

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5140 of 2006**

Smt. Rajlaxmi Patel, W/o. R.B. Patel, Aged about 52 years, R/o. Rly. Qtr. No. 54/10, Near Rly. Good Shed, Rly. Station, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Union of India, Through: Divisional Railway Manager (P), South Eastern Railway, now South East Central Railway, P.O. Bilaspur, Chhattisgarh
2. Loco Foreman, S.E. Rly. Now S.E.C. Rly. Raipur Chhattisgarh
3. Sr. Divisional Personal Officer, S.E. Rly. Now S.E.C. Rly, Bilaspur, Chhattisgarh
4. Divisional Mechanical Engineer, S.E. Rly. Now S.E.C. Rly. Bilaspur, Chhattisgarh
5. Sr. Divisional Mechanical Engineer, S.E. Rly. Now S.E.C. Rly. Bilaspur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Hanuman Prasad Agrawal, Advocate
For Respondents	:	Mr. Abhishek Sinha, Advocater along with Ms. S. Harshita, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****24/01/2019**

1. The challenge in the present writ petition substantially is:

7(a) That, the award passed by Hon'ble Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur on dated 26.04.2006 i.e. Annexure P-II is without jurisdiction is deserve to be quashed.

7(b) That, the removal order dated 01.10.1993 i.e. Annexure P-III which is passed by the Respondent No.4 is void and illegal ab-initio is deserve to be quashed.

7(c) That the order dated 23.11.1993 i.e. Annexure P-IV passed by the Respondent No.5 is void and illegal is deserve to be quashed.

2. So far as the relief clause No.7(d) is concerned, this Court is of the opinion that the challenge to the said order Annexure P/1 dated 05.10.1993 may not be maintainable in the present writ petition, as the same would have to be challenged by way of a separate writ petition. Moreover, the challenge to the order of the Central Administrative Tribunal is heard and decided by a Division Bench.
3. Given the aforesaid facts, this Court confines the writ petition to relief clause No.7(a) to 7(c). The three orders under challenge are the order of removal from service dated 01.10.1993. The order passed by the Appellate authority rejecting the appeal on 23.11.1993 and the order of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur in case No. CGIT/LCR/114/96, dated 26.04.2006, whereby the Tribunal has passed an award answering the reference in the negative holding that the department was justified in removing the petitioner from service.
4. The ground of challenge raised by the petitioner is that the Department has not properly conducted the departmental enquiry against the petitioner and has not sufficiently proved the misconduct and that the Tribunal has not properly appreciated this fact.
5. It was further the contention of the counsel for the petitioner that, even if the contents are accepted, even then the punishment of removal from service is too harsh and excessive and is disproportionate to the nature of allegations leveled against the applicant. It was further the contention of the counsel for the petitioner that apart from the challenge to the order of the Tribunal,

there are also various unclaimed salary and other benefits, which have not been paid to the petitioner by the respondents.

6. So far as the unpaid salary and other monetary benefits are concerned, this Court is again of the view that the said relief also cannot be considered by this Court in the present writ petition, as the present writ petition has been filed assailing the award of the CGIT and therefore this Court would have to confine its finding only to the extent of, whether the award of the Tribunal is proper, legal and justified or not.
7. As regard the claim for monetary benefits is concerned, this Court without expressing any opinion on merits reserves the right of the petitioner to avail other remedy available to her under the other forum.
8. As regard the award passed by the CGIT is concerned, it would be relevant at this juncture to take note of the specific finding of fact given by the Tribunal. In paragraphs No. 11 & 12, the Tribunal has specifically discussed the evidences, which were led on behalf of the petitioner as well as by the respondent-Management.
9. The award further reflects that, during the course of the evidence before the Tribunal, the petitioner herself has admitted the allegations, which have been alleged against her. At the same time, the petitioner have also not been able to adduce sufficient evidence to show or prove before the Tribunal that the action taken by the respondent-Management was with any malafide or ulterior motive. In the absence of any evidence to substantiate her contentions on behalf of the petitioner and at the same time, the fact that the

petitioner herself having admitted the allegations of “*Marpeet*” as is revealed from paragraph No.12 of the award, this Court is of the opinion that the Tribunal has not committed any illegality while deciding the matter.

10. Given the evidence, which have come on record, it also cannot be held that the finding of the Tribunal to be a perverse finding, neither can the award be held to be one, which is contrary to the evidence led by the parties. So far as the scope of interference is concerned, it is by now well settled legal position that the High Court, in exercise of its power under Article 226 of the Constitution of India, would not substitute itself as an Appellate authority over a finding of fact given by a Tribunal.
11. In the course of a judicial review of an order of Tribunal, this Court would confine itself to be decision making process and not the decision itself. Moreover, unless the petitioner or the person, who challenges the award of the Tribunal, is able to show that the finding arrived at by the Tribunal, is a perverse finding, this Court in exercise of its power under Article 226 of the Constitution of India would find it difficult to reach to another conclusion, if at all, if there be one.
12. For the aforesaid reasons, this Court does not find any strong case made out by the petitioner calling for an interference with the order Annexure P/2 dated 26.04.2006, passed by the CGIT-cum-Labour Court, Jabalpur. However, as has been held earlier, so far as the claim of the petitioner of certain unpaid salary and other allowances is concerned, if it has been till date not settled by the respondents,

the petitioner would be at liberty to approach either the respondents by way of a suitable representation or approaching an appropriate forum, in an appropriate manner, for redressal of her grievances.

13. With the aforesaid observations, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved