

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.24131 of 2005

ORDER:

When the matter is taken up for hearing, learned counsel for the petitioner submits that the 2nd respondent had dismissed I.D.No.52 of 2001 preferred by the petitioner without granting any relief.

Learned counsel for the petitioner contends that the 2nd respondent ought to have interfered with the order of removal passed by the 1st respondent, as the same is shockingly disproportionate to the alleged misconduct.

He further submits that the 2nd respondent dismissed I.D.No.52 of 2001 on 03.03.2003 observing as follows:-

“By making corrections in the S.P.s., it gave raise to issue of used tickets with an intention to misappropriate the amount only. No other reason can be believed by making corrections in S.P.s. As clear act of misappropriation is proved against the petitioner, lenient view shall not be taken in awarding the punishment for proved misconduct. If any lesser punishment than removal from service is imposed by exercising powers under Section 11-A of I.D.Act, it would be nothing but improper exercise of powers conferred on this Tribunal under Section 11-A of I.D.Act. It would be nothing, but uncalled for and unwarranted sympathy, if lenient view is taken in imposing punishment. Punishment of removal for the act of misconduct is proportionate, deserving and reasonable. This Tribunal cannot give any valid reasons to impose lesser punishment than removal from service. So removal order passed by the management against the petitioner shall be confirmed. The petition is liable to be dismissed without giving any relief to the petitioner....”.

He contended that a perusal of the above finding of the Tribunal goes to show that the 2nd respondent observed that there is

an intention of misappropriation of the amount and mere intention is not sufficient for holding that the petitioner is guilty of misappropriation. The 2nd respondent ought to have interfered with the punishment of removal by applying the proportionality theory. Therefore, ends of justice would be met if the case of the petitioner is considered for fresh appointment without any past service benefits.

The learned Standing Counsel appearing for the respondents submits that the 1st respondent has imposed the punishment of removal from service for the proven misconduct in the enquiry and, therefore, the 2nd respondent had rightly not interfered with the punishment of removal. There are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that the 2nd respondent gave a finding that by making certain corrections in the SR. there is only an intention of the petitioner to misappropriate the amount and there is no specific finding that the petitioner is involved in misappropriation. Therefore, the 2nd respondent ought to have considered the case of the petitioner atleast for fresh appointment by applying the proportionality theory. Therefore, in order to give a quietus to this long pending case, the respondents are directed to consider the case of the petitioner for appointment afresh as a Conductor without any past service benefits, subject to medical fitness. It is made clear that the earlier service rendered by the petitioner i.e., prior to removal will be counted for the purpose of service benefits. However, the period

from the date of removal till fresh appointment will be treated as *dies non*, for which the petitioner is not entitled for any benefits.

With the above observations, this writ petition is disposed of.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

03-01-2020
Prv

