

MAT 725 of 2020

IA No: CAN 1 of 2020, CAN 2 of 2020

Chandan Kumar Bhattacharya

vs.

Union of India & Anr.

Mr. Rananeesh Guha Thakurta

...for the Appellant/Petitioner

Mr. Debapriya Gupta

Mr. Arijit Majumdar

...for the Respondents/UOI

Party/parties is/are represented in the order of their name/names as printed above in the cause-title.

This appeal arises from the order impugned dated March 13, 2020. In preferring the appeal there has been a delay of about 180 days. The reasons are pleaded in the application.

This Court is satisfied that there is sufficient and cogent reasons as to why the appellant could not prefer the appeal within the stipulated time.

In such view of the matter, the application for condonation of the delay of about 180 days in preferring the appeal stands allowed.

CAN 2 of 2020 in connection with MAT 725 of 2020 stands thus **disposed of**.

MAT 725 of 2020 with CAN 1 of 2020

Under challenge in this appeal and through CAN 1 of 2020, which is an application for appropriate order, is the judgement and order of the Hon'ble Single Bench dated 13th March, 2020 in W.P. 3384(W) of 2020. The appellant is the writ petitioner and the respondents/the Union of India (*UOI*) was the employer of the appellant.

In the writ petition the appellant complained of the initiation of departmental proceedings (*DP*) by issuance of a charge-sheet close to his date of superannuation. It is submitted that the Memorandum containing the Articles of Charges was issued to the appellant on 30th September, 2019 and he superannuated on 31st October, 2019. The charge against the appellant is one of committing financial impropriety during the tenure of his service.

By the order impugned dated 13th March, 2020, the Hon'ble Single Bench directed the respondents/*UOI* and, specifically the Director General of the Border Roads Organisation (*BRO*) to take a decision with regard to the release of the admissible terminal benefits of the appellant within the period specified in the order.

The Hon'ble Single Bench, however, did not interdict the Disciplinary Proceedings (*DP*) which was allowed to be concluded within a reasonable period, considering the fact that in the meantime the appellant has already retired from service.

Mr. Guha Thakurta, learned Counsel appearing for the appellant, submits that the retirement benefits of the appellant, arguably accepting the fact that the Hon'ble Single Bench correctly passed the order impugned dated 13th March, 2020, is yet to be released in favour of the appellant. It is also submitted that the *DP* is being held at Doomdooma, Assam and the appellant is a senior citizen who is physically unable to participate in the *DP*, more so considering the present pandemic situation. It is pointed out that as a result the order of the Hon'ble Single Bench dated 13th March, 2020 to complete the *DP* within a reasonable period is being circumvented by the action of the respondents/*UOI*.

Mr. Gupta, learned Counsel representing the respondents/*UOI*, raises a preliminary point questioning the maintainability of the writ petition. It is submitted that the order impugned dated 13th March, 2020 is not a judgment within the meaning of Clause 15 of the Letters Patent. Secondly, this appeal is not maintainable since, according to Mr. Gupta, the order impugned dated 13th

March, 2020 has not conclusively decided the rights of the parties *inter se*.

The point on maintainability taken by Mr. Gupta is naturally objected to by Mr. Guha Thakurta and consequently falls for examination before this Court at the threshold. Upon a close reading of the order dated 13th March, 2020, this Court is left in no manner of doubt that the rights of the parties which fell for adjudication in the writ petition, *viz.* (a) the initiation of the *DP* and (b) the release of his complete retirement benefits, have been conclusively decided by issuing specific directions by the Hon'ble Single Bench. The rights of both the parties *inter se* have been conclusively determined by the judgement and order impugned dated 13th March, 2020. Next, on merits, Mr. Gupta submits that although the petitioner was granted the opportunity to participate in the *DP* online, i.e. in virtual mode on several occasions, the petitioner chose not to do so. It is, therefore, submitted that the respondents/the employer had to proceed with examining its witnessess in the enquiry and the matter hangs at this juncture. It is additionally pointed out by learned Counsel for the respondents that a total number of ten prosecution/management witnessess ((*PWs*)/(*MWs*)) have been so far examined in the *DP*.

Mr. Gupta relies upon a statement of computation of dues receivable by the appellant pending the *DP*. The

dues also include the amounts which can only be received by the appellant after the *DP* is concluded.

A copy of the statement dated 7th December, 2020 produced in Court today by Mr. Gupta is handed over to Mr. Guha Thakurta for the benefit of taking precise instructions.

Having considered the gamut of facts and circumstances as discussed above, this Court finds that the order of the Hon'ble Single Bench dated 13th March, 2020 deserves no interference. However, since the appellant/petitioner claims to be technologically not at pace with the respondents in the matter of the conduct of the *DP* online, a further opportunity is given to both the parties to conduct a fresh arrangement for concluding the *DP* within a further period of six months from this date, even in online/virtual mode allowing opportunity to the appellant /writ petitioner to participate.

The *DP*, as directed by this order, shall commence from the stage till it has reached up to this date. The appellant/writ petitioner shall be entitled to cross-examine the *PWs*/ *MWs* upon obtaining copies of their evidence-in-chief. The appellant/writ-petitioner shall also have equal opportunity of presenting his evidence which

shall then be subject to cross-examination by the prosecution/management.

The above directions are passed extending the time to complete the enquiry in affirmation of the view held by Hon'ble Single Bench *vide* its judgment and order dated 13th March, 2020.

The appellant undertakes to cooperate in the enquiry.

Learned Counsel for the respondents submits that the admissible dues of the appellant shall be disbursed within a period of two months from this date and the appellant shall be also informed of the reasons for the pendency of his other dues subject to the *DP* by and within the above stated period of two months.

Since affidavits are not invited, allegations made are deemed to be denied.

Mr. Guha Thakurta makes a prayer for grant of promotional benefits in the nature of MACP (Modified Assured Career Progression) Scheme. This Court is of the firm view that such a prayer is utterly misconceived considering the present scope of the appeal. Accordingly, this prayer stands rejected at the threshold

MAT 725 of 2020 along with **CAN 1 of 2020** and **CAN 3 of 2020** stand thus **disposed of**.

All parties shall act in terms of copy of this order
downloaded from the official website of this Court.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)