

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2873 of 2015**

1. Union of India, Through General Manager SEC Railway Bilaspur Civil/Revenue District Bilaspur, Chhattisgarh.
2. Divisional Railway Manager, SEC Railway, Civil/Revenue District Bilaspur.
3. Senior Divisional Signal & Telecom Engineer, SEC Railway, Civil/Revenue District Bilaspur, Chhattisgarh
4. Divisional Signal & Telecom Engineer, SEC Railway, Civil/Revenue District Bilaspur.

---- Petitioners**Versus**

Lalji Yadav S/o Dulare Yadav, aged about 63 years, Occupation Ex-Khalashi Helper, SEC Railway, Korba (Signal Department) R/o 3/4 New Colony, SEC Railway, Korba, District Korba, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri H.S.Ahluwalia, Advocate.
For Respondent	:	None.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****11/02/2016**

1. No one appeared for the Respondent in the pre-lunch session. We passed over the matter *suo moto*. None is present on his behalf in the post-lunch session also.
2. The Petitioners assail order dated 12.5.2015 of the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting Bilaspur (hereinafter called 'the Tribunal') in Original Application No. 203/00110/2015. The Tribunal has ordered quashing of the impugned orders notwithstanding the earlier order in Original Application No. 879 of 2005 and remanded the matter to reconsider dismissal in

light of the reinstatement of two others also made accused in a case under Section 3A of the Railway Properties (Unauthorised Possession) Act, 1966 (hereinafter called 'the Act').

3. Learned Counsel for the Petitioners submits that the Respondent was convicted on 25.11.1994 by the Special Railway Magistrate in Case No. 1392 of 1982 under Section 3A of the Act. Show cause notice was issued to him on 24.2.1995 proposing punishment of removal from service. On 28.6.2001, the Respondent requested postponement of decision as he had preferred an appeal against his conviction. The authorities gave him repeated reminders seeking upto date status. In absence of satisfactory reply, he was ultimately dismissed from service on 22.1.2003. Aggrieved, the Respondent preferred Writ Petition No. 3709 of 2003. Unable to persuade the Court for interference, an alternative submission was made that he may be permitted to seek voluntary retirement. It was directed to be considered. The request for voluntary retirement was rejected by a reasoned order dated 19.3.2004. Aggrieved, the Respondent preferred Original Application No. 879 of 2005 before the Tribunal which declined to interfere either with the order of dismissal or the order rejecting the representation on 18.2.2008.

4. Original Application No. 203/00110/2015 was thereafter filed belatedly seeking a limited relief to pay pension/provident fund. The Tribunal went beyond the pleadings, considered issues with regard to which no relief had been sought, sat in judgment over its own earlier order dated 18.2.2008 and issued the impugned order to reconsider the matter for voluntary retirement in light of the order dated 13.2.2004 in Writ Petition No. 3709 of 2003 treating it as a direction to grant of voluntary retirement. There were no pleadings in the latter Original Application with regard to any claim for parity in punishment vis-a-vis others similarly situated. The Tribunal again travelled outside the pleadings to consider

the issue and granted relief on basis of the same. The order dated 12.5.2015 is therefore not sustainable.

5. We have considered the submissions.

6. Conviction was ordered under Section 3A of the Act on 25.11.1994. Show cause notice was issued promptly on 24.2.1995 for dismissal. The order of dismissal under Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1962 was passed on 22.1.2003. The challenge to the same failed in Writ Petition No. 3709 of 2013. An alternative plea to seek voluntary retirement was made. The Court only directed consideration of the same in accordance with law. No mandamus could have been issued and neither was any mandamus issued to accept the application for voluntary retirement. It was rejected by a reasoned order on 19.3.2004. Original Application No. 879 of 2005 preferred against the same was rejected on 18.2.2008. The order of dismissal as also rejection of the request for voluntary retirement attained finality as it was not questioned before any superior forum.

7. The Respondent could not have re-agitated the issue again in the fresh Original Application filed in the year 2015. He therefore sought limited relief for release of pension and retiral benefits. No relief was sought with regard to the order of dismissal dated 22.1.2003 or the order of rejection of the request for voluntary retirement on 19.3.2004. No grievance was raised with regard to a claim for parity in punishment, if it could have been raised considering that it stood barred on principles of constructive res-judicata.

8. The Tribunal by the impugned order dated 12.5.2015 completely exceeded its jurisdiction, travelled beyond the law and considered grant of relief beyond pleadings. It is absolutely impermissible for the Tribunal or a Court of law to travel beyond the pleadings and grant relief which the applicant may not have ever asked for. Relief has to be granted on basis of what is sought for and not

what the Court may opine. Learned Counsel for the Petitioners has rightly relied upon AIR (2010) 1 SC 476 (Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi).

9. The conclusion of the Tribunal on the issue for voluntary retirement appears to be based on complete misconception of the order dated 13.2.2004 in Writ Petition No. 3709 of 2003 without any discussion or consideration of the order dated 19.3.2004 which attained finality after dismissal of Original Application No. 879 of 2005. The finding of the Tribunal that the Petitioners had not considered the issue for voluntary retirement in terms of the direction of the Court is therefore completely perverse and unsustainable.

10. Last, but not the least, we find that the order dated 12.5.2015 is not sustainable on a simple ground of its being completely destructive of judicial discipline. The Tribunal had no authority or jurisdiction to sit over its own order dated 18.2.2008. The order suffers from complete non-application of mind.

11. Thus viewed from any aspect, the order dated 12.5.2015 is completely unsustainable in law or facts and is set aside.

12. The writ petition is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE