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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16.01.2020

+ **W.P.(C) 384/2020**

**DIVISIONAL RAILWAY MANAGER EAST COAST RAILWAY
AND ORS.**

..... Petitioners

Through: Mr. Himanshu Upadhyaya,
Advocate with Ms. Poly
Shivanshi Gupta, Advocate.

versus

HIRDESH KUMAR

.... Respondent

Through: Mr. Shiv Kumar Sharma,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

1. The present petition is directed against order dated 03.04.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in O.A. No. 3388/2014. On the last date of hearing, learned counsel for the respondent had appeared in the matter and had requested for a copy of the paperbook, which stands supplied.
2. With the consent of the parties, we set-down the petition for final hearing and disposal at the admission stage itself.
3. Some necessary facts which are required to be noticed for disposal of this petition are that the respondent herein was working as

Senior Section Engineer (SSE) in the year 2007. On 29.01.2007, he was issued a charge memo alleging that he had permitted a contractor to load scrap material in excess of the permitted quantity onto the train. The value of this excess scrap was quantified at Rs.13,330/-. The explanation rendered by the respondent was not found to be acceptable. Resultantly, the Senior Divisional Engineer directed that an enquiry be conducted. The Inquiry Officer submitted his report on 29.01.2007, holding that the charge was not proved. The report of the Inquiry Officer, alongwith other relevant material, was sent to the Vigilance Officer. The Disciplinary Authority thereafter issued a communication dated 19.02.2009 to the respondent ; and on 05.03.2019, the Disciplinary Authority passed an order imposing the punishment of reduction of pay scale by two stages for a period of six months, with a condition that it will not have the effect of postponing the future increments of pay on expiry of such period. An appeal was preferred ; which was rejected by the petitioner on 03.01.2012 ; which led to filing of the O.A. before the Tribunal. The Tribunal allowed the O.A. and that has led to filing of the present writ petition.

4. Mr. Upadhyaya, learned counsel for the petitioners submits that the Tribunal committed an error as it failed to take into account that the Disciplinary Authority had in fact applied its mind and had not proceeded only on the communication recieved from the Vigilance Department. It is further submitted that the order of the Tribunal is arbitrary and illegal on facts and law ; and thus liable to be set-aside. Mr. Upadhyaya further explains that there is no infirmity or illegality in the procedure followed by the petitioners in taking into account the

observations of the Vigilance Department's comments, since the proceedings had started on the basis of the Vigilance Department's allegations. It is contended that punishment has been imposed in terms of Railway Servant (Discipline & Appeal) Rules, 1968. Counsel further submits that once proper procedure was followed ; charge-sheet was issued ; list of documents in support of articles of charges were provided to the respondent, the Tribunal could not have interfered in the same.

5. Counsel for the respondent on the other hand submits that there is no infirmity in the order passed by the Tribunal, which requires interference by this court. It is contended that the reading of communication dated 19.02.2009 would leave no element of doubt that the Disciplinary Authority did not apply its mind and simply relied upon the comments received from the Vigilance Department.

6. We have heard learned counsel for the parties and have considered their rival contentions.

7. The facts noted hereinabove are not in dispute. It would be useful to reproduce communication dated 19.02.2009 which was addressed to the respondent herein by the Disciplinary Authority, which reads as under:-

"No.DAR/HK/SSE/(P) USFD/ SEP date:19.02.2009

To

*Sri Hridesh Kumar
SSE (P. WAY)/USFD
Kantabanji*

Sub:- Final Defence on Vigilance comments on Inquiry Officer's analysis and findings

Ref: Major penalty charge sheet No.DAR/HK/SSE(P)/USFD/SEP

The Vigilance's comments on Inquiry Officer's analysis and findings in respect of major penalty charge sheet no.DAR/HK/SSE (P) USFD/SBP dt. 25/29.01.2007 with IO's findings/report in your case are enclosed herewith. In case you wish to make any submission or any representation against it, you may do so in writing and forward the same to the undersigned within 15 days of the receipt of this letter undersigned within 15 days of the receipt of this letter, failing which it will be deemed to have been accepted by you and that you have nothing to say against it. Therefore, it will take action on Vigilance comments on Inquiry Officer's analysis and findings and the final defence (if received).

Encl: (1) Vigilance's comments (2 pages) with

I.O.'s analysis and findings, (3 pages)

*Sr Divnl Engineer (West)
E. Co. Rly, Sambalpur,
(Disciplinary Authority)"*

8. A careful examination of this communication would show that the Disciplinary Authority did indeed completely rely upon the comments of the Vigilance Department on the Inquiry Officer's report. There is not even a whisper to suggest that the Disciplinary Authority had examined the inquiry report or analysed it or independently reached a conclusion or recorded a disagreement note. The submissions made by Mr. Upadhyaya with regard to following proper procedure would have no bearing on the facts of the case since

the O.A. has been allowed on the ground of the Disciplinary Authority not having applied its mind independently.

9. Resultantly, we find no merit in the writ petition. The same is accordingly dismissed.

C.M. No.1050/2020 (stay)

10. Since the main petition is disposed of, this application is also disposed of.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 16, 2020

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