

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4327/2019

Nandkishor s/o Shamraoji Dhakite

...Versus...

**Union of India, through Secretary to Govt. of India Ministry of Railway, New
Delhi – 110 001 and others**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.M. Sudame, Advocate for petitioner
Shri N.P. Lambat, Advocate for respondents

**CORAM : DIPANKAR DATTA, C.J. &
A.S. CHANDURKAR, J.**

DATE : AUGUST 27, 2020

1. Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.
2. The challenge in this writ petition is to an order dated 21/02/2019, passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur.
3. Upon hearing the parties, the Tribunal dismissed the original application before it by recording as follows :

“5. *It is evident that the issues relating to evidence produced in support of the charges against the applicant and the proof of his delinquency have been well established even in the previous consideration held while passing orders in the OA No.2020/2010 which was then challenged before the Hon’ble High Court. The Hon’ble High Court had considered that the evidence was such that the punishment was prima facie quite harsh and disproportionate to the offence particularly in the context that the previous record of the applicant had not been considered. It is in such circumstances that the respondents volunteered to review the orders from this aspect and they have done so in the impugned orders. The fact of the charges and evidence in support of it and that the applicant was rightly proven to be delinquent have already been discussed in the previous orders of this Tribunal and have been reviewed without observing anything to the contrary by the Hon’ble High Court. Therefore, we do not see any need to review these orders from those aspects as is sought to be urged in this OA. In the circumstances that the respondents have re-considered the punishment imposed and reduced the punishment as above, we are of the view that the presently punishment is not disproportionate to the offence and is quite appropriate to the nature of the offence held against the applicant and does not*

merit any alteration within the scope of judicial review by this Tribunal.”

4. We have read the order dated 09/12/2015 of a coordinate Bench of this Court while disposing of the earlier writ petition presented before it by the petitioner, being Writ Petition No.1214/2015. The Tribunal seems to have overlooked that part of the order, expressing a “*prima facie*” view, and also that the petitioner had been granted liberty to approach this Court, if the occasion so required. The occasion for making such observations appears to be the acceptance by the coordinate Bench of the submission made on behalf of the respondents – the Railway, that the petitioner may be granted the liberty to ventilate his grievance by filing a mercy petition under Rule 31 of the Railway Servants (Discipline and Appeal) Rules, 1968, which is a remedy that the statutory rules provided to him but was not exhausted.

5. Since the learned Advocate for the respondents invited the Court to pass such order, granting liberty to the petitioner to take recourse to the provisions of Rule 31 of the 1968 Rules, the coordinate Bench did not examine the challenge on its merits. Taking an incorrect view of the order of the coordinate Bench, the Tribunal dismissed the original application.

6. We are of the considered view that the petitioner has set up a strong case for the original application to be heard on its merits by the Tribunal upon setting aside of the order impugned and on a remand being ordered by us. It is ordered accordingly.

7. This order would result in revival of the original application on the file of the Tribunal. The Tribunal is requested to decide the original application on merits, in accordance with law, as expeditiously as possible.

8. The writ petition is disposed of accordingly. No order as to costs.

9. The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

CHIEF JUSTICE

Wadkar

Shailendra
Wadkar

Digitally signed
by Shailendra
Wadkar
Date: 2020.08.28
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