

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 679 of 2015

1. V.K. Madhukar S/o Shri B.P. Madhukar Aged About 37 years Ex. Assistant Public Prosecutor Railway Protection Force South East Central Railway Quarter No. 157/03, Cross Road No. 3, W.R.S. Colony Raipur Pin 492008 Tah & Distt. Raipur (C.G.)

---- Petitioner

Versus

1. Union Of India, Through Secretary Ministry Of Railway Govt. Of India Rail Bhawan New Delhi
2. Sr. Divisional Security Commissioner Railway Protection Force South East Central Railway Bilaspur Tah & Distt. Bilaspur (C.G.)
3. Additional Divisional Railway Manager, General Administrative Department W.R.S. Colony Raipur 492008 Tah & Distt. Raipur (C.G.)

---- Respondent

For Petitioner Shri V.G. Tamaskar, Advocate

For Respondents Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

10/07/2015

Heard learned counsel for the parties.

1. This petition under Article 226 of the Constitution of India has been preferred to assail the order dated 29.09.2014 (Annexure-P-7) passed by the Disciplinary Authority in the Divisional Office, Office of the

Additional Divisional Railway Manager/R, SECR, imposing penalty of removal from service.

2. Shri Tamaskar, learned counsel appearing for the petitioner, would submit that the Disciplinary Authority has violated Rule 48.1 of the Railway Protection Force Rules, 1987 (for short 'the RPF Rules'); punishment has been imposed by the incompetent authority because the enquiry has been constituted by the Chief Security Commissioner, but the punishment has been imposed by the different authority.
3. Shri Tamaskar would further submit that the petitioner has preferred an appeal against the order of punishment, however, under Rule 220 of the RPF Rules the appeal is required to be disposed of within three months, however, the appeal remained pending for more than three months, therefore, the petitioner has preferred this writ petition.
4. Per contra, Shri Sinha, learned counsel appearing for the respondents would submit that the petitioner's appeal is pending consideration, therefore, the petition is not maintainable. He would place reliance upon the decision of the Supreme Court rendered in **Arunima Baruah v. Union of India and Others**¹.
5. It is the settled proposition of law that a person cannot be permitted to initiate and prosecute two parallel proceedings, one before the Appellate Authority and another before the High Court under Article 226 of the Constitution of India.

¹ (2007) 6 SCC 120

6. The Supreme Court in **M/s Tilokchand Motichand & Others v. H.B.**

Munshi and Another², has held thus :

“6.....The reason of the rule no doubt is public policy which Coke summarised as “*interest reipublicae res judicatas non rescindi*” but the motivating factor is the existence of another parallel jurisdiction in another Court and that Court having been moved, this Court insists on bringing its decision before this Court for review.....”

7. In **Jai Singh v. Union of India and Others**³, the Supreme Court

held thus :

“4. The High Court dismissed the writ petition on the ground that it involved determination of disputed questions of fact. It was also observed that the High Court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy. After hearing Mr Sobhagmal Jain on behalf of the appellant, we see no cogent ground to take a view different from that taken by the High Court. There cannot, in our opinion, be any doubt on the point that the extent of purity of the gypsum won by the appellant is a question of fact. It has also been brought to our notice that after the dismissal of the writ petition by the High Court, the appellant has filed a suit, in which he has agitated the same question which is the subject-matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.”

(Emphasis added)

8. The aforesaid view has been reiterated by the Supreme Court in

Arunima Baruah (supra).

² 1969 (1) SCC 110

³ (1977) 1 SCC 1

9. Since admittedly, the petitioner's appeal is pending before the Appellate Authority, the present writ petition is not maintainable. Therefore, the writ petition is disposed of with a direction to the Appellate Authority to consider and decide the petitioner's appeal, in accordance with law and on its own merits, at the earliest, preferably within a period of three months from the date of submission of certified copy of this order.
10. It is made clear that this Court has not expressed any opinion on the merits of the case and the respondent authorities shall decide the matter, on its own merits, strictly in accordance with law, without treating any observation made in this order, as opinion on the merits of the case.

Sd/-
Judge

Prashant Kumar Mishra

Gowri