

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.29579 OF 2018

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The Union of India and its officials in East Coast Railway filed this writ petition aggrieved by the order dated 20.04.2018 passed by the Central Administrative Tribunal, Hyderabad Bench (*hereinafter*, 'the Tribunal'), in O.A.No.020/00950/2017. The said O.A. was filed by the respondent herein aggrieved by the order dated 23.04.2016 passed by the Senior Divisional Mechanical Engineer (Diesel), East Coast Railway, Visakhapatnam, the order dated 20.07.2016 passed by the Assistant Divisional Railway Manager, East Coast Railway, Visakhapatnam, and the order dated 06.03.2017 passed by the Chief Mechanical Engineer and Revisionary Authority, East Coast Railway, Orissa, in relation to the punishment imposed upon him on the ground that the same is disproportionate to the charge. He sought a consequential direction to the authorities to restore all service benefits, including monetary benefits.

By the order under challenge, the Tribunal opined that as a lesser punishment had been imposed upon one N.G.Naidu, Office Superintendent, in relation to the very same incident, the authorities ought to have applied parity in punishment and accordingly allowed the O.A. in part directing the authorities to impose a penalty which was identical to that imposed upon N.G.Naidu, Office Superintendent.

Sri C.V.Rajeeva Reddy, learned counsel for the petitioners, would contend that the respondent was higher in rank when compared to N.G.Naidu, Office Superintendent, and therefore, there could have been no parity in their treatment as opined by the Tribunal.

We find merit in this submission.

However, that being said, it may be noted that the punishment imposed upon the respondent-applicant was permanent reduction to the post of Junior Engineer (Diesel/Mechanical) in PB 2 with GP Rs.4200 and holding him unfit for future promotions.

Smt. Ch.Sujatha, learned counsel appearing for Smt.N.Anula, learned counsel on caveat for the respondent-applicant, would inform this Court that in terms of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 (*for brevity*, 'the Rules of 1968'), major penalties have been stipulated under Clauses (v) to (ix). She would further point out that though Clause (vi) permits reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or service, the Rule does not speak of shutting out further avenues for promotion.

Perusal of the major penalties prescribed under the aforesaid Clauses demonstrates that the authorities exceeded their brief in disqualifying the respondent-applicant from aspiring for further promotions for all times to come.

That apart, perusal of the record reflects that the respondent-applicant was not directly involved in the alleged irregularity in relation to the stock of HSD oil. At best, he could be held guilty of dereliction of duty in terms of supervising his subordinates in the stock verification and maintenance of records as per norms.

That being so, the penalty of permanent reduction to a lower post appears to be shockingly disproportionate to his short-comings in relation to the charge. Be it noted that Clause (vi) of Rule 6 of the Rules of 1968 also permits conditions for restoration to the original grade, post or service to be prescribed while effecting reduction to a lower grade, post or service. It

appears that this aspect of the matter was completely overlooked and the highest punishment of permanent reduction was straight away visited upon the respondent-applicant. Be it viewed from any angle, we are of the opinion that the authorities failed to exercise their discretion judiciously while taking a decision as to the nature and extent of the penalty to be imposed upon the respondent-applicant. Unfortunately, the Tribunal completely lost sight of this aspect of the matter and decided the matter on wholly unsustainable grounds.

It may be noted that in terms of the law laid down by the Supreme Court in STATE OF MEGHALAYA V/ s. MECKEN SINGH N.MARAK¹, this Court, while setting aside the punishment on the ground of proportionality, is required to remit the matter to the disciplinary authority to reconsider the question of imposition of penalty.

The writ petition is accordingly disposed of setting aside the order dated 20.04.2018 passed by the Tribunal in O.A.No.020/00950/2017 and also setting aside the punishment order dated 23.04.2016 issued by the Senior Divisional Mechanical Engineer (Diesel), East Coast Railway, Visakhapatnam. The matter is remitted to the Senior Divisional Mechanical Engineer (Diesel), East Coast Railway, Visakhapatnam, for consideration afresh of the issue in the light of the rules and the observations made hereinabove.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

27th AUGUST, 2018
Sv

¹ AIR 2008 SC 2862