been found to be proved and (b) in such circumstances where either to prove or disprove the charges, no evidence is available then the earlier removal order dated 05.08.1976 can be accepted as evidence which order has been affirmed with the dismissal of the appeal filed by the delinquent employee. The petitioner submitted his reply which did not find favour with the disciplinary authority who by means of order dated 11.07.2012 removed the petitioner from service. The said order has been affirmed with the dismissal of the appeal filed by the petitioner vide order dated 03.09.2012.

15. Perusal of the order dated 11.07.2012 passed by the disciplinary authority would indicate that the disciplinary authority has proceeded on the basis of assumption and presumption inasmuch as in the order impugned, he has indicated that at the time of earlier removal of the petitioner dated 05.08.1976 certain documents must have been in existence on the basis of which the said order was passed and even if the documents were not available with the inquiry officer consequently, the removal order dated 05.08.1976 can be read as evidence.

16. The aforesaid reasoning of the disciplinary authority is patently misconceived and fallacious inasmuch as once the Division Bench of this Court

required a fresh inquiry to be held against the petitioner and the inquiry officer found all the five charges against the petitioner to be not proved and dissent note was issued in this regard on grounds (a) & (b) as already indicated above but ultimately the disciplinary authority was of the view that even if the documents were not available after a long lapse of time it was duty of the inquiry officer to have indicated the reasons as to why the said documents were not available and that earlier removal order dated 05.08.1976 can be read in evidence and reasons must be there on the basis of which the removal order dated 05.08.1976 was passed. As already indicated above, the said reasons assigned by the disciplinary authority are patently fallacious inasmuch as once the Division Bench of this Court had remitted the matter for a fresh inquiry and the charges were not found proved against the petitioner as such, in the absence of any documents or evidence to prove the charges against the petitioner, the earlier removal order dated 05.08.1976 could not be read as evidence against the petitioner more particularly when it is the inquiry officer who is specifically required to prove the charges against the petitioner. Even if the charges were not proved by the inquiry officer certain reasons should have emerged from the order of the disciplinary authority including evidence against the petitioner to hold the charges as proved but as already indicated above, no reasons emerge from the order of the disciplinary authority dated 11.07.2012 to indicate that the charges as levelled against the petitioner have been found proved and the reasoning adopted by the disciplinary authority of the earlier removal order dated 05.08.1976 to be read as evidence can be said to be only laughable and patently misconceived and obviously cannot stand scrutiny in the eyes of law.

17. Keeping in view the aforesaid discussion, the writ petition deserves to be allowed and is allowed. The orders impugned dated 11.07.2012 & 03.09.2012, copies of which are annexures 1 & 2 to the writ petition are set aside.

18. The natural corollary to the orders impugned being set aside on the basis of technicality i.e no sufficient reason emerging from the order of the disciplinary authority dated 11.07.2012 should have occasioned the matter to be remitted back to the disciplinary authority for passing of fresh order. However, in the

instant case, the petitioner is aged about 79 years and it is on account of the act of the department that the instant situation has arisen inasmuch as despite the Division Bench judgment of this Court requiring a fresh inquiry and the charges not having been proved against the petitioner the disciplinary authority has in fact passed an order which does not stand legal scrutiny .

19. Keeping in view the aforesaid reason, there would not be any occasion for a fresh inquiry to be conducted against the petitioner more particularly when he is aged about 79 years. As such, with the setting aside of the removal order dated 05.06.2012, the petitioner would be entitled for all consequential benefits except the arrears of pay on the principle of ' No work No Pay'.

20. Let the entire consequential benefit be given to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 10.4.2024

Pachhere/-