

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

WPCT 2 of 2021

Reserved on:- 04.03.2021

Date of decision:- 10.06.2021

Union of India

...Petitioner

-versus-

Subrata Ranjan Das

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ANIRUDDHA ROY

Present:- Mr. Shankar Ranjan Sen, Advocate

...for the petitioner

Mr. Ziaul Haque, Advocate

...for the respondent

ORDER

Aniruddha Roy, J.:

1. This writ petition has been filed assailing the order dated February 5, 2020 (for short, the impugned order) passed by the Central Administrative Tribunal, Kolkata Bench, (for short, the Tribunal) in OA 350/1589 /2014 (Subrata Ranjan Das vs. Union of India & Ors.) [for short, the Original Application] whereunder the Original Application was allowed. Vide impugned order the Tribunal quashed the order dated October 30, 2014 passed by the disciplinary authority. Liberty was granted to the petitioner to proceed against the respondent.

2. The facts of the case as are evident from records are that on August 30, 2011 the respondent was on duty in Train No. CED/SPL, LOCO

No. 27642 of call for 21:45 hours at Andul. The train arrived at Dum Dum Junction at 02:32 hours and thereafter signal was lowered at 03:07 hours to proceed further for Chittpur. The petitioner refused to proceed and was unwilling to continue to discharge his duty and demanded relief at Dum Dum Junction. For this reason, the signal was to be put back at stop position at 03:40 hours. At the time the respondent had completed only 06:25 hours of his duty.

3. Finally the train departed from Dum Dum Junction at 04:03 hours with a help of fresh crew as the respondent was reluctant to continue. As a result there had been detention of the train at Dum Dum Junction for 33 minutes. It was shown in Traction Rolling Stock (TRS now operation) account. As a consequence all the trains were to be rescheduled. Such an act was considered to be a gross negligence on the part of the respondent to perform his duty and violation of GR/SR 2.06 i.e. General Rules and Subsidiaries Rules. The respondent was then suspended by Office Order dated August 30, 2011. The suspension was revoked by an Order dated September 12, 2011. The respondent submitted his defense statement on September 27, 2011. In the disciplinary proceeding initiated by the railway employer, the disciplinary authority submitted its report. Punishment of stoppage of three increments as and when due, with non-cumulative effect, was imposed upon the respondent by the disciplinary authority vide order dated November 2, 2011.

4. Being aggrieved against the said punishment order the respondent preferred a departmental appeal. The punishment order was upheld and confirmed by the appellate authority by its order dated May 10, 2012.

5. The respondent then filed a Revision Petition before the departmental Revisional Authority and the same was rejected. The respondent moved the Tribunal by filing OA No. 1159 of 2012. By an order dated December 14, 2013 the Tribunal quashed the penalty order dated November 2, 2011 and remanded the matter back to the disciplinary authority with a direction to pass a reasoned order within two months, after giving hearing to

the respondent. Pursuant to the said direction dated December 14, 2013 after giving personal hearing to the respondent the appellate authority passed an order on January 6, 2014.

6. Being aggrieved thereby the respondent filed the second Original Application before the Tribunal being OA 263 of 2014. By an order dated August 22, 2014 the Tribunal quashed the said order of the appellate authority and directed the disciplinary authority to hear out the matter in terms of the order dated December 4, 2013 passed in OA No. 1159 of 2012.

7. Pursuant to such direction of the Tribunal, hearing was conducted on October 27, 2014 by the disciplinary authority and an order was passed on October 30, 2014. The same was challenged by the said Original Application before the Tribunal and the impugned order was passed.

8. Mr. Shankar Ranjan Sen, learned advocate appearing for the petitioner submitted that, following all the applicable rules and procedure and after affording adequate opportunity of hearing and also following the earlier direction made by the Tribunal the said order dated October 30, 2014 was passed by the disciplinary authority. The same was otherwise a speaking order and should not have been interfered with by the Tribunal.

9. Mr. Ziaul Haque, learned advocate appearing for the respondent submitted that, the charges imposed against the respondent relate to several crucial facts and to adjudicate upon the same proper examination of witnesses was required. Witnesses for the prosecution were examined but the respondent was not granted opportunity to cross examine such prosecution witnesses. In absence of such an opportunity to cross examine the prosecution witness, the basic principle of natural justice was breached and on this ground alone the order dated October 30, 2014 stood vitiated and the Tribunal rightly quashed the same.

10. After considering the submissions made on behalf of the parties and upon close perusal of material before this Court, we are of the considered view that the disciplinary authority while proceeding against the respondent

had duly considered the materials before it and proceeded with proper application of mind thereupon. From the materials it would be evident that the respondent was never granted relief by the employer at the detention point i.e. Dum Dum Junction where the train was detained for 33 minutes. The respondent did not comply with the provisions of the relevant Rules and violated GR/SR 2.06 i.e. the General Rules and Subsidiaries Rules. The charges against the respondent involved several factual aspects which had duly been addressed in detail by the Enquiry Officer and also in the previous round of litigations before the Tribunal. The relevant witness action in the disciplinary proceeding had also proved the charges against the respondent. It was established that the petitioner had failed to discharge his duty at the relevant point of time and caused detention of the train at Dum Dum Junction for 33 minutes. This had a cascading effect. Considering the nature of charges established against the respondent the disciplinary authority imposed minor punishment on the petitioner. The decision of the disciplinary authority was well versed and reasoned. In as much as, the respondent did not challenge the said disciplinary proceeding and its finding before the departmental appellate forum, instead applied before the Tribunal.

11. After considering the submissions made on behalf of the parties and upon close perusal of the materials available before this Court, this Court is of the considered view the respondent had violated the General Rules and Subsidiaries Rules as mentioned above and acted with a gross negligence while performing his duty. Balancing the nature of charges established against the respondent the punishment imposed by the disciplinary authority was minor. The decision of the disciplinary authority is well versed and reasoned. Such decision was also taken after affording adequate opportunity of hearing to the respondent.

12. This Court in exercise of its power under judicial review has a very limited authority to examine the order of the disciplinary proceeding. The Tribunal is the fact find authority who can examine the order of the

disciplinary authority in all possible manner, of course within the parameters of law. This Court cannot sit in appeal over the decision of the disciplinary authority or the Tribunal. Primarily in exercise of its power under judicial review this Court will examine the decision making process of the disciplinary authority. From a perusal of the order of the Tribunal it appears that, it had failed to appreciate that the charges against the respondent were duly proved and the respondent failed to rebut the same. The respondent had a meaningful participation in the disciplinary proceeding. The Tribunal further failed to appreciate that considering the negligence on the part of the respondent while performing his duty and having acted in violation of the relevant General Rules and Subsidiaries Rules, the punishment imposed on the respondent was minor in nature.

13. In view of our fore going discussions and the reasons stated, the impugned order passed by the Tribunal cannot sustain and is accordingly set aside. The order of the disciplinary authority dated October 30, 2014 is not interfered with and stands as it is.

14. Thus, the writ petition being **W.P.C.T. 2 of 2021** stands allowed.

(Rajesh Bindal)
Chief Justice (Acting)

(Aniruddha Roy)
Judge

Kolkata

10.06.2021

.....
P.A. (RM)