IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 10012 OF 2018

Union of India & Ors. ...Petitioners
Versus
K. S. Deshmukh ...Respondent

Mr. T. J. Pandian for Petitioners
None for Respondent.

CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.

DATE : 23 APRIL 2018

P. C. :

1] Heard Mr. Pandian, the learned counsel for the petitioners.

2] The challenge in this petition is to the judgment and order dated 26th July 2017 made by the Central Administrative Tribunal (CAT) in Original Application No. 579 of 2014 instituted by the respondent.

3] On 15th March 2010, the respondent was issued a charge-sheet alleging that he accepted illegal gratification of Rs.50/- from a decoy passenger. In the enquiry which ensued, the charge was held as proved and the disciplinary authority by an order dated 4th November 2011 imposed penalty of reduction by two stages for two years. In pursuance of show cause notice dated 21st March 2012 and the ensuring order dated 30th June 2012, the revisional authority, upon *suo moto* exercise of revisional powers, enhanced the penalty imposed upon the respondent to reversion of initial grade as junior ticket collector for a period of ten years.

4] The respondent, instituted OA No. 232 of 2013 before the CAT, to challenge the show cause notice dated 21st March 2012 and the order dated 30th June 2012 by which enhanced penalty came to be imposed him. The CAT, by order dated 9th May 2013 quashed the show cause notice as well as enhanced penalty order on the ground that the same were non speaking but remitted the matter to the revisional authority for passing a fresh order in accordance with law.

5] On remand, the revisional authority, issued fresh show cause notice and imposed enhanced penalty of compulsory retirement on 5th August 2013. The appellate authority confirmed this order on 20th September 2013.

6] Aggrieved by orders dated 5th August 2013 and 20th September 2013, the respondent instituted OA No. 579 of 2014 contending *inter alia* that the show cause notice issued on the second occasion was grossly defective, in as much as there was no reference to the enhanced penalty of compulsory retirement. By the impugned judgment and order dated 26th July 2017, the CAT, has set aside the enhanced penalty but maintained the earlier penalty of reduction by two stages for two years. Hence, the present petition.

7] Mr. Pandian submits that merely because the show cause notice may not have referred to the further enhanced penalty, it cannot be said that imposition of the further enhanced penalty was vitiated. In any case, Mr. Pandian submits that the CAT has itself accepted that in a matter of this nature, the CAT ought to have remitted the matter once again to the revisional authority. Despite making observations to this effect, the CAT, has chosen not to remand the matter to the revisional authority on the sole ground that in the meanwhile, the respondent, stood retired on attaining the age of superannuation. Mr. Pandian submits that in terms of Rule 9 of Railway Service Pension Rules, 1993, the petitioners, are entitled to continue disciplinary proceedings even after retirement of an employee. Since, this aspect has not been considered by the CAT, the impugned judgment and order is liable to be set aside.

8] We have considered the submissions made by Mr. Pandian and also perused the record. In our judgment, the impugned judgment and order warrants no interference in the facts and circumstances of the present case. The reasons for this are indicated briefly hereafter.

9] After the charge was held as proved against the respondent, the petitioners, on basis of advise from the Vigilance Department, chose to impose upon the respondent penalty of reduction by two stages for two years. This penalty was accepted by the respondent, since, the respondent, instituted no proceedings to challenge the same.

10] Thereafter, the petitioners revisional authority exercised *suo moto* powers of revision and enhanced this penalty to reversion to initial grade as junior ticket collector for a period of ten years. This order, was a non speaking order and the revisional authority, failed to comply with the petitioners own rules and regulations before this order was made. The CAT, by its order dated 9th May 2013 in OA No. 232 of 2013, therefore, set aside this enhanced penalty but remitted the matter to the revisional authority in order to enable the revisional authority to take action in terms of the service rules applicable. What is significant is that the revisional authority, even at that stage, had not proposed any penalty of compulsory retirement upon the respondent.

11] In the second round, the revisional authority, again, without complying with the provisions of the service rules proceeded to enhance the penalty not as earlier proposed / imposed but imposed the further enhanced penalty of compulsory retirement. There was no opportunity granted to the respondent to show cause as to why the proposed penalty of compulsory retirement ought not to be imposed upon him. The show cause notice made no reference to the penalty of compulsory retirement at all. The CAT, has correctly stated legal position that even in such a situation, the correct order is to be made is that of remand to the revisional authority. However, for cogent reasons, the CAT has held that since the respondent has already retired from service on attaining the age of superannuation and further since, the penalty of reduction by two stages for two years stands, the interests of justice will be met if the matter is permitted to rest there rather than require the respondent to face yet another round before the revisional authority.

12] The CAT, in the present case, has not held that the petitioners have no power to continue disciplinary proceedings after an employee attains the age of superannuation. All that the CAT has held that in the facts and circumstances of the present case, interests of justice will be met if the matter rests at the stage of initial penalty imposed upon the respondent.

13] There is no good ground to interfere with the view taken by the CAT. The CAT, has correctly stated the legal position. The CAT, has given cogent reasons as to why in the interests of justice in the present case, do not warrant a remand, virtually, the third time. The petitioners themselves imposed penalty of reduction by two stages for two years on the basis of advise from the Vigilance Department. The revisional authority undoubtedly has the power to enhance such penalty. However, such enhancement has to be after the compliance with the service rules as prescribed. The prescribed service rules, were however, flouted.

14] Besides, the revisional authority, on the first occasion, deemed it appropriate to enhance the penalty to reversion as junior ticket collector for a period of ten years. After the respondent succeeded before the CAT, it appears that this very revisional authority imposed penalty of compulsory retirement and that too, without afford of opportunity to the respondent to give his say on the proposed enhanced penalty.

15] Taking all these circumstances into consideration, the CAT has made the impugned judgment and order. As noted earlier, we see no good ground to interfere with the same in the peculiar facts and circumstances of the present case.

16] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

CHANDKA