



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No.432 of 2014

04 March, 2025

Union of India and others Petitioners

Versus

Prem Shankar Saxena Respondent

Presence:-

Mr. Virendra Kaparuwan, learned counsel for the Union of India/Petitioners.

Mr. M. C. Pant, learned counsel for the respondent.

Hon'ble Justice Shri Manoj Kumar Tiwari

Hon'ble Justice Shri Vivek Bharti Sharma

JUDGMENT: (per Shri Manoj Kumar Tiwari, J.)

This writ petition is directed against the judgment and order dated 14.07.2014 passed by the Central Administrative Tribunal, Allahabad Bench in Original Application No.536 of 2011. By the said judgment, punishment of compulsory retirement imposed upon respondent by the Disciplinary Authority; as affirmed by the Appellate Authority, was set aside and it was held that respondent shall be deemed to be in service till the date of his superannuation i.e. 31.07.2009 and he shall be entitled to all consequential benefits.

2. It is not in dispute that respondent was serving as a Wireman in Central Public Works Department; a charge-sheet was issued to him on 06.11.1991; respondent denied the charges and requested for a detailed inquiry; an Inquiry Officer was



appointed vide letter dated 03.01.1992, the inquiry could not be completed till 2001 due to change of Inquiry Officers as well as Presenting Officers; respondent filed OA No.156 of 2001 challenging the charge-sheet and questioning the continuation of disciplinary proceedings.

3. Learned Central Administrative Tribunal vide order dated 09.02.2001 disposed of the said original application by directing superintending Engineer, CPWD, New Delhi to conclude disciplinary proceedings within four months. Operative portion of the order dated 09.02.2001 passed in OA No.156 of 2001 is reproduced below:-

"The O.A. is accordingly disposed of finally with the direction to the respondent no.2, superintending Engineer, Central Public Works Department, New Delhi to conclude the disciplinary proceedings against the applicant (if already not concluded) within a period of four months from the date of copy of this order is filed. The payment of arrears claimed on revised pay scale/shall abide by the result of the enquiry. There shall be no order as to costs."

4. It is revealed from the record that the Inquiry Officer completed the inquiry and submitted report to the Disciplinary Authority on 13.07.2001, in which charge nos.1, 2, 3, 5, 6, 8 and 9 were found to be proved and charge no.4 and 7 were not found to be proved. The inquiry report was supplied to the respondent and he gave representation against the inquiry report on 11.09.2001 and the Disciplinary Authority after considering representation submitted by respondent, passed the punishment order on 08.11.2001.

5. Appellant challenged the punishment order by filing an appeal, however, his appeal was dismissed



by the appellate authority on 01.12.2010. The orders passed by the Disciplinary Authority and the appellate authority were challenged by respondent before Central Administrative Tribunal in Original Application No.536 of 2011. Learned Tribunal allowed the application filed by respondent challenging the punishment order and the appellate order only on the ground that the timeline fixed by the Tribunal in its order dated 09.02.2001 passed in OA No.156 of 2001 was breached, inasmuch as, the disciplinary proceedings were required to be concluded within four months as per earlier order passed by learned Tribunal, however, the punishment order was passed after expiry of four months. Relevant discussion as made in paragraph nos.11, 12 and 13 of the impugned judgment dated 14.07.2014 is extracted below:-

“11. The learned counsel for the respondents has contended that the disciplinary proceedings were initiated on 06.11.1991 and concluded on 08.11.2001 (not on 10.11.2001 as stated in reply) by imposing the penalty of compulsory retirement. It has been submitted that neither copy of OA No. 156/01 was not supplied to the respondents nor any chance to submit the defence statement was given to them and an exparte hearing was held by this Tribunal and a direction was issued to the respondents to complete the disciplinary proceedings within 04 months. The inquiry was completed within the prescribed period by the Inquiry Officer on 13.07.2001. It has also been submitted that the Tribunal issued the direction to finalize the inquiry proceedings within 04 months period and not directed to take the final action including the imposition of penalty and, therefore, there was no delay in concluding the disciplinary proceedings as directed by this Tribunal.

12. The order dated 09.02.2001 passed in OA No. 156/01 reads as under:-

“The O.A. is accordingly disposed of finally with the direction to the respondent no.2, superintending Engineer, Central Public Works Department, New Delhi to conclude the



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disciplinary proceedings against the applicant (if already not concluded) within a period of four months from the date of copy of this order is filed. The payment of arrears claimed on revised pay scale/shall abide by the result of the enquiry. There shall be no order as to costs."

13. There is no denial of the fact that the copy of said order was served on Respondent No. 3 on 15.03.2001. It is an admitted fact that impugned order of punishment was passed on 08.11.2001. The order of this Tribunal dated 09.02.2001 clearly provides that the disciplinary proceedings should be concluded within a period of 04 months and there is no force in the contention of respondents that the compliance of Tribunal's order was complete by submitting the inquiry report on 13.07.2001. As the disciplinary proceedings ends with the issue of the punishment order and not on date of submission of Inquiry Report, we are of the view that the impugned punishment order was issued on 09.11.2001 i.e. after 7 months and 23 days, which is beyond the time prescribed by this Tribunal vide order dated 09.02.2001 and no application for extension of time for compliance of Tribunal's order was moved, the impugned punishment order dated 08.11.2001 is beyond jurisdiction and void abinitio in view of judgments and orders referred above."

6. The reasoning given by learned Tribunal for setting aside the order of punishment and also the order passed by the appellate authority does not appeal to us. A punishment imposed upon a government servant after due inquiry, as per applicable Discipline and Appeal Rules, cannot be set aside only on the ground that the time limit for concluding disciplinary proceedings fixed by the Tribunal in earlier round of litigation was breached. The disciplinary authority does not loose jurisdiction to impose penalty merely because the timeline fixed by the Tribunal, was breached.

7. Even otherwise also, there is no discussion in the impugned judgment as to whether the delay in passing the final order of punishment was attributable



to the departmental authorities or to the respondent himself, who was facing disciplinary inquiry.

8. The view taken by learned Tribunal for setting aside the punishment order and also the order passed by appellate authority, is unsustainable for yet another reason. The order dated 09.02.2001, which fixed the deadline of four months for concluding disciplinary inquiry does not indicate the consequences which would follow, in case, the deadline is breached by the authorities, the authority concerned may be hauled for contempt for contempt, however, a public servant found guilty of misconduct in full-fledged inquiry cannot be exonerated of all charges merely because there was some delay in concluding the disciplinary inquiry.

9. Many a times, Courts are faced with a question as to whether a particular provision in a Statute is mandatory or directory. Hon'ble Apex Court in the case of **Sharif-ud-din Vs. Abdul Gani Lone** reported as **(1980) 1 SCC 403** has held in paragraph no.9 that *"Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."*

10. In the case of **Kailash Vs. Nanhku and Others** reported as **(2005) 4 SCC 480** the Hon'ble Apex Court has referred to 'Principles of Statutory Interpretation' authored by Justice G.P. Singh. Paragraph no.34 of the said judgment is reproduced below:-



“34. Justice G.P. Singh notes in his celebrated work *Principles of Statutory Interpretation* (9th Edn., 2004) while dealing with mandatory and directory provisions:

“The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.' ”(p. 338)

“ ‘For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider *inter alia*, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.” (pp. 339-40)”

11. The order passed in OA No.156 of 2001 whereby four months were given to the Disciplinary Authority to conclude disciplinary proceedings is extracted in paragraph no.3. There is nothing in the said order to indicate that if the timeline of four months fixed by learned Tribunal is breached and disciplinary proceedings are not concluded within given time, then



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the disciplinary proceedings shall stand abated or the punishment order, if passed, would be of no consequence.

12. In the absence of any indication about the consequences which would follow on account of breach of the timeline fixed by the Tribunal, the non-compliance of the order dated 09.02.2001 passed in OA No.156 of 2001 may give rise to a cause of action for filing a contempt petition, however, a punishment order validly passed by the Disciplinary Authority, as per rules, cannot be set aside on the ground that the punishment order was passed after expiry of timeline fixed by the Tribunal.

13. For the aforesaid reasons, the impugned judgement and order dated 14.07.2014 passed by learned Tribunal in Original Application No.536 of 2011 deserves to be set aside and the same is hereby set aside. The Original Application No.536 of 2011 shall stand restored to the file of Central Administrative Tribunal, Allahabad Bench, Allahabad and learned Tribunal shall decide the Original Application afresh on merits.

14. This Court hopes and expects that the Original Application would be decided within six months from the date of production of a certified copy of this judgment.

(Vivek Bharti Sharma, J.)

(Manoj K. Tiwari, J.)

04.03.2025

Sukhbant

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