

08-12-2020

WP.CT 374 of 2013

Ct. 12

Hirak Banerjee
Versus
The Union of India & Ors.

(Through Video Conference)

Mr. Siddharta Lahiri, Adv.
Mr. Argha Banerjee, Adv.
...for the petitioner

Mr. Pinaki Bhattacharyya, Adv.
Mr. Debjyoti Maity, Adv.
...for South Eastern Railway

This writ petition is directed against an order passed by the Central Administrative Tribunal on 30th July, 2013 in an application filed by the present petitioner under Section 19 of the Administrative Tribunals Act, 1985 in which, inter alia, the writ petitioner has prayed for quashing of the Enquiry Report dated 11th December, 2008 submitted by the Women's Rights Protection Committee, order of the Disciplinary Authority dated 25th August, 2009, order of the Appellate Authority dated 1st October, 2009 and the order of the Revisionary Authority dated 28th January, 2010 and with a prayer for reinstatement with all consequential benefits.

The applicant was working as Office Superintendent in the respondent's organization. He was dismissed from service on the basis of a report by Complaint Committee submitted by the Women's Rights Protection Committee and the Disciplinary Authority without considering the statements alleged to have issued a show-cause notice dismissing the applicant from service.

The grievance of the writ petitioner was that the Disciplinary authority as well as the Revision Authority passed orders confirming the orders of the Disciplinary Authority mechanically and without considering the explanations offered by the writ petitioner.

The Complaint Committee observed that the petitioner, by virtue of his seniority and authority, had greater potential for abuse of power over the complainant and he was in a position to create hostile work environment for the lady by threatening her continuously since he is up in hierarchy, although the writ petitioner alleged that a lady worker lodged a false complaint against him. But the Committee arrived at a finding that such explanation is inadequate for such a nature of complaint and returned a finding that all harassment was made by the writ petitioner to the lady. This finding of alleged sexual harassment was challenged before the respective higher authorities in hierarchy and thereafter, being unsuccessful, the application under Section 19 of the said Act was filed.

The Authority concerned imposed the major penalties by dismissing him from service. Before the Tribunal, the writ petitioner questioned the constitution of the Committee and it was submitted that the Committee was constituted de-horse the directions given in Visakha's case. However, in arriving at a finding as to whether the respective authorities having the jurisdiction to consider the grievance of the petitioner has properly addressed their mind and arrived at a rational conclusion and it is a possible and fair view under the facts and circumstances the Tribunal appears to have not discussed the issues at all and has merely reproduced the findings of the respective authorities without addressing the issues raised by the writ petitioner.

We have perused the order carefully but we could not find any reason for accepting the findings of the authorities that had culminated in the final order of punishment. Even if we assume that the procedure followed was just and fair but then again, it is clear that it was on the basis of some presumption that the applicant was in a position to exercise the authority and power over the lady, the order of dismissal was passed. The proportionality of the order in the facts and circumstances of the case was, however, not discussed in the impugned order.

Considering the aforesaid facts, we invite the parties to address us if it is possible to pass any suitable order that may be acceptable to the parties. Where as preponderance of probability is the yardstick in a disciplinary proceeding to sustain the order of the disciplinary authorities and the hierarchies established in the service jurisprudence, the doctrine of proportionality principle is applied in circumstances where major penalty like dismissal from service which is akin to a civil death and carries with it stigma. The matter was adjourned from time to time to dwell on this issue. It appears that the Railway Authority have taken a very fair stand as a model employer proposing to substitute the ultimate order of dismissal by extending the benefit under Rule 65 of the Railway Services (Pension) Rules, 1993 to the petitioner.

On the conspectus of the facts and the materials available on record and taking into consideration the communication from the Railway Authorities to Mr. Pinaki Bhattacharya dated 26th November, 2020, we extend the benefit of compassionate allowance at the rate of 2/3rd of pension and gratuity which would be admissible to him if he

had retired on compensation pension with effect from December, 2013 for the reasons as stated in our order dated 17th November, 2020. Subject to compliance of all formalities, dues as may be admissible to the petitioner in terms of our order, shall be released in favour of the writ petitioner within two months from the date of communication of this order.

The communicated dated 26th November, 2020 is kept with the record.

The order of the Central Administrative Tribunal is set aside.

With the above observations, the writ petition being WPCT 374 of 2013 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of necessary formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)